[FR Doc. 98–5390 Filed 3–2–98; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 500, 505 and 515

Foreign Assets Control Regulations; Regulations Prohibiting Transactions Involving the Shipment of Certain Merchandise Between Foreign Countries; Cuban Assets Control Regulations: Civil Penalty Administrative Hearings

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Treasury Department amends the Foreign Assets Control Regulations and the Cuban Assets Control Regulations to add procedures for the conduct of administrative hearings in civil penalty cases and for settlement of civil penalty cases in lieu of administrative hearings. A conforming amendment is made to the Transaction Control Regulations. The final rule is issued after consideration of public comments received on the proposed rule published in the February 14, 1997 **Federal Register**.

EFFECTIVE DATE: This final rule is effective April 2, 1998.

FOR FURTHER INFORMATION CONTACT: Mrs. B.S. Scott, Chief, Civil Penalties Program (tel.: 202/622–6140), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, U.S. Treasury Department, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in WordPerfect 5.1, ASCII, and Adobe Acrobat™ readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library (''TEL'') in the ''Business, Trade and Labor Mall'' of the FedWorld bulletin board. By modem, dial 703/321–3339, and select the appropriate self–expanding file in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: http://www.ustreas.gov/treasury/services/fac/fac.html, or in fax form through the Office's 24–hour fax–on–demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch–tone telephone.

Background

The Foreign Assets Control Regulations, 31 CFR part 500, and the Cuban Assets Control Regulations, 31 CFR part 515 (jointly, the ''Regulations''), are amended to provide for detailed procedures governing administrative hearings, as provided in section 1710(c) of the Cuban Democracy Act of 1992 (22 U.S.C. 6001–6010 — the ''CDA''). A conforming amendment is made to § 505.50 of the Regulations Prohibiting Transactions Involving the Shipment of Certain Merchandise Between Foreign Countries, 31 CFR part 505, which incorporates by reference the penalty provisions of part 500. Because the CDA amends section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16) to permit the imposition of civil monetary penalties and civil forfeiture with opportunity for hearing and discovery, subpart G of the Regulations is revised to establish the procedures governing administrative hearings.

This final rule addresses the comments received during the public comment period and establishes the Office of Foreign Assets Control's (''OFAC'') civil penalties administrative hearing process.

Response to Public Comments

On February 14, 1997, OFAC requested public comments on proposed rules (31 CFR Parts 500, 505 and 515). OFAC received two letters commenting on the proposed hearing procedures. The commenters were Lonnie Ann Pera, Esq., of Zuckert, Scoutt & Rasenberger, L.L.P., and D.E. Wilson, Jr., Esq., of Lane & Mittendorf LLP. A number of procedural and substantive changes have been made to improve clarity and to reflect concerns raised in the comments submitted.

In response to the suggestion of one commenter, the sections have been renumbered to create new headings to facilitate use of the regulations. In the discussion below, the new headings are used with the previous heading listed in parentheses. The comments below apply equally to part 500 and 515, but, because the sections are identical, reference is made only to part 500.

Section 550.701(b)

Criminal Penalty Increase:

One commenter suggested that more information about increased criminal fines for violations of the Trading with the Enemy Act pursuant to 18 U.S.C. 3571 be included. Further information is provided.

Section 500.702

Calendar Days:

Both commenters raised a number of procedural points requesting clarification of filing and service requirements. Many of their suggestions have been incorporated into the final rule. Filing deadlines are now specifically counted in terms of calendar days, unless otherwise noted.

Notice in the Prepenalty Notice of Waiver of Discovery:

One commenter believed that the prepenalty notice should specifically inform the respondent that a request for discovery must be included in the response or the right to discovery is waived. This additional notice to the respondent is now included in § 500.702(b)(2)(iii). The second commenter stated that the waiver of respondent's rights to discovery and hearing where the respondent has filed in an untimely manner was ''draconian.'' OFAC disagrees. Prepenalty notices and OFAC regulations clearly set out deadline requirements which respondents must satisfy.

Service:

One commenter stated that § 500.702(c)(3) should require the individual serving the prepenalty notice to sign and to indicate on the certificate the date on which the prepenalty notice was served. The paragraph has been amended to require that the certificate include both the server's signature and the date of service.

Section 500.703

Notice of Address Change:

Each respondent is required to provide a name and address for service. One commenter asked that OFAC define the term ''interested parties'' found in section 703(b)(1)(iii), which contains the requirement for accurate address information. The commenter requested that the possible sanctions for failure to comply with this provision be specifically set forth in the regulations. OFAC has changed the term ''interested

parties'' to ''parties'' to clarify who must be notified of address changes. The imposition of sanctions for failure to comply with this requirement is committed to the discretion of the Administrative Law Judge. Consistent with the Administrative Procedure Act, 5 U.S.C. ch. 5 and 7 (the ''APA''), the Administrative Law Judge has the authority to conduct the hearing including the authority to ''regulate the course of the hearing and the conduct of the parties and their counsel.'' § 500.706(b)(5).

One commenter believed that if a respondent is represented by counsel, OFAC need only know the current name, address and telephone number of respondent's counsel and that notice only need be sent to the parties' counsel. OFAC agrees it is sufficient for a party represented by counsel to have the counsel provide the appropriate name, address, and facsimile machine and telephone numbers. This provision has been amended accordingly.

Informal Settlement:

One commenter stated it was not clear whether OFAC would or could toll the 30 calendar day response period during settlement discussions and requested clarification regarding the required mechanism for tolling the response period under § 500.703(b)(3). OFAC believes that the provision is clear. There is no automatic tolling of the 30–day response period during settlement discussions. A respondent engaged in settlement discussions for 29 calendar days may not break off discussions on day 29 and then receive 29 additional calendar days to file a response to the prepenalty notice. In this example, the respondent would have only one remaining calendar day left in which to file a response absent a clear agreement with OFAC to the contrary. Where OFAC has responded affirmatively in writing that the 30 calendar day response period has been tolled for ongoing settlement discussions, the respondent will be informed in writing of the new deadline for responding.

Section 500.705

Admissibility of Information into the Record:

One commenter expressed concern over the admissibility of evidence into the record. OFAC has amended the language to emphasize that information will be admissible into the record to the extent that the Administrative Law Judge deems it admissible pursuant to § 500.715.

Signature of a Requesting Party:

One commenter objected to OFAC's double signature requirement on a request for hearing. Under the proposed regulations, § 500.705(c) required both respondent's signature and respondent's counsel's signature on the request for hearing. OFAC agrees this is unnecessary and has amended this requirement to allow signature either by respondent or, if represented, by respondent's counsel.

Section 500.706

Notice of Appearance:

Both commenters sought clarification concerning the requirement for notice of appearance and representation before the Administrative Law Judge. The provision has been amended to reflect OFAC's intent that parties or their counsel provide written notice to the Administrative Law Judge that they are either a party or counsel to a party in the proceeding before the judge. The notice of appearance must be provided to the Administrative Law Judge. No particular format is required for the notice of appearance.

Section 500.709 (proposed § 500.706)

Motions, Interlocutory Appeals, Notice of Change of Address:

Both commenters supported the use of facsimile transmissions and private expedited mail services to facilitate respondents' efforts in meeting filing deadlines. One commenter questioned how the Administrative Law Judge would be able to serve the parties with a decision by certified mail and leave the parties sufficient time to respond with an interlocutory appeal. Citing delivery problems with certified mail in particular areas of the country, the commenter stated that the parties may not learn of the decision until just before, or possibly even after, the expiration of the 10–day period for appealing the decision. OFAC has amended these provisions. Parties or the Administrative Law Judge may serve or file copies of signed and dated documents by facsimile transmission, courier, or other expedited means, provided that the original, signed document is also sent concurrently by registered or certified mail, return receipt requested. The date stated in the date–stamped registered or certified mail postal receipt constitutes the filing or service date.

Section 500.707 (proposed § 500.706(g))

Interlocutory Appeal:

One commenter asked for more precise instructions in filing an interlocutory appeal. The commenter also asked for a model form. The Administrative Law Judge has the authority to provide particularized instructions of this nature.

500.706(e)

Ex Parte Communications:

One commenter noted that the terms referring to ''party,'' ''party's counsel,'' ''respondent,'' and ''any other individual'' were used but not interchangeably. OFAC agrees with the commenter and the paragraph has been amended to achieve more consistent usage of these terms.

Section 500.710(e) (proposed § 500.706(k)(5))

Exemptions from Discovery:

One commenter suggested that OFAC was treating as undiscoverable Executive orders dealing with the treatment of national security information even where the President has decided that certain of such orders are not classified. This is not OFAC's position. This section provides for withholding information requested in discovery where a privilege is asserted. One available privilege applies to classified information. Unclassified documents would not qualify for this privilege.

The other commenter felt that a respondent would be compelled to submit interrogatories before OFAC had time to set a hearing date. The commenter suggested that the filing deadlines were already strict and asserted that requiring respondent to serve interrogatories in advance of scheduling a hearing date would prove ''unduly burdensome'' for the respondent. OFAC does not agree. A respondent has 30 calendar days in which to respond to an OFAC prepenalty notice and request a hearing and discovery. Once the response is served upon OFAC, an Administrative Law Judge will be assigned the case. The Administrative Law Judge will set the hearing date, not OFAC. When the procedural schedule is not prescribed under the regulations, the Administrative Law Judge has the authority to establish the schedule. The Administrative Law Judge may, for example, convene a pre–hearing conference to respond to scheduling burdens being experienced by the parties.

Section 500.711 (proposed § 500.706(l)(5))

Summary Disposition:

One commenter suggested that a respondent might not receive the Administrative Law Judge's recommended decision for summary dismissal in sufficient time to file an interlocutory appeal. The commenter also requested that the regulations clarify whether the appeal is due within

20 days after the date of the Administrative Law Judge's decision or after the date respondent receives the recommended decision.

OFAC agrees with the commenter's concerns and the need for greater clarity on this point. Service by the Administrative Law Judge upon the parties of recommended decisions and other orders might be delayed by the use of U.S. certified mail, and this may impose hardships upon the parties. This and other provisions have been amended to provide for delivery of the Administrative Law Judge's signed and dated recommended decisions and other orders by facsimile transmission, courier, or other expedited means, concurrent with service by U.S. certified mail. Section 500.711(e)(proposed § 500.706(l)(5)) has been changed to clarify that an appeal from the Administrative Law Judge's recommended decision for summary disposition is due within 20 days of the date of the judge's decision.

Section 500.713 (proposed § 500.706(o))

Public Hearing:

One commenter suggested that the term ''notice'' required clarification. OFAC has amended the language to include a specific reference to the ''notice of hearing from the Administrative Law Judge.'' § 500.713(a). Thus, within 20 calendar days of the Administrative Law Judge's notice of hearing, any party may file a motion with the judge requesting a closed hearing.

Section 500.715(g) (proposed § 500.706(q)(7))

Costs of Depositions:

One commenter requested that OFAC specify exactly which costs of a deposition the requesting party must pay. OFAC believes that the regulations are clear. All costs of depositions shall be borne by the party requesting the deposition. Should a party requesting a deposition object to fees or travel expenses sought by the deponent, the requesting party may seek a ruling by the Administrative Law Judge. Pursuant to § 500.706(b)(4) and (12), the Administrative Law Judge has the authority to cause depositions to be taken and to set fees and expenses for witnesses, including expert witnesses.

One commenter asked that the term ''unavailable'' be defined for purposes of § 500.715(g). The commenter suggested that the respondent must know whether a deposition is appropriate if a person cannot attend the hearing because of a conflict, or whether the witness must meet the ''unavailability'' requirements of the Federal Rules of Evidence before the respondent may take a deposition. While the Federal Rules of Evidence do not generally apply to this administrative hearing process, the Administrative Law Judge does have the authority to take and cause depositions to be taken. In the event a question or controversy arises as to the ''unavailability'' of a witness, the parties may seek a ruling by the Administrative Law Judge.

Section 500.716(g) (proposed § 500.706(u))

Final Decision:

Proposed § 500.706(u) provided for the final decision of the Secretary or the Secretary's designee to be based on a review of the proposed decision and the entire record of the proceeding. A commenter questioned whether OFAC intended that the final decision be based upon the parties' proposed decisions or on the Administrative Law Judge's recommended decision. OFAC has amended § 500.716(g) to read ''based on a review of the Administrative Law Judge's recommended decision and the entire record of the proceeding.''

Regulatory Flexibility Act

It has been determined that this final rule is not a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified, pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the final rule will not have a significant economic impact on a substantial number of small entities, so that no regulatory flexibility analysis is required. The factual basis for this certification is as follows: Since civil penalty procedures under the Regulations were adopted (June 29, 1993, for part 515; April 8, 1994, for part 500), all recipients of a prepenalty notice under the Regulations have been provided the opportunity to request an administrative hearing, with prehearing discovery, prior to imposition of a penalty. §§ 500.702(b) & 515.702(b). As of December 12, 1997, the cumulative number of hearing requests pending was 41. Of these, only 5 involved respondents that are small business entities with fewer than 500 employees. A respondent's decision to use the administrative hearing process is strictly voluntary, and any final agency action imposing a civil penalty, with or without an administrative hearing, remains appealable pursuant to section 702 of the APA.

The collection of information in the final rule arises in the conduct of administrative actions or investigations by OFAC against specific individuals or entities and is, pursuant to 44 U.S.C. 3518(c)(1)(B)(ii), not subject to the requirements of the Paperwork Reduction Act.

List of Subjects

31 CFR Part 500

Administrative practice and procedure, Banks, banking, Blocking of assets, Cambodia, Currency, Estates, Exports, Finance, Foreign claims, Foreign investment in the United States, Foreign trade, Imports, Information and informational materials, International organizations, North Korea, Penalties, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Terrorism, Travel restrictions, Trusts and trustees, Vessels, Vietnam.

31 CFR Part 505

Administrative practice and procedure, Arms and munitions, Banks, banking, Communist countries, Exports, Finance, Foreign trade, Nuclear materials, Penalties, Reporting and recordkeeping requirements.

31 CFR Part 515

Administrative practice and procedure, Air carriers, Banks, banking, Blocking of assets, Cuba, Currency, Estates, Exports, Finance, Foreign investment in the United States, Foreign trade, Imports, Information and informational materials, Penalties, Reporting and recordkeeping requirements, Securities, Shipping, Specially designated nationals, Terrorism, Travel restrictions, Trusts and trustees, Vessels.

For the reasons set forth in the preamble, 31 CFR parts 500, 505 and 515 are amended as set forth below:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 is revised to read as follows:

Authority: 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p.748.

2. Subpart G is revised to read as follows:

Subpart G—Penalties

Secs.

Subpart G—Penalties

§ 500.701 Penalties.

(a) Attention is directed to section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16 — ''TWEA''), as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note), which provides that:

(1) Persons who willfully violate any provision of TWEA or any license, rule, or regulation issued thereunder, and persons who willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of TWEA shall, upon conviction, be fined not more than $1,000,000 or, if an individual, be fined not more than $100,000 or imprisoned for not more than 10 years, or both; and an officer, director, or agent of any corporation who knowingly participates in such violation shall, upon conviction, be fined not more than $100,000 or imprisoned for not more than 10 years, or both.

(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, concerned in a violation of TWEA may upon conviction be forfeited to the United States.

(3) The Secretary of the Treasury may impose a civil penalty of not more than $55,000 per violation on any person who violates any license, order, or regulation issued under TWEA.

(4) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation subject to a civil penalty issued pursuant to TWEA shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States Government.

(b) The criminal penalties provided in TWEA are subject to increase pursuant to 18 U.S.C. 3571 which, when read in conjunction with section 16 of TWEA, provides that persons convicted of violating TWEA may be fined up to the greater of either $250,000 for individuals and $1,000,000 for organizations or twice the pecuniary gain or loss from the violation.

(c) Attention is directed to 18 U.S.C. 1001, which provides that 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 under title 18, United States Code, or imprisoned not more than 5 years, or both.

§ 500.702 Prepenalty notice; contents; respondent's rights; service.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Trading with the Enemy Act, and the Director determines that further proceedings are warranted, he or she shall issue to the person concerned a notice of his or her intent to impose a monetary penalty and/or forfeiture. The prepenalty notice may be issued whether or not another agency has taken any action with respect to this matter.

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

(2) *Respondent's rights*—(i) *Right to respond.* The prepenalty notice shall also inform the respondent of respondent's right to respond in writing to the notice within 30 calendar days of the mailing or other service of the notice pursuant to paragraph (c) of this section, as to why a monetary penalty and/or forfeiture should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

(ii) *Right to request a hearing.* The prepenalty notice shall also inform the respondent that, in the response provided for in paragraph (b)(2)(i) of this section, the respondent may also request a hearing conducted pursuant to 5 U.S.C. 554–557 to present the respondent's defenses to the imposition of a penalty and/or forfeiture and to offer any other information that the respondent believes should be included in the agency record prior to a final determination concerning the imposition of a penalty and/or forfeiture. A failure to request a hearing within 30 calendar days of service of the prepenalty notice constitutes a waiver of a hearing.

(iii) *Right to request discovery prior to hearing.* The prepenalty notice shall also inform the respondent of the right to discovery prior to a requested hearing. Discovery must be requested in writing in the response provided for in paragraph (b)(2)(i) of this section, jointly with respondent's request for a hearing. A failure to file a request for discovery within 30 calendar days of service of the prepenalty notice constitutes a waiver of prehearing discovery.

(c) *Service.* The prepenalty notice, or any amendment or supplement thereto, shall be served upon the respondent. Service shall be presumed completed:

(1) Upon mailing a copy by registered or certified mail, return receipt requested, addressed to the respondent at the respondent's last known address; or

(2) Upon the mailing date stated in a date–stamped postal receipt presented by the Office of Foreign Assets Control with respect to any respondent who has refused, avoided, or in any way attempted to decline delivery, tender, or acceptance of the registered or certified letter or has refused to recover a registered or certified letter served; or

(3) Upon personal service by leaving a copy with the respondent or an officer, a managing or general agent, or any other agent authorized by appointment or by law to accept or receive service for the respondent and evidenced by a certificate of service signed and dated by the individual making such service, stating the method of service and the identity of the individual with whom the prepenalty notice was left; or

(4) Upon proof of service on a respondent who is not resident in the United States by any method of service permitted by the law of the jurisdiction in which the respondent resides or is located, provided the requirements of such foreign law satisfy due process requirements under United States law with respect to notice of administrative proceedings, and where applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraphs (c)(1) through (3) of this section inappropriate

or ineffective for service upon the nonresident respondent.

§ 500.703 Response to prepenalty notice; requests for hearing and prehearing discovery; waiver; informal settlement.

(a) *Deadline for response.* The respondent shall have 30 calendar days from the date of mailing or other service of the prepenalty notice pursuant to § 500.702(c) to respond thereto. The response, signed and dated, may be sent by facsimile transmission to the Office of Foreign Assets Control, at 202/622–1657, or by courier or other expedited means at any time during the 30–day response period if an original copy is sent concurrently via the U.S. Postal Service, registered or certified mail, return receipt requested. The date shown on the date–stamped registered or certified mail postal receipt will constitute the filing date of the response.

(b) *Form and contents of response*—(1) *In general.* The written response need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should be responsive to the allegations contained therein and set forth the nature of the respondent's defenses.

(i) The response must admit or deny specifically each separate allegation of violation made in the prepenalty notice. If the respondent is without knowledge as to an allegation, the response shall so state, and such statement shall operate as a denial. Failure to deny, controvert, or object to any allegation will be deemed an admission of that allegation.

(ii) The response must also set forth any additional or new matter or arguments the respondent seeks, or shall seek, to use in support of all defenses or claims for mitigation. Any defense or partial defense not specifically set forth in the response shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(iii) The response must also accurately state, for each respondent, the respondent's full name and address for future service, together with current telephone and, if applicable, facsimile machine numbers and area code. If respondent is represented by counsel, counsel's full name and address, together with telephone and facsimile numbers and area code, may be provided in lieu of service information for the respondent. The respondent or respondent's counsel of record is responsible for providing timely written notice to the parties of any subsequent changes in the information provided.

(2) *Request for hearing and prehearing discovery; waiver.* Any request for an administrative hearing and prehearing discovery must be made, if at all, in the written response made pursuant to this section and within the 30 calendar day period specified in § 500.705(a). A failure to request a hearing and prehearing discovery in writing within 30 calendar days of service of the prepenalty notice constitutes a waiver of a hearing and prehearing discovery. A response asserting that respondent reserves the right to request a hearing or prehearing discovery beyond the 30 calendar day period is ineffectual.

(3) *Informal settlement; response deadline.* In addition or as an alternative to a written response to a prepenalty notice pursuant to this section, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent is not required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the 30 calendar day period specified in paragraph (a) of this section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control. A failure to request a hearing and prehearing discovery in writing within 30 calendar days of service of the prepenalty notice constitutes a waiver of a hearing and prehearing discovery.

§ 500.704 Penalty imposition or withdrawal absent a hearing request.

(a) *No violation.* If, in the absence of a timely hearing request, after considering any response to the prepenalty notice and any relevant facts, the Director determines that there was no violation by the respondent named in the prepenalty notice, the Director promptly shall notify the respondent in writing of that determination and that no civil monetary penalty or civil forfeiture pursuant to this subpart will be imposed.

(b) *Violation.* If, in the absence of a timely hearing request, after considering any response to the prepenalty notice and any relevant facts, the Director determines that there was a violation by the respondent named in the prepenalty notice, the Director promptly shall issue a written notice of the imposition by the Office of Foreign Assets Control of the civil monetary penalty and/or civil forfeiture and/or other available disposition with respect to that respondent.

(1) The penalty/forfeiture notice shall inform the respondent that payment of the assessed penalty must be made within 30 calendar days of the mailing of the penalty notice.

(2) The penalty/forfeiture notice shall inform the respondent of the requirement to furnish respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that the Department intends to use such number for the purposes of collecting and reporting on any delinquent penalty amount in the event of a failure to pay the penalty imposed.

§ 500.705 Time and opportunity to request a hearing.

(a) *Deadline for hearing request.* Within 30 calendar days of the date of mailing or other service of the prepenalty notice pursuant to § 500.702(c), the respondent may file a written request for an agency hearing conducted pursuant to this section, to present the respondent's defenses to the imposition of a penalty and/or forfeiture and to offer any other information for inclusion, if found admissible pursuant to § 500.715(a), into the agency record prior to a final determination concerning the imposition of a penalty and/or forfeiture.

(b) *Content of written response.* If an agency hearing is requested by the respondent or by the respondent's counsel, the written hearing request must be accompanied by a written response to the prepenalty notice containing the information required by § 500.703(b)(1)(i) through (iii). An untimely hearing request or written response to the prepenalty notice constitutes a waiver of a hearing.

(c) *Signature of filings.* All hearing requests, motions, responses, interrogatories, requests for deposition transcripts, requests for protective orders, and all other filings relating to requests for and responses to discovery or pertaining to the hearing process, must be signed by each requesting party or, if represented, by each party's counsel.

(d) *Computation of time*—(1) *Final date on weekend or holiday.* Whenever the final date for any requirement of this part falls on a Saturday, Sunday, Federal holiday, or other day on which

the Office of Foreign Assets Control is not open for the transaction of business during normal working hours, the time for filing will be extended to the close of business on the next working day.

(2) *Closing time.* The time for filing any document expires at 5:00 p.m. local Washington, DC time on the last day when such filing may be made.

§ 500.706 Hearing.

(a) *Notice of hearing.* (1) Any respondent requesting a hearing shall receive notice of the time and place of the hearing at the service address provided pursuant to § 500.703(b)(1)(iii). Requests to change the time and place of a hearing may be submitted to the Administrative Law Judge, who may modify the original notice or subsequently set hearing dates. All requests for a change in the time or place of a hearing must be received in the Administrative Law Judge's chambers and served upon the parties no later than 15 working days before the scheduled hearing date.

(2) The hearing shall be conducted in a manner consistent with 5 U.S.C. 554–557, pursuant to section 1710(c) of the Cuban Democracy Act of 1992 (22 U.S.C. 6001–6010) and section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16).

(b) *Powers.* The Administrative Law Judge shall have all powers necessary to conduct the hearing, consistent with 5 U.S.C. 554–557, including the following powers:

(1) To administer oaths and affirmations;

(2) To require production of records or any information relative to any act or transaction subject to this part, including the imposition of sanctions available under Federal Rule of Civil Procedure 37(b)(2) (Fed. R. Civ. P. 37(b)(2), 28 U.S.C.) for a party's failure to comply with discovery requests;

(3) To receive relevant and material evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this part;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling or prehearing conferences as deemed necessary;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the Secretary or the Secretary's designee shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the Secretary or to the Secretary's designee a recommended decision as provided in §§ 500.711(d) and 500.716(e);

(9) To recuse himself on motion made by a party or on the Administrative Law Judge's own motion;

(10) To establish time, place, and manner limitations on the attendance of the public and the media for any public hearing;

(11) To perform all necessary or appropriate measures to discharge the duties of an Administrative Law Judge; and

(12) To set fees and expenses for witnesses, including expert witnesses.

(c) *Appearance and practice in a civil penalty hearing*—(1) *Appearance before an Administrative Law Judge by counsel.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, or territory of the United States, or the District of Columbia may represent respondents upon written notice to the Administrative Law Judge in a civil penalty hearing.

(2) *Appearance before an Administrative Law Judge by a nonlawyer.* A respondent may appear on his own behalf; a duly authorized member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any corporation may represent that corporation upon written notice to the Administrative Law Judge in a civil penalty hearing.

(3) *Office of Foreign Assets Control representation.* The Office of Foreign Assets Control shall be represented by the Office of General Counsel of the United States Department of the Treasury.

(d) *Conflicts of interest.*—(1) *Conflict of interest in representation.* No individual shall appear as counsel for a party in a proceeding conducted pursuant to this subpart if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person, or by counsel's own interests.

(2) *Corrective Measures.* The Administrative Law Judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(e) *Ex parte communications*—(1) *Definition.* The term *ex parte communication* means any material oral or written communication not on the public record concerning the merits of an adjudicatory proceeding with respect to which reasonable prior notice to all parties is not given, on any material matter or proceeding covered by these regulations that takes place between:

(i) A party to the proceeding, a party's counsel, or any other individual; and

(ii) The Administrative Law Judge handling that proceeding, or the Secretary, or the Secretary's designee.

(2) *Exceptions.* (i) A request to learn the status of the proceeding does not constitute an ex parte communication; and

(ii) Settlement inquiries and discussions do not constitute ex parte communications.

(3) *Prohibition on ex parte communications.* From the time a respondent requests a hearing until the date that the Secretary or the Secretary's designee issues a final decision, no party, interested person, or counsel therefor shall knowingly make or cause to be made an ex parte communication. The Administrative Law Judge, the Secretary, and the Secretary's designee shall not knowingly make or cause to be made to a party, or to any interested person or counsel therefor, any ex parte communication.

(4) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the Administrative Law Judge, the Administrative Law Judge shall cause all such written communication (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All parties to the proceeding shall have an opportunity, within 10 calendar days of the receipt of service of the notice or of receipt of a memorandum of the ex parte communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (e)(5) of this section, appropriate under the circumstances, or may file an interlocutory appeal with the Secretary or the Secretary's designee.

(5) *Sanctions.* Any party to the proceeding, a party's counsel, or any other individual, who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Administrative Law Judge for good cause shown, or that may be imposed upon interlocutory appeal taken to the Secretary or the Secretary's designee, including, but not limited to, exclusion from the hearing and an adverse ruling

on the issue which is the subject of the prohibited communication.

(f) *Time limits.* Except as provided elsewhere in this subpart, the Administrative Law Judge shall establish all time limits for filings with regard to hearings conducted pursuant to this subpart, except for decisions on interlocutory appeals filed with the Secretary or the Secretary's designee.

(g) *Failure to appear.* The unexcused failure of a respondent to appear in person at a hearing or to have duly authorized counsel appear in respondent's place constitutes a waiver of the respondent's right to a hearing and is deemed an admission of the violation alleged. Without further proceedings or notice to the respondent, the Administrative Law Judge shall enter a finding that the right to a hearing was waived, and the case shall be determined pursuant to § 500.704.

§ 500.707 Interlocutory appeal.

(a) *Interlocutory appeals.* When exceptions, requests for extensions, or motions, including motions for summary disposition, are denied by the Administrative Law Judge, interlocutory appeals may be taken to the Secretary or to the Secretary's designee for a decision.

(b) *Filing deadline.* Interlocutory appeals must be filed no later than 15 calendar days after the matter being appealed has been decided in writing by the Administrative Law Judge. Parties may request that the Administrative Law Judge transmit the written decision to the parties by facsimile transmission, courier, or other expedited means in addition to service of the decision via the U.S. Postal Service by registered or certified mail, return receipt requested. Such requests must be supported by a written statement of need for expedited delivery. Timely filing of the interlocutory appeal shall be determined by the date stated on the date–stamped registered or certified mail postal receipt.

(c) *Manner of filing.* Interlocutory appeals to the Secretary or the Secretary's designee must be filed by facsimile transmission to 202/622–1188, courier, or other expedited means, and sent concurrently by registered or certified mail, return receipt requested, to the Secretary's Office, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, with the envelope prominently marked ''Attention: OFAC Interlocutory Appeal.'' Expedited service must also be made upon the Administrative Law Judge and all parties or, if represented, their counsel, with certified copies sent concurrently by registered or certified mail, return receipt requested.

§ 500.708 Settlement during hearing proceedings.

Any party may, at any time during the hearing, unilaterally submit written offers or proposals for settlement of a proceeding to the Secretary or the Secretary's designee, at the address listed in § 500.707(c). Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a hearing. No settlement offer or proposal, nor any subsequent negotiation or resolution, is admissible as evidence in any hearing before this tribunal.

§ 500.709 Motions.

(a) *Written motions.* Except as otherwise specifically provided herein, an application or request for an order or ruling must be made by written motion, in typed format.

(1) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(2) No oral argument may be held on written motions unless directed by the Administrative Law Judge. Written memoranda, briefs, affidavits, and other relevant material and documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the Administrative Law Judge directs that such motion be made in writing.

(c) *Filing of motions*—(1) *In general.* Motions by respondents must be filed with the Administrative Law Judge and served upon the Office of the Chief Counsel, Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, with the envelope prominently marked ''Urgent: Annex—Room 3133,'' unless otherwise directed by the Administrative Law Judge. Motions by the Office of Foreign Assets Control must be filed with the Administrative Law Judge and with each respondent or respondent's counsel. Motions may also be concurrently sent by facsimile transmission, courier, or other expedited means.

(2) *Interlocutory appeals.* Motions related to interlocutory appeals to the Secretary or the Secretary's designee must be filed by facsimile transmission to 202/622–1188, by courier, or by other expedited means, and sent concurrently by registered or certified mail, return receipt requested, to the Secretary's Office, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, with the envelope prominently marked ''Attention: OFAC Interlocutory Appeal.'' Expedited service must also be made upon the Administrative Law Judge and all parties or, if represented, their counsel, with certified copies sent concurrently by registered or certified mail, return receipt requested.

(d) *Responses.* (1) Any party may file a written response to a motion within 20 calendar days of the date of its mailing, by registered or certified mail pursuant to this subpart. If directed by the Administrative Law Judge, the time period in which to respond may be shortened or extended. The Administrative Law Judge may allow each party to file a response before finally ruling upon any oral or written motion. The Administrative Law Judge may allow a rejoinder to responses for good cause shown. If a rejoinder is permitted, it must be filed within 15 calendar days of the date the response was filed and served upon all parties.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed to be consent by that party to the entry of an order substantially in the form of any proposed order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

§ 500.710 Discovery.

(a) *In general.* The availability of information and documents through discovery is subject to the agency's assertion of privileges available to OFAC and/or to the Treasury and to the application of all exemptions afforded the agency pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)) and the Privacy Act (5 U.S.C. 552a) to all facets of discovery, including interrogatories, depositions that seek the release of trade secrets, proprietary materials, third–party confidential and/or commercially sensitive materials, placement of information, documents and/or materials under seal and/or protective order, and interlocutory appeals to the Secretary or the Secretary's designee from any decision of the Administrative Law Judge.

(b) *Types of discovery.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or other evidence for inspection; and requests for admission. All depositions of Federal employees

must take place in Washington, DC, at the U.S. Treasury Department or at the location where the Federal employee to be deposed performs his duties, whichever the Federal employee's supervisor or the Office of the Chief Counsel, Foreign Assets Control shall deem appropriate. All depositions of Federal employees shall be held at a mutually agreed upon date and time, and for a mutually agreed upon length of time.

(c) *Interrogatories.* Respondent's interrogatories must be served upon the Office of the Chief Counsel, Foreign Assets Control within 20 calendar days of respondent's written request for a hearing. The Office of Foreign Assets Control's interrogatories must be served within 30 calendar days of the receipt of service of respondent's interrogatories or within 30 calendar days of the receipt of respondent's written request for a hearing if no interrogatories are filed by respondent by that time. Parties have 30 calendar days to respond to interrogatories from the date interrogatories are received. Interrogatories shall be limited to 20 questions only. Each subpart, section, or other designation of a part of a question shall be counted as one complete question in computing the permitted 20 question total. Where more than 20 questions are served upon a party, the receiving party may determine which of the 20 questions the receiving party shall answer.

(d) *Scope.* Parties may obtain discovery regarding any matter not privileged which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The Administrative Law Judge may make any order which justice requires to ensure that requests are not unreasonable, oppressive, excessive in scope or unduly burdensome, including the issuance of an order to show cause why a particular discovery request is justified upon the motion of the objecting party.

(e) *Privileged matter.* Privileged documents are not discoverable. Privileges include, inter alia, the attorney–client privilege, attorney work–product privilege, any government's or government agency's deliberative–process or classified information privilege, including materials classified pursuant to Executive Order 12958 (3 CFR, 1995 Comp., p. 333) and any future Executive orders that may be issued relating to the treatment of national security information, and all materials and information exempted from release to the public pursuant to the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)).

(f) *Updating discovery.* Whenever a party receives new or additional information or documentation, all information produced, and all information required to be provided pursuant to the discovery and hearing process, must automatically be updated. The Administrative Law Judge may impose sanctions for failure to update, including prohibiting opposition to claims or defenses raised, striking pleadings or staying proceedings, dismissing the action or any part thereof, rendering a judgment by default, and holding a party in contempt.

(g) *Time limits.* All discovery, including all responses to discovery requests, shall be completed no later than 20 calendar days prior to the date scheduled for the commencement of the hearing. No exceptions to this time limit shall be permitted, unless the Administrative Law Judge finds on the record that good cause exists for waiving the requirements of this paragraph (g).

§ 500.711 Summary disposition.

(a) *In general.* The Administrative Law Judge shall recommend that the Secretary or the Secretary's designee issue a final order granting a motion for summary disposition if the facts of the record show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving party is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes that there is no genuine issue of material fact to be determined and that such party is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 calendar days after service of such a motion, or within such time period as allowed by the Administrative Law Judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, transcripts, affidavits, and any other evidentiary materials that the moving party contends support its position. The motion must also be accompanied by a brief containing the points and authorities in support of the moving party's arguments. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which such party contends a genuine dispute exists. The opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his or her own motion, the Administrative Law Judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the Administrative Law Judge shall determine whether the moving party is entitled to summary disposition. If the Administrative Law Judge determines that summary disposition is warranted, he or she shall submit a recommended decision to that effect to the Secretary. If the Administrative Law Judge finds that no party is entitled to summary disposition, he or she shall make a ruling denying the motion.

(e) *Interlocutory appeal.* Following receipt of the Administrative Law Judge's recommended decision relating to summary disposition, each party has the right to an interlocutory appeal to the Secretary or the Secretary's designee. The interlocutory appeal must be filed within 20 calendar days immediately following the Administrative Law Judge's recommended decision.

(f) *Partial summary disposition.* If the Administrative Law Judge determines that a party is entitled to summary disposition as to certain claims only, the Administrative Law Judge shall defer submission of a recommended decision as to those claims. A hearing on the remaining issues must be ordered and those claims for which the Administrative Law Judge has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 500.712 Prehearing conferences and submissions.

(a) *Prehearing conferences.* The Administrative Law Judge may, on his or her own motion, or at the request of any party for good cause shown, direct counsel for the parties to meet with him or her (in person, by telephone, or by teleconference) at a prehearing

conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes; and

(7) Such other matters as may aid in the orderly disposition of the proceeding.

(b) *Prehearing orders.* At, or within a reasonable time following the conclusion of, any prehearing conference, the Administrative Law Judge shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

(c) *Prehearing submissions.* Within 40 calendar days of the receipt of respondent's request for a hearing or at a time set by the Administrative Law Judge, the Office of Foreign Assets Control shall serve on the respondent and upon the Administrative Law Judge, the following:

(1) Stipulations of fact, if any;

(2) A list of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(3) A list of witnesses to be called to testify at the hearing, including the name and address of each witness and a short summary of the expected testimony of each witness.

(d) *Deadline for respondent's and the other parties' submissions.* Unless for good cause shown the Administrative Law Judge permits an extension of time to file, the respondent and the other parties shall have 20 calendar days from the date of the submission by the Office of Foreign Assets Control of the items set forth in paragraph (c) of this section, and/or of any other party's service of items set forth in this paragraph (d), to serve upon the Administrative Law Judge and all parties, the following:

(1) Its response to stipulations of fact, if any;

(2) A list of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(3) A list of witnesses to be called to testify at the hearing, including the name and address of each witness and a short summary of the expected testimony of each witness.

(e) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraphs (c) and (d) of this section, except for good cause shown.

§ 500.713 Public hearings.

(a) *In general.* All hearings shall be open to the public, unless the Administrative Law Judge, at his or her discretion, determines at any time prior to or during the hearing, that holding an open hearing would be contrary to the public interest. Within 20 calendar days of service of the notice of hearing from the Administrative Law Judge, any party may file with the Administrative Law Judge a request for a closed hearing, and any party may file a pleading in reply to such a request. Failure to file a request or a reply is deemed a waiver of any objections regarding whether the hearing will be public or closed.

(b) *Filing document under seal.* (1) The Office of Foreign Assets Control may file any document or any part of a document under seal if disclosure of the document would be inconsistent with the protection of the public interest or if justice requires protection of any person, including a source or a party, from annoyance, threat, oppression, or undue burden or expense, or the disclosure of the information would be, or might reasonably lead to a disclosure, contrary to Executive Order 12958 or other Executive orders concerning disclosure of information, U.S. Treasury Department regulations, the Privacy Act, or the Freedom of Information Act.

(2) The Administrative Law Judge shall also safeguard the security and integrity of any documents under seal and shall take all appropriate steps to preserve the confidentiality of such documents or any parts thereof, including closing portions of the hearing to the public. Release of any information under seal, in any form or manner, is subject to the same sanctions and the exercise of the same authorities as are provided with respect to ex parte communications under paragraph (e)(5) of this section.

(3) Should the Administrative Law Judge deny placement of any documents under seal or under protective order, any party, and any person whose documents or materials are at issue, may file an interlocutory appeal to the Secretary or the Secretary's designee. In such cases the Administrative Law Judge must not release or expose any of the records or documents in question to the public or to any other parties for a period of 20 calendar days from the date of the Administrative Law Judge's ruling, in order to permit a petitioner the opportunity either to withdraw the records and documents or to file an interlocutory appeal with the Secretary or the Secretary's designee requesting an order that the records be placed under seal.

(4) Upon settlement, final decision, or motion to the Administrative Law Judge for good cause shown, all materials (including all copies) under seal or protective order shall be returned to the respective parties, except when it may be necessary to retain a record until the judicial process is completed.

(5) Written notice of all requests for release of protected documents or materials shall be given to the parties registered with the Administrative Law Judge at least 20 calendar days prior to any permitted release and prior to any access not specifically authorized under the protective order. A copy of all requests for information, including the name, address, and telephone number of the requester, shall be provided to the petitioner. Each request for access to protected material must also provide the names, addresses, and telephone numbers of all persons represented by the requester, including those on whose behalf the requester seeks access to protected information. The Administrative Law Judge shall impose sanctions provided under § 500.706(e)(4) and (e)(5) for failure to provide this information.

§ 500.714 Conduct of hearings.

(a) *In general*—(1) *Overview.* Hearings shall be conducted to provide a fair and expeditious presentation of the relevant disputed issues and facts. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the relevant facts.

(2) *Order of hearing.* The Office of Foreign Assets Control shall present its case–in–chief first, unless otherwise ordered in advance by the Administrative Law Judge or otherwise expressly specified by law or regulation. The Office of Foreign Assets Control shall be the first party to present an opening statement and a closing statement and may make a rebuttal statement after the respondent's closing statement.

(3) *Stipulations.* Unless the Administrative Law Judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which has been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* A record of the hearing shall be made by manual or electronic

means, including through the use of audio recorded diskettes or audio–visual cassettes, and transcribed unless the Administrative Law Judge rules otherwise. The transcript shall be made available to any party upon payment of the cost thereof. The Administrative Law Judge shall have authority to order the record corrected, either upon a motion to correct, upon a motion to stipulate by the parties for good cause shown, or following notice to the parties upon the Administrative Law Judge's own motion. The Administrative Law Judge shall serve notice upon all parties, at the addresses provided by the parties pursuant to § 500.703(b)(1)(iii), that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed with the Administrative Law Judge.

§ 500.715 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, evidence that is relevant and material is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(2) Evidence may be excluded if it is misleading or its probative value is substantially outweighed by the danger of unfair prejudice or confusion of the issues, or considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence need not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant and material, and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court.

(2) All matters officially noticed by the Administrative Law Judge shall appear on the record.

(3) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Duplicate copies.* A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(d) *Objections to admissibility of evidence.* Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record. Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Rejected exhibits.* The Administrative Law Judge shall retain rejected exhibits, adequately marked for identification, in the event of an interlocutory appeal.

(f) *Stipulations.* The parties may stipulate as to any relevant matters of fact or to the authenticity of any relevant documents. Such stipulations may be received into evidence at a hearing and are binding on the parties with respect to the matters therein stipulated.

(g) *Depositions of unavailable witnesses.* If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition within the United States to which all parties to the proceeding have received timely notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits. All costs of depositions shall be borne by the party requesting the deposition.

§ 500.716 Proposed decisions; recommended decision of Administrative Law Judge; final decision.

(a) *Proposed decisions.* Any party may file with the Administrative Law Judge a proposed decision within 30 calendar days after the parties have received notice that the transcript has been filed with the Administrative Law Judge, unless otherwise ordered by the Administrative Law Judge.

(b) *Reliance on relevant authorities.* The proposed decision must be supported by citation to relevant authorities and by transcript page references to any relevant portions of the record. At the same time the proposed decision is filed, a post–hearing brief may be filed in support. The post–hearing brief shall be filed either as part of the same document or in a separate document.

(c) *Reply briefs.* Reply briefs may be filed within 15 calendar days after the date on which the parties' proposed decision is due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed a proposed decision or a post–hearing brief may not file a reply brief.

(d) *Simultaneous filing required.* Absent a showing of good cause for the use of another procedure, the Administrative Law Judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

(e) *Recommended decision and filing of record.* Within 45 calendar days after expiration of the time allowed for filing reply briefs, the Administrative Law Judge shall file with and certify to the Secretary or the Secretary's designee the record of the proceeding and the decision. The record must include the Administrative Law Judge's recommended decision, including a determination either that there was no violation by the person named in the prepenalty notice, or that there was a violation by the person named in the prepenalty notice, and the recommended monetary penalty and/or civil forfeiture and/or other disposition available to the Office of Foreign Assets Control. In addition to the proposed decision, the record must include all prehearing and hearing transcripts, exhibits, and rulings, and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The Administrative Law Judge shall have the recommended decision served upon each party.

(f) *Exceptions to the recommended decision.* When the Administrative Law Judge has issued his recommended decision, the Administrative Law Judge or his representative shall contact each party by telephone at the telephone number provided by each party pursuant to § 500.703(b)(1)(iii). Within 3 calendar days of telephoning the parties, the recommended decision shall be mailed by the Administrative Law Judge to the parties. A party may file written exceptions to the recommended decision with the Secretary or the Secretary's designee within 30 calendar days of the date the telephone call is placed by the Administrative Law Judge or his representative. A supporting brief may be filed at the time the exceptions are filed.

(g) *Final decision.* The final decision of the Secretary or the Secretary's designee shall be based on a review of the Administrative Law Judge's recommended decision and the entire record of the proceeding. The final written decision shall be provided to all parties.

§ 500.717 Judicial review.

Any person may seek judicial review as provided under 5 U.S.C. 702 for a penalty and/or forfeiture imposed pursuant to this part.

§ 500.718 Referral to United States Department of Justice; administrative collection measures.

In the event that the respondent does not pay the penalty imposed pursuant to this part within 30 calendar days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures or to the United States Department of Justice for appropriate action to recover the

penalty in a civil suit in a Federal district court.

PART 505—REGULATIONS PROHIBITING TRANSACTIONS INVOLVING THE SHIPMENT OF CERTAIN MERCHANDISE BETWEEN FOREIGN COUNTRIES

1. The authority citation for part 505 is revised to read as follows:

Authority: 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

2. Section 505.50 is revised to read as follows:

§ 505.50 Penalties.

For provisions relating to penalties, see subpart G of part 500 of this chapter.

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 is revised to read as follows:

Authority: 31 U.S.C. 321(b); 22 U.S.C. 2370(a), 6001–6010, 6021–6091; 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–132, 110 Stat. 1214, 1254 (18 U.S.C. 2332d); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

2. Subpart G is revised to read as follows:

Subpart G—Penalties

Secs.

Subpart G—Penalties

§ 515.701 Penalties.

(a) Attention is directed to section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16 — ''TWEA''), as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note), which provides that:

(1) Persons who willfully violate any provision of TWEA or any license, rule, or regulation issued thereunder, and persons who willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of TWEA shall, upon conviction, be fined not more than $1,000,000 or, if an individual, be fined not more than $100,000 or imprisoned for not more than 10 years, or both; and an officer, director, or agent of any corporation who knowingly participates in such violation shall, upon conviction, be fined not more than $100,000 or imprisoned for not more than 10 years, or both.

(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, concerned in a violation of TWEA may upon conviction be forfeited to the United States.

(3) The Secretary of the Treasury may impose a civil penalty of not more than $55,000 per violation on any person who violates any license, order, or regulation issued under TWEA.

(4) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation subject to a civil penalty issued pursuant to TWEA shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States Government.

(b) The criminal penalties provided in TWEA are subject to increase pursuant to 18 U.S.C. 3571 which, when read in conjunction with section 16 of TWEA, provides that persons convicted of violating TWEA may be fined up to the greater of either $250,000 for individuals and $1,000,000 for organizations or twice the pecuniary gain or loss from the violation.

(c) Attention is directed to 18 U.S.C. 1001, which provides that 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 under title 18, United States Code, or imprisoned not more than 5 years, or both.

§ 515.702 Prepenalty notice; contents; respondent's rights; service.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Trading with the Enemy Act, and the Director determines that further proceedings are warranted, he or she shall issue to the person concerned a notice of his or her intent to impose a monetary penalty and/or forfeiture. The prepenalty notice may be issued whether or not another agency has taken any action with respect to this matter.

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

(2) *Respondent's rights*—(i) *Right to respond.* The prepenalty notice shall also inform the respondent of respondent's right to respond in writing to the notice within 30 calendar days of the mailing or other service of the notice pursuant to paragraph (c) of this section, as to why a monetary penalty and/or forfeiture should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

(ii) *Right to request a hearing.* The prepenalty notice shall also inform the respondent that, in the response provided for in paragraph (b)(2)(i) of this section, the respondent may also request a hearing conducted pursuant to 5 U.S.C. 554–557 to present the respondent's defenses to the imposition of a penalty and/or forfeiture and to offer any other information that the respondent believes should be included in the agency record prior to a final determination concerning the imposition of a penalty and/or forfeiture. A failure to request a hearing within 30 calendar days of service of the prepenalty notice constitutes a waiver of a hearing.

(iii) *Right to request discovery prior to hearing.* The prepenalty notice shall also inform the respondent of the right to discovery prior to a requested hearing. Discovery must be requested in writing in the response provided for in paragraph (b)(2)(i) of this section, jointly

with respondent's request for a hearing. A failure to file a request for discovery within 30 calendar days of service of the prepenalty notice constitutes a waiver of prehearing discovery.

(c) *Service.* The prepenalty notice, or any amendment or supplement thereto, shall be served upon the respondent. Service shall be presumed completed:

(1) Upon mailing a copy by registered or certified mail, return receipt requested, addressed to the respondent at the respondent's last known address; or

(2) Upon the mailing date stated in a date–stamped postal receipt presented by the Office of Foreign Assets Control with respect to any respondent who has refused, avoided, or in any way attempted to decline delivery, tender, or acceptance of the registered or certified letter or has refused to recover a registered or certified letter served; or

(3) Upon personal service by leaving a copy with the respondent or an officer, a managing or general agent, or any other agent authorized by appointment or by law to accept or receive service for the respondent and evidenced by a certificate of service signed and dated by the individual making such service, stating the method of service and the identity of the individual with whom the prepenalty notice was left; or

(4) Upon proof of service on a respondent who is not resident in the United States by any method of service permitted by the law of the jurisdiction in which the respondent resides or is located, provided the requirements of such foreign law satisfy due process requirements under United States law with respect to notice of administrative proceedings, and where applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraphs (c)(1) through (3) of this section inappropriate or ineffective for service upon the nonresident respondent.

§ 515.703 Response to prepenalty notice; requests for hearing and prehearing discovery; waiver; informal settlement.

(a) *Deadline for response.* The respondent shall have 30 calendar days from the date of mailing or other service of the prepenalty notice pursuant to § 515.702(c) to respond thereto. The response, signed and dated, may be sent by facsimile transmission to the Office of Foreign Assets Control, at 202/622–1657, or by courier or other expedited means at any time during the 30–day response period if an original copy is sent concurrently via the U.S. Postal Service, registered or certified mail, return receipt requested. The date shown on the date–stamped registered or certified mail postal receipt will constitute the filing date of the response.

(b) *Form and contents of response—* (1) *In general.* The written response need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should be responsive to the allegations contained therein and set forth the nature of the respondent's defenses.

(i) The response must admit or deny specifically each separate allegation of violation made in the prepenalty notice. If the respondent is without knowledge as to an allegation, the response shall so state, and such statement shall operate as a denial. Failure to deny, controvert, or object to any allegation will be deemed an admission of that allegation.

(ii) The response must also set forth any additional or new matter or arguments the respondent seeks, or shall seek, to use in support of all defenses or claims for mitigation. Any defense or partial defense not specifically set forth in the response shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(iii) The response must also accurately state, for each respondent, the respondent's full name and address for future service, together with current telephone and, if applicable, facsimile machine numbers and area code. If respondent is represented by counsel, counsel's full name and address, together with telephone and facsimile numbers and area code, may be provided in lieu of service information for the respondent. The respondent or respondent's counsel of record is responsible for providing timely written notice to the parties of any subsequent changes in the information provided.

(2) *Request for hearing and prehearing discovery; waiver.* Any request for an administrative hearing and prehearing discovery must be made, if at all, in the written response made pursuant to this section and within the 30 calendar day period specified in § 515.705(a). A failure to request a hearing and prehearing discovery in writing within 30 calendar days of service of the prepenalty notice constitutes a waiver of a hearing and prehearing discovery. A response asserting that respondent reserves the right to request a hearing or prehearing discovery beyond the 30 calendar day period is ineffectual.

(3) *Informal settlement; response deadline.* In addition or as an alternative to a written response to a prepenalty notice pursuant to this section, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent is not required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the 30 calendar day period specified in paragraph (a) of this section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control. A failure to request a hearing and prehearing discovery in writing within 30 calendar days of service of the prepenalty notice constitutes a waiver of a hearing and prehearing discovery.

§ 515.704 Penalty imposition or withdrawal absent a hearing request.

(a) *No violation.* If, in the absence of a timely hearing request, after considering any response to the prepenalty notice and any relevant facts, the Director determines that there was no violation by the respondent named in the prepenalty notice, the Director promptly shall notify the respondent in writing of that determination and that no civil monetary penalty or civil forfeiture pursuant to this subpart will be imposed.

(b) *Violation.* If, in the absence of a timely hearing request, after considering any response to the prepenalty notice and any relevant facts, the Director determines that there was a violation by the respondent named in the prepenalty notice, the Director promptly shall issue a written notice of the imposition by the Office of Foreign Assets Control of the civil monetary penalty and/or civil forfeiture and/or other available disposition with respect to that respondent.

(1) The penalty/forfeiture notice shall inform the respondent that payment of the assessed penalty must be made within 30 calendar days of the mailing of the penalty notice.

(2) The penalty/forfeiture notice shall inform the respondent of the requirement to furnish respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that the Department intends to use such number

for the purposes of collecting and reporting on any delinquent penalty amount in the event of a failure to pay the penalty imposed.

§ 515.705 Time and opportunity to request a hearing.

(a) *Deadline for hearing request.* Within 30 calendar days of the date of mailing or other service of the prepenalty notice pursuant to § 515.702(c), the respondent may file a written request for an agency hearing conducted pursuant to this section, to present the respondent's defenses to the imposition of a penalty and/or forfeiture and to offer any other information for inclusion, if found admissible pursuant to § 515.715(a), into the agency record prior to a final determination concerning the imposition of a penalty and/or forfeiture.

(b) *Content of written response.* If an agency hearing is requested by the respondent or by the respondent's counsel, the written hearing request must be accompanied by a written response to the prepenalty notice containing the information required by § 515.703(b)(1)(i) through (iii). An untimely hearing request or written response to the prepenalty notice constitutes a waiver of a hearing.

(c) *Signature of filings.* All hearing requests, motions, responses, interrogatories, requests for deposition transcripts, requests for protective orders, and all other filings relating to requests for and responses to discovery or pertaining to the hearing process, must be signed by each requesting party or, if represented, by each party's counsel.

(d) *Computation of time*—(1) *Final date on weekend or holiday.* Whenever the final date for any requirement of this part falls on a Saturday, Sunday, Federal holiday, or other day on which the Office of Foreign Assets Control is not open for the transaction of business during normal working hours, the time for filing will be extended to the close of business on the next working day.

(2) *Closing time.* The time for filing any document expires at 5:00 p.m. local Washington, DC time on the last day when such filing may be made.

§ 515.706 Hearing.

(a) *Notice of hearing.* (1) Any respondent requesting a hearing shall receive notice of the time and place of the hearing at the service address provided pursuant to § 515.703(b)(1)(iii). Requests to change the time and place of a hearing may be submitted to the Administrative Law Judge, who may modify the original notice or subsequently set hearing dates. All requests for a change in the time or place of a hearing must be received in the Administrative Law Judge's chambers and served upon the parties no later than 15 working days before the scheduled hearing date.

(2) The hearing shall be conducted in a manner consistent with 5 U.S.C. 554–557, pursuant to section 1710(c) of the Cuban Democracy Act of 1992 (22 U.S.C. 6001–6010) and section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16).

(b) *Powers.* The Administrative Law Judge shall have all powers necessary to conduct the hearing, consistent with 5 U.S.C. 554–557, including the following powers:

(1) To administer oaths and affirmations;

(2) To require production of records or any information relative to any act or transaction subject to this part, including the imposition of sanctions available under Federal Rule of Civil Procedure 37(b)(2) (Fed. R. Civ. P. 37(b)(2), 28 U.S.C.) for a party's failure to comply with discovery requests;

(3) To receive relevant and material evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this part;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling or prehearing conferences as deemed necessary;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the Secretary or the Secretary's designee shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the Secretary or to the Secretary's designee a recommended decision as provided in §§ 515.711(d) and 515.716(e);

(9) To recuse himself on motion made by a party or on the Administrative Law Judge's own motion;

(10) To establish time, place, and manner limitations on the attendance of the public and the media for any public hearing;

(11) To perform all necessary or appropriate measures to discharge the duties of an Administrative Law Judge; and

(12) To set fees and expenses for witnesses, including expert witnesses.

(c) *Appearance and practice in a civil penalty hearing*—(1) *Appearance before an Administrative Law Judge by counsel.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, or territory of the United States, or the District of Columbia may represent respondents upon written notice to the Administrative Law Judge in a civil penalty hearing.

(2) *Appearance before an Administrative Law Judge by a nonlawyer.* A respondent may appear on his own behalf; a duly authorized member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any corporation may represent that corporation upon written notice to the Administrative Law Judge in a civil penalty hearing.

(3) *Office of Foreign Assets Control representation.* The Office of Foreign Assets Control shall be represented by the Office of General Counsel of the United States Department of the Treasury.

(d) *Conflicts of interest.*—(1) *Conflict of interest in representation.* No individual shall appear as counsel for a party in a proceeding conducted pursuant to this subpart if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person, or by counsel's own interests.

(2) *Corrective Measures.* The Administrative Law Judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(e) *Ex parte communications*—(1) *Definition.* The term *ex parte communication* means any material oral or written communication not on the public record concerning the merits of an adjudicatory proceeding with respect to which reasonable prior notice to all parties is not given, on any material matter or proceeding covered by these regulations that takes place between:

(i) A party to the proceeding, a party's counsel, or any other individual; and

(ii) The Administrative Law Judge handling that proceeding, or the Secretary, or the Secretary's designee.

(2) *Exceptions.* (i) A request to learn the status of the proceeding does not constitute an ex parte communication; and

(ii) Settlement inquiries and discussions do not constitute ex parte communications.

(3) *Prohibition on ex parte communications.* From the time a respondent requests a hearing until the

date that the Secretary or the Secretary's designee issues a final decision, no party, interested person, or counsel therefor shall knowingly make or cause to be made an ex parte communication. The Administrative Law Judge, the Secretary, and the Secretary's designee shall not knowingly make or cause to be made to a party, or to any interested person or counsel therefor, any ex parte communication.

(4) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the Administrative Law Judge, the Administrative Law Judge shall cause all such written communication (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All parties to the proceeding shall have an opportunity, within 10 calendar days of the receipt of service of the notice or of receipt of a memorandum of the ex parte communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (e)(5) of this section, appropriate under the circumstances, or may file an interlocutory appeal with the Secretary or the Secretary's designee.

(5) *Sanctions.* Any party to the proceeding, a party's counsel, or any other individual, who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Administrative Law Judge for good cause shown, or that may be imposed upon interlocutory appeal taken to the Secretary or the Secretary's designee, including, but not limited to, exclusion from the hearing and an adverse ruling on the issue which is the subject of the prohibited communication.

(f) *Time limits.* Except as provided elsewhere in this subpart, the Administrative Law Judge shall establish all time limits for filings with regard to hearings conducted pursuant to this subpart, except for decisions on interlocutory appeals filed with the Secretary or the Secretary's designee.

(g) *Failure to appear.* The unexcused failure of a respondent to appear in person at a hearing or to have duly authorized counsel appear in respondent's place constitutes a waiver of the respondent's right to a hearing and is deemed an admission of the violation alleged. Without further proceedings or notice to the respondent, the Administrative Law Judge shall enter a finding that the right to a hearing was waived, and the case shall be determined pursuant to § 515.704.

§ 515.707 Interlocutory appeal.

(a) *Interlocutory appeals.* When exceptions, requests for extensions, or motions, including motions for summary disposition, are denied by the Administrative Law Judge, interlocutory appeals may be taken to the Secretary or to the Secretary's designee for a decision.

(b) *Filing deadline.* Interlocutory appeals must be filed no later than 15 calendar days after the matter being appealed has been decided in writing by the Administrative Law Judge. Parties may request that the Administrative Law Judge transmit the written decision to the parties by facsimile transmission, courier, or other expedited means in addition to service of the decision via the U.S. Postal Service by registered or certified mail, return receipt requested. Such requests must be supported by a written statement of need for expedited delivery. Timely filing of the interlocutory appeal shall be determined by the date stated on the date–stamped registered or certified mail postal receipt.

(c) *Manner of filing.* Interlocutory appeals to the Secretary or the Secretary's designee must be filed by facsimile transmission to 202/622–1188, courier, or other expedited means, and sent concurrently by registered or certified mail, return receipt requested, to the Secretary's Office, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, with the envelope prominently marked ''Attention: OFAC Interlocutory Appeal.'' Expedited service must also be made upon the Administrative Law Judge and all parties or, if represented, their counsel, with certified copies sent concurrently by registered or certified mail, return receipt requested.

§ 515.708 Settlement during hearing proceedings.

Any party may, at any time during the hearing, unilaterally submit written offers or proposals for settlement of a proceeding to the Secretary or the Secretary's designee, at the address listed in § 515.707(c). Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a hearing. No settlement offer or proposal, nor any subsequent negotiation or resolution, is admissible as evidence in any hearing before this tribunal.

§ 515.709 Motions.

(a) *Written motions.* Except as otherwise specifically provided herein, an application or request for an order or ruling must be made by written motion, in typed format.

(1) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(2) No oral argument may be held on written motions unless directed by the Administrative Law Judge. Written memoranda, briefs, affidavits, and other relevant material and documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the Administrative Law Judge directs that such motion be made in writing.

(c) *Filing of motions*—(1) *In general.* Motions by respondents must be filed with the Administrative Law Judge and served upon the Office of the Chief Counsel, Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, with the envelope prominently marked ''Urgent: Annex—Room 3133,'' unless otherwise directed by the Administrative Law Judge. Motions by the Office of Foreign Assets Control must be filed with the Administrative Law Judge and with each respondent or respondent's counsel. Motions may also be concurrently sent by facsimile transmission, courier, or other expedited means.

(2) *Interlocutory appeals.* Motions related to interlocutory appeals to the Secretary or the Secretary's designee must be filed by facsimile transmission to 202/622–1188, by courier, or by other expedited means, and sent concurrently by registered or certified mail, return receipt requested, to the Secretary's Office, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, with the envelope prominently marked ''Attention: OFAC Interlocutory Appeal.'' Expedited service must also be made upon the Administrative Law Judge and all parties or, if represented, their counsel, with certified copies sent concurrently by registered or certified mail, return receipt requested.

(d) *Responses.* (1) Any party may file a written response to a motion within 20 calendar days of the date of its mailing, by registered or certified mail pursuant to this subpart. If directed by the Administrative Law Judge, the time period in which to respond may be shortened or extended. The Administrative Law Judge may allow each party to file a response before

finally ruling upon any oral or written motion. The Administrative Law Judge may allow a rejoinder to responses for good cause shown. If a rejoinder is permitted, it must be filed within 15 calendar days of the date the response was filed and served upon all parties.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed to be consent by that party to the entry of an order substantially in the form of any proposed order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

§ 515.710 Discovery.

(a) *In general.* The availability of information and documents through discovery is subject to the agency's assertion of privileges available to OFAC and/or to the Treasury and to the application of all exemptions afforded the agency pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)) and the Privacy Act (5 U.S.C. 552a) to all facets of discovery, including interrogatories, depositions that seek the release of trade secrets, proprietary materials, third–party confidential and/or commercially sensitive materials, placement of information, documents and/or materials under seal and/or protective order, and interlocutory appeals to the Secretary or the Secretary's designee from any decision of the Administrative Law Judge.

(b) *Types of discovery.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or other evidence for inspection; and requests for admission. All depositions of Federal employees must take place in Washington, DC, at the U.S. Treasury Department or at the location where the Federal employee to be deposed performs his duties, whichever the Federal employee's supervisor or the Office of the Chief Counsel, Foreign Assets Control shall deem appropriate. All depositions of Federal employees shall be held at a mutually agreed upon date and time, and for a mutually agreed upon length of time.

(c) *Interrogatories.* Respondent's interrogatories must be served upon the Office of the Chief Counsel, Foreign Assets Control within 20 calendar days of respondent's written request for a hearing. The Office of Foreign Assets Control's interrogatories must be served within 30 calendar days of the receipt of service of respondent's interrogatories or within 30 calendar days of the receipt of respondent's written request for a hearing if no interrogatories are filed by respondent by that time. Parties have 30 calendar days to respond to interrogatories from the date interrogatories are received. Interrogatories shall be limited to 20 questions only. Each subpart, section, or other designation of a part of a question shall be counted as one complete question in computing the permitted 20 question total. Where more than 20 questions are served upon a party, the receiving party may determine which of the 20 questions the receiving party shall answer.

(d) *Scope.* Parties may obtain discovery regarding any matter not privileged which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The Administrative Law Judge may make any order which justice requires to ensure that requests are not unreasonable, oppressive, excessive in scope or unduly burdensome, including the issuance of an order to show cause why a particular discovery request is justified upon the motion of the objecting party.

(e) *Privileged matter.* Privileged documents are not discoverable. Privileges include, inter alia, the attorney–client privilege, attorney work–product privilege, any government's or government agency's deliberative–process or classified information privilege, including materials classified pursuant to Executive Order 12958 (3 CFR, 1995 Comp., p. 333) and any future Executive orders that may be issued relating to the treatment of national security information, and all materials and information exempted from release to the public pursuant to the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)).

(f) *Updating discovery.* Whenever a party receives new or additional information or documentation, all information produced, and all information required to be provided pursuant to the discovery and hearing process, must automatically be updated. The Administrative Law Judge may impose sanctions for failure to update, including prohibiting opposition to claims or defenses raised, striking pleadings or staying proceedings, dismissing the action or any part thereof, rendering a judgment by default, and holding a party in contempt.

(g) *Time limits.* All discovery, including all responses to discovery requests, shall be completed no later than 20 calendar days prior to the date scheduled for the commencement of the hearing. No exceptions to this time limit shall be permitted, unless the Administrative Law Judge finds on the record that good cause exists for waiving the requirements of this paragraph (g).

§ 515.711 Summary disposition.

(a) *In general.* The Administrative Law Judge shall recommend that the Secretary or the Secretary's designee issue a final order granting a motion for summary disposition if the facts of the record show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving party is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes that there is no genuine issue of material fact to be determined and that such party is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 calendar days after service of such a motion, or within such time period as allowed by the Administrative Law Judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, transcripts, affidavits, and any other evidentiary materials that the moving party contends support its position. The motion must also be accompanied by a brief containing the points and authorities in support of the moving party's arguments. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which such party contends a genuine dispute exists. The opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his or her own motion, the Administrative Law Judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the Administrative Law Judge shall determine whether the moving party is entitled to summary disposition. If the Administrative Law Judge determines that summary disposition is warranted, he or she shall submit a recommended decision to that effect to the Secretary. If the Administrative Law Judge finds that no party is entitled to summary disposition, he or she shall make a ruling denying the motion.

(e) *Interlocutory appeal.* Following receipt of the Administrative Law Judge's recommended decision relating to summary disposition, each party has the right to an interlocutory appeal to the Secretary or the Secretary's designee. The interlocutory appeal must be filed within 20 calendar days immediately following the Administrative Law Judge's recommended decision.

(f) *Partial summary disposition.* If the Administrative Law Judge determines that a party is entitled to summary disposition as to certain claims only, the Administrative Law Judge shall defer submission of a recommended decision as to those claims. A hearing on the remaining issues must be ordered and those claims for which the Administrative Law Judge has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 515.712 Prehearing conferences and submissions.

(a) *Prehearing conferences.* The Administrative Law Judge may, on his or her own motion, or at the request of any party for good cause shown, direct counsel for the parties to meet with him or her (in person, by telephone, or by teleconference) at a prehearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes; and

(7) Such other matters as may aid in the orderly disposition of the proceeding.

(b) *Prehearing orders.* At, or within a reasonable time following the conclusion of, any prehearing conference, the Administrative Law Judge shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

(c) *Prehearing submissions.* Within 40 calendar days of the receipt of respondent's request for a hearing or at a time set by the Administrative Law Judge, the Office of Foreign Assets Control shall serve on the respondent and upon the Administrative Law Judge, the following:

(1) Stipulations of fact, if any;

(2) A list of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(3) A list of witnesses to be called to testify at the hearing, including the name and address of each witness and a short summary of the expected testimony of each witness.

(d) *Deadline for respondent's and the other parties' submissions.* Unless for good cause shown the Administrative Law Judge permits an extension of time to file, the respondent and the other parties shall have 20 calendar days from the date of the submission by the Office of Foreign Assets Control of the items set forth in paragraph (c) of this section, and/or of any other party's service of items set forth in this paragraph (d), to serve upon the Administrative Law Judge and all parties, the following:

(1) Its response to stipulations of fact, if any;

(2) A list of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(3) A list of witnesses to be called to testify at the hearing, including the name and address of each witness and a short summary of the expected testimony of each witness.

(e) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraphs (c) and (d) of this section, except for good cause shown.

§ 515.713 Public hearings.

(a) *In general.* All hearings shall be open to the public, unless the Administrative Law Judge, at his or her discretion, determines at any time prior to or during the hearing, that holding an open hearing would be contrary to the public interest. Within 20 calendar days of service of the notice of hearing from the Administrative Law Judge, any party may file with the Administrative Law Judge a request for a closed hearing, and any party may file a pleading in reply to such a request. Failure to file a request or a reply is deemed a waiver of any objections regarding whether the hearing will be public or closed.

(b) *Filing document under seal.* (1) The Office of Foreign Assets Control may file any document or any part of a document under seal if disclosure of the document would be inconsistent with the protection of the public interest or if justice requires protection of any person, including a source or a party, from annoyance, threat, oppression, or undue burden or expense, or the disclosure of the information would be, or might reasonably lead to a disclosure, contrary to Executive Order 12958 or other Executive orders concerning disclosure of information, U.S. Treasury Department regulations, the Privacy Act, or the Freedom of Information Act.

(2) The Administrative Law Judge shall also safeguard the security and integrity of any documents under seal and shall take all appropriate steps to preserve the confidentiality of such documents or any parts thereof, including closing portions of the hearing to the public. Release of any information under seal, in any form or manner, is subject to the same sanctions and the exercise of the same authorities as are provided with respect to ex parte communications under paragraph (e)(5) of this section.

(3) Should the Administrative Law Judge deny placement of any documents under seal or under protective order, any party, and any person whose documents or materials are at issue, may file an interlocutory appeal to the Secretary or the Secretary's designee. In such cases the Administrative Law Judge must not release or expose any of the records or documents in question to the public or to any other parties for a period of 20 calendar days from the date of the Administrative Law Judge's ruling, in order to permit a petitioner the opportunity either to withdraw the records and documents or to file an interlocutory appeal with the Secretary or the Secretary's designee requesting an order that the records be placed under seal.

(4) Upon settlement, final decision, or motion to the Administrative Law Judge for good cause shown, all materials (including all copies) under seal or protective order shall be returned to the respective parties, except when it may be necessary to retain a record until the judicial process is completed.

(5) Written notice of all requests for release of protected documents or materials shall be given to the parties registered with the Administrative Law Judge at least 20 calendar days prior to any permitted release and prior to any

access not specifically authorized under the protective order. A copy of all requests for information, including the name, address, and telephone number of the requester, shall be provided to the petitioner. Each request for access to protected material must also provide the names, addresses, and telephone numbers of all persons represented by the requester, including those on whose behalf the requester seeks access to protected information. The Administrative Law Judge shall impose sanctions provided under § 515.706(e)(4) and (e)(5) for failure to provide this information.

§ 515.714 Conduct of hearings.

(a) *In general*—(1) *Overview.* Hearings shall be conducted to provide a fair and expeditious presentation of the relevant disputed issues and facts. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the relevant facts.

(2) *Order of hearing.* The Office of Foreign Assets Control shall present its case–in–chief first, unless otherwise ordered in advance by the Administrative Law Judge or otherwise expressly specified by law or regulation. The Office of Foreign Assets Control shall be the first party to present an opening statement and a closing statement and may make a rebuttal statement after the respondent's closing statement.

(3) *Stipulations.* Unless the Administrative Law Judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which has been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* A record of the hearing shall be made by manual or electronic means, including through the use of audio recorded diskettes or audio–visual cassettes, and transcribed unless the Administrative Law Judge rules otherwise. The transcript shall be made available to any party upon payment of the cost thereof. The Administrative Law Judge shall have authority to order the record corrected, either upon a motion to correct, upon a motion to stipulate by the parties for good cause shown, or following notice to the parties upon the Administrative Law Judge's own motion. The Administrative Law Judge shall serve notice upon all parties, at the addresses provided by the parties pursuant to § 515.703(b)(1)(iii), that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed with the Administrative Law Judge.

§ 515.715 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, evidence that is relevant and material is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(2) Evidence may be excluded if it is misleading or its probative value is substantially outweighed by the danger of unfair prejudice or confusion of the issues, or considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence need not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant and material, and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court.

(2) All matters officially noticed by the Administrative Law Judge shall appear on the record.

(3) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Duplicate copies.* A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(d) *Objections to admissibility of evidence.* Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record. Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Rejected exhibits.* The Administrative Law Judge shall retain rejected exhibits, adequately marked for identification, in the event of an interlocutory appeal.

(f) *Stipulations.* The parties may stipulate as to any relevant matters of fact or to the authenticity of any relevant documents. Such stipulations may be received into evidence at a hearing and are binding on the parties with respect to the matters therein stipulated.

(g) *Depositions of unavailable witnesses.* If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition within the United States to which all parties to the proceeding have received timely notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits. All costs of depositions shall be borne by the party requesting the deposition.

§ 515.716 Proposed decisions; recommended decision of Administrative Law Judge; final decision.

(a) *Proposed decisions.* Any party may file with the Administrative Law Judge a proposed decision within 30 calendar days after the parties have received notice that the transcript has been filed with the Administrative Law Judge, unless otherwise ordered by the Administrative Law Judge.

(b) *Reliance on relevant authorities.* The proposed decision must be supported by citation to relevant authorities and by transcript page references to any relevant portions of the record. At the same time the proposed decision is filed, a post–hearing brief may be filed in support. The post–hearing brief shall be filed either as part of the same document or in a separate document.

(c) *Reply briefs.* Reply briefs may be filed within 15 calendar days after the date on which the parties' proposed decision is due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed a proposed decision or a post–hearing brief may not file a reply brief.

(d) *Simultaneous filing required.* Absent a showing of good cause for the use of another procedure, the Administrative Law Judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

(e) *Recommended decision and filing of record.* Within 45 calendar days after expiration of the time allowed for filing reply briefs, the Administrative Law Judge shall file with and certify to the Secretary or the Secretary's designee the record of the proceeding and the decision. The record must include the Administrative Law Judge's recommended decision, including a determination either that there was no violation by the person named in the prepenalty notice, or that there was a violation by the person named in the prepenalty notice, and the recommended monetary penalty and/or civil forfeiture and/or other disposition available to the Office of Foreign Assets Control. In addition to the proposed decision, the record must include all prehearing and hearing transcripts, exhibits, and rulings, and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The Administrative

Law Judge shall have the recommended decision served upon each party.

(f) *Exceptions to the recommended decision.* When the Administrative Law Judge has issued his recommended decision, the Administrative Law Judge or his representative shall contact each party by telephone at the telephone number provided by each party pursuant to § 515.703(b)(1)(iii). Within 3 calendar days of telephoning the parties, the recommended decision shall be mailed by the Administrative Law Judge to the parties. A party may file written exceptions to the recommended decision with the Secretary or the Secretary's designee within 30 calendar days of the date the telephone call is placed by the Administrative Law Judge or his representative. A supporting brief may be filed at the time the exceptions are filed.

(g) *Final decision.* The final decision of the Secretary or the Secretary's designee shall be based on a review of the Administrative Law Judge's recommended decision and the entire record of the proceeding. The final written decision shall be provided to all parties.

§ 515.717 Judicial review.

Any person may seek judicial review as provided under 5 U.S.C. 702 for a penalty and/or forfeiture imposed pursuant to this part.

§ 515.718 Referral to United States Department of Justice; administrative collection measures.

In the event that the respondent does not pay the penalty imposed pursuant to this part within 30 calendar days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Dated: January 7, 1998.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 2, 1998.

James E. Johnson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 98–5358 Filed 2–26–98; 9:05 am]

BILLING CODE 4810–25–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR 22, 24, 27, 90, and 101

[FCC 98–18]

Public Mobile Radio Services, Personal Communications Services, Wireless Communications Services, Private Land Mobile Radio Services, and Fixed Microwave Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Memorandum Opinion and Order,* in response to a petition for forbearance, the Commission forbears from its existing procedures for transfers of control and assignment of licenses for non-substantial or ''*pro forma*'' transactions for certain wireless telecommunications licensees and adopts streamlined procedures in order to reduce such carriers' regulatory burdens.

EFFECTIVE DATE: April 2, 1998.

FOR FURTHER INFORMATION CONTACT: David Furth at (202) 418–0620 or Rhonda Lien at (202) 418–7240 (Wireless Telecommunications Bureau/ Commercial Wireless Division).

SUPPLEMENTARY INFORMATION: This is a summary of the *Memorandum Opinion and Order,* adopted and released February 4, 1998. The complete text of the *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington D.C. and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 1231 20th St. N.W., Washington, D.C. 20037.

Synopsis of the Report and Order

I. Introduction

1. On February 4, 1997, the Wireless Telecommunications Practice Committee of the Federal Communications Bar Association (FCBA) filed a Petition for Forbearance from the application of the prior notification and approval requirements of section 310(d) of the Communications Act of 1934, as amended (the Act) to telecommunications carriers licensed by the Wireless Telecommunications Bureau of the Federal Communications Commission (Commission) for *pro forma* assignments of licenses and transfers of control. See 47 U.S.C. 310. On May 22, 1997, the Broadband Personal Communications Services Alliance of the Personal Communications Industry Association (PCIA) filed a separate petition for forbearance, which reiterates FCBA's request for forbearance from section 310(d) and requests forbearance from other regulations as well. For the reasons discussed below, the Commission grants the FCBA Petition and that portion of the PCIA Petition relating to forbearance from section 310(d), subject to several exceptions noted below. This *Memorandum Opinion and Order (Order)* only addresses PCIA's request for forbearance from enforcement of section 310(d). PCIA's requests for forbearance of other regulations contained in PCIA's petition will be addressed in a separate order.

II. Background, Petition, and Comments

2. Section 310(d) of the Act forbids any assignment of a radio license or transfer of control of a radio licensee corporation without obtaining prior Commission consent, and states in relevant part: ''No construction permit or station license * * * shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.'' 47 U.S.C. 310(d). Currently, transfers or assignments that do not ''involve a substantial change in ownership or control,'' commonly referred to as *pro forma* transactions, must receive prior Commission approval but are exempt from the 30-day public notice requirement that would otherwise apply. Applicants identify whether their applications for transfer and assignment are *pro forma* in nature, and the Wireless Telecommunications Bureau (Bureau) processes *pro forma* applications through an initial determination that the application is in fact *pro forma* in nature, and a review of the application for accuracy and completeness. When these criteria are met, there is no need for additional public interest review of the application, because the person or entity retaining ultimate control of the license was subject to prior public interest review and approval by the Commission when it was originally awarded the license, whether by initial licensing or by a previous transfer or assignment. Therefore, where no substantial change of control will result from the transfer or assignment, grant of the application is presumptively in the public interest, and the application is placed on public notice as granted.