

Office of Foreign Assets Control

Sudanese Sanctions Regulations

31 C.F.R. Part 538

Guidance Regarding the Application of the Sudanese Sanctions Regulations to the New State to be Formed by the Secession of Southern Sudan

Date: April 12, 2011

This guidance was developed in response to inquiries received by the Department of the Treasury's Office of Foreign Assets Control ("OFAC") concerning the application of the Sudanese Sanctions Regulations, 31 C.F.R. Part 538 (the "SSR"), to the new state expected to be formed by the secession of Southern Sudan. In the recent referendum conducted pursuant to the Comprehensive Peace Agreement of 2005, voters in Southern Sudan elected to secede from the Republic of the Sudan. A new state is expected to be formed on July 9, 2011.

Executive Order 13067 of November 3, 1997 ("E.O. 13067"), and Executive Order 13412 of October 13, 2006 ("E.O. 13412"), imposed economic sanctions against "Sudan" and the "Government of Sudan," pursuant to, *inter alia*, the International Emergency Economic Powers Act ("IEEPA"). These Executive orders generally prohibit the exportation or re-exportation of goods, technology, or services "to Sudan," the importation of "goods or services of Sudanese origin," and the dealing in "property and interests in property of the Government of Sudan." E.O.13412 also prohibits transactions "relating to the petroleum or petrochemical industries in Sudan." OFAC implements these E.O.s through the SSR, which track the scope of the orders by applying to Sudan and the Government of Sudan.

When the new state is formed by Southern Sudan, it will not be included in the territorial boundaries of Sudan nor be governed by the Government of Sudan. Following interagency consultations, OFAC has concluded that the SSR will continue to apply only to Sudan and the Government of Sudan, and that such a new state and its government will not be subject to them. The fact that the SSR will continue to apply only with respect to the future, smaller Sudan and its government is consistent with the fact that the President issued E.O.s 13067 and 13412 to deal with the threat that the policies and actions of the Government of Sudan pose to the national security and foreign policy of the United States.

While the new state formed by Southern Sudan will no longer be directly subject to OFAC sanctions, certain activities by U.S. persons in the new state will continue to be prohibited by the SSR absent OFAC authorization given the interdependence between some sectors of the Southern Sudanese economy and infrastructure and those of the rest of present-day Sudan. The SSR will continue to prohibit U.S. persons from dealing in property and interests in property of the Government of Sudan, from performing services that benefit Sudan or the Government of Sudan, from engaging in transactions relating to the petroleum or petrochemical industry in Sudan, and from participating in exports to or imports from the new state that transit through Sudan, *see* 31 C.F.R. §§ 538.406, 538.210, and 538.417. For example, the SSR will prohibit a U.S. company, unless authorized by OFAC, from providing services to the petroleum industry in

the new state if those services would benefit the Government of Sudan or relate to the petroleum industry in Sudan, or from transporting exports of petroleum or petrochemical products through Sudan. Further, should a revenue-sharing arrangement between Sudan and the new state result in a situation where the government of the new state makes payments to the Government of Sudan from the sale of Southern Sudanese petroleum, U.S. persons generally could not engage in transactions involving the oil industry in the new state unless authorized by OFAC. Information on applying for a license is set forth in section 501.801 of the Reporting, Procedures and Penalties Regulations, 31 C.F.R. Part 501.