



DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 510

North Korea Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury’s Office of Foreign Assets Control (OFAC) is amending the North Korea Sanctions Regulations to implement the Treasury-administered provisions of the North Korea Sanctions and Policy Enhancement Act of 2016, as amended by the Countering America’s Adversaries Through Sanctions Act and the National Defense Authorization Act for Fiscal Year 2020. Specifically, OFAC is incorporating blocking and correspondent account sanctions provisions, adding a new prohibition that is applicable for persons that are owned or controlled by a U.S. financial institution and established or maintained outside the United States, adding new statutory exemptions relevant to certain newly added prohibitions, making technical and conforming edits to three definitions, revising an interpretive provision, and updating the authorities and delegation sections of the regulations. OFAC is also amending the definition of luxury goods.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC’s website (www.treasury.gov/ofac).

Background

On November 4, 2010, OFAC issued the North Korea Sanctions Regulations, 31 CFR part 510 (75 FR 67912, November 4, 2010) (the “Regulations”). Since then, OFAC has amended the Regulations several times. This rule amends the Regulations to incorporate the Treasury-administered provisions of the North Korea Sanctions and Policy Enhancement Act of 2016, Pub. L. 114-122, 130 Stat. 93 (22 U.S.C. 9201–9255) (NKSPEA), as amended by the Countering America’s Adversaries Through Sanctions Act, Pub. L. 115-44, 131 Stat. 886 (22 U.S.C. 9201 *et seq.*) (CAATSA) and the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, 133 Stat. 1198 (FY 2020 NDAA).

NKSPEA

On February 18, 2016, the President signed NKSPEA into law. Among other things, section 104 of NKSPEA provides that the President, with certain exceptions, shall block and prohibit all transactions in property and interests in property that are in the United States, that come within the United States, or that are or come within control or possession of a U.S. person of: the Government of North Korea, the Workers’ Party of Korea, and other persons the President determines knowingly engage in certain North Korea-related activities.

On August 2, 2017, the President signed CAATSA into law. Title III of CAATSA, among other things, amends NKSPEA. Section 311(a) of CAATSA amends section 104(a) of NKSPEA to provide that the President shall, with certain exceptions, block and prohibit all transactions in property and interests in property that are in the United States, that come into the United States, or that are or come into the possession of U.S. persons of any person the President determines knowingly, directly or indirectly, imports, exports, or reexports to or from North Korea any defense article or defense service or engages in certain other North Korea-related activities. Section 104(b) of NKSPEA provides that the President may, with certain exceptions, block any person that knowingly engages in, contributes to, assists, sponsors, or provides financial, material, or technological support for, or goods and services in support of, any sanctioned person.

On December 20, 2019, the President signed the FY 2020 NDAA. Title LXXI of the 2020 NDAA, titled the “Otto Warmbier North Korea Sanctions and Enforcement Act of 2019,” among other things, amends NKSPEA by adding new sections 104(g), 201B, and 201C. NKSPEA section 104(g) requires the President to designate any person that he determines knowingly engages in certain specified North Korea-related activities.

New section 201B of NKSPEA requires the Secretary of the Treasury to impose sanctions with respect to any foreign financial institution (FFI) that the Secretary of the Treasury determines, in consultation with the Secretary of State, knowingly on or after April 18, 2020, provides significant financial services to any person designated for the imposition of sanctions with respect to North Korea under NKSPEA subsections 104(a), 104(b), or 104(g), an applicable Executive order, or an applicable United Nations Security Council resolution. Section 201B provides that the Secretary may impose blocking sanctions on such FFIs, or may prohibit or

impose strict conditions on the opening or maintenance of a correspondent account or a payable-through account in the United States.

New section 201C of NKSPEA requires the Secretary of the Treasury, in consultation with the Secretary of State, to prohibit an entity owned or controlled by a U.S. financial institution and established or maintained outside the United States from knowingly engaging in any transaction, directly or indirectly, with the Government of North Korea or any person designated for the imposition of sanctions with respect to North Korea under NKSPEA subsections 104(a), 104(b), or 104(g), an applicable Executive order, or an applicable United Nations Security Council resolution.

Regulatory Amendments

With this rule, OFAC is incorporating the blocking and correspondent or payable-through account sanctions contained in sections 104(a), 104(b), 104(g), and 201B of NKSPEA, as amended by CAATSA and the FY 2020 NDAA (NKSPEA, as amended), into the Regulations as new § 510.201(a)(3)(vii) through (x), respectively. OFAC is incorporating the correspondent or payable-through account sanctions of section 201B of NKSPEA, as amended, in § 510.210(c), and adding a new provision at § 510.214 to implement section 201C of NKSPEA, as amended.

OFAC is also incorporating certain statutory exemptions under NKSPEA, as amended, in new paragraph (f) to § 510.213; amending the definition of luxury goods at § 510.317 to create a regulatory exception to exclude items approved for import, export, or reexport to or into North Korea by the United Nations Security Council; making technical and conforming edits to the definitions of “effective date” in § 510.304, “financial, material, or technological support” in § 510.306, and “North Korean person” in § 510.319; amending the interpretive provision at § 510.413 related to significant transactions; updating the authorities section of the Regulations

to incorporate the FY 2020 NDAA and to shorten citations to conform with *Federal Register* guidance; and amending the delegation section at § 510.802 to add the delegation of certain functions with respect to the FY 2020 NDAA.

Public Participation

Because the amendment of the Regulations involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, as well as the provisions of Executive Order 13771, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the “Reporting, Procedures and Penalties Regulations”). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505-0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 510

Administrative practice and procedure, Banks, banking, Blocking of assets, Foreign financial institutions, Foreign trade, Imports, North Korea, Services, United Nations, Vessels, Workers’ Party of Korea.

For the reasons set forth in the preamble, the Department of the Treasury’s Office of Foreign Assets Control amends 31 CFR part 510 as follows:

PART 510—NORTH KOREA SANCTIONS REGULATIONS

1. The authority citation for part 510 is revised to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; 28 U.S.C. 2461 note; 50 U.S.C. 1705 note; 22 U.S.C. 9201–9255; 22 U.S.C. 9201 note; Pub. L. 116-92, 133 Stat. 1198; E.O. 13466, 73 FR 36787, 3 CFR, 2008 Comp., p. 195; E.O. 13551, 75 FR 53837, 3 CFR, 2010 Comp., p. 242; E.O. 13570, 76 FR 22291, 3 CFR, 2011 Comp., p. 233; E.O. 13687, 80 FR 819, 3 CFR, 2015 Comp., p. 259; E.O. 13722, 81 FR 14943, 3 CFR, 2016 Comp., p. 446; E.O. 13810, 82 FR 44705, 3 CFR, 2017 Comp., p. 379.

Subpart B—Prohibitions

2. Amend § 510.201 as follows:

- a. Remove the word “or” at the end of paragraph (a)(3)(v)(F).
- b. Remove the period at the end of paragraph (a)(3)(vi)(B) and add a semicolon in its place.
- c. Redesignate Notes 3, 4, and 5 to paragraph (a) as Notes 4, 5, and 6 to paragraph (a).
- d. Add paragraphs (a)(3)(vii) through (x).
- e. Revise newly redesignated Note 4 to paragraph (a).

The additions and revision read as follows:

§ 510.201 Prohibited transactions involving blocked property.

(a) * * * * *

(3) * * * * *

(vii) *Section 104(a) of the North Korea Sanctions and Policy Enhancement Act of 2016, as amended by the Countering America’s Adversaries Through Sanctions Act and the National Defense Authorization Act for Fiscal Year 2020 (NKSPEA, as amended).* Any person the Secretary of the Treasury determines, in consultation with the Secretary of State, knowingly:

(A) Directly or indirectly, imports, exports, or reexports to, into, or from North Korea any goods, services, or technology controlled for export by the United States because of the use of such goods, services, or technology for weapons of mass destruction or delivery systems for such weapons and materially contributes to the use, development, production, possession, or acquisition by any person of a nuclear, radiological, chemical, or biological weapon or any device or system designed in whole or in part to deliver such a weapon;

(B) Directly or indirectly, provides training, advice, or other services or assistance, or engages in significant financial transactions, relating to the manufacture, maintenance, or use of any such weapon, device, or system to be imported, exported, or reexported to, into, or from North Korea;

(C) Directly or indirectly, imports, exports, or reexports luxury goods to or into North Korea;

(D) Engages in, is responsible for, or facilitates censorship by the Government of North Korea;

(E) Engages in, is responsible for, or facilitates serious human rights abuses by the Government of North Korea;

(F) Directly or indirectly, engages in money laundering, the counterfeiting of goods or currency, bulk cash smuggling, or narcotics trafficking that supports the Government of North Korea or any senior official or person acting for or on behalf of that Government;

(G) Engages in significant activities undermining cybersecurity through the use of computer networks or systems against foreign persons, governments, or other entities on behalf of the Government of North Korea;

(H) Directly or indirectly, sells, supplies, or transfers to or from the Government of North Korea or any person acting for or on behalf of that Government, a significant amount of precious metal, graphite, raw or semi-finished metals or aluminum, steel, coal, or software, for use by or in industrial processes directly related to weapons of mass destruction and delivery systems for such weapons, other proliferation activities, the Korean Workers' Party, armed forces, internal security or intelligence activities, or the operation and maintenance of political prison camps or forced labor camps, including outside of North Korea;

(I) Directly or indirectly, imports, exports, or reexports to, into, or from North Korea any arms or related materiel or any defense article or defense service (as such terms are defined in section 47 of the Arms Export Control Act (22 U.S.C. 2794));

(J) Directly or indirectly, purchases or otherwise acquires from North Korea any significant amounts of gold, titanium ore, vanadium ore, copper, silver, nickel, zinc, or rare earth minerals;

(K) Directly or indirectly, sells or transfers to North Korea any significant amounts of rocket, aviation, or jet fuel (except for use by a civilian passenger aircraft outside North Korea, exclusively for consumption during its flight to North Korea or its return flight);

(L) Directly or indirectly, provides significant amounts of fuel or supplies, provides bunkering services, or facilitates a significant transaction or transactions to operate or maintain, a vessel or aircraft that is designated under an applicable Executive order or an applicable United Nations Security Council resolution (as such terms are defined in NKSPEA, as amended), or that is owned or controlled by a person designated under an applicable Executive order or applicable United Nations Security Council resolution (as such terms are defined in NKSPEA, as amended);

(M) Directly or indirectly, insures, registers, facilitates the registration of, or maintains insurance or a registration for, a vessel owned or controlled by the Government of North Korea, except as specifically approved by the United Nations Security Council;

(N) Directly or indirectly, maintains a correspondent account as defined in section 201A(d)(1) of NKSPEA, as amended, with any North Korean financial institution, except as specifically approved by the United Nations Security Council; or

(O) Attempts to engage in any of the conduct described in paragraphs (a)(3)(vii)(A) through (N) of this section;

(viii) *Section 104(b) of NKSPEA, as amended.* Any person the Secretary of the Treasury determines, in consultation with the Secretary of State, knowingly:

(A) Engages in, contributes to, assists, sponsors, or provides financial, material, or technological support for, or goods and services in support of, any person designated pursuant to: an applicable United Nations Security Council resolution (as defined in NKSPEA, as amended); this section; or any applicable Executive order (as defined in NKSPEA, as amended);

(B) Contributed to:

(1) The bribery of an official of the Government of North Korea or any person acting for on behalf of that official;

(2) The misappropriation, theft, or embezzlement of public funds by, or for the benefit of, an official of the Government of North Korea or any person acting for or on behalf of that official; or

(3) The use of any proceeds of any activity described in paragraph (a)(3)(viii)(B)(1) or (2) of this section;

(C) Materially assisted, sponsored, or provided significant financial, material, or technological support for, or goods or services to or in support of, the activities described in paragraph (a)(3)(viii)(A) or (B) of this section;

(D) Directly or indirectly, purchased or otherwise acquired from the Government of North Korea significant quantities of coal, iron, or iron ore, in excess of the limitations provided in applicable United Nations Security Council resolutions (as defined in NKSPEA, as amended);

(E) Directly or indirectly, purchased or otherwise acquired significant types or amounts of textiles from the Government of North Korea;

(F) Facilitated a significant transfer of funds or property of the Government of North Korea that materially contributes to any violation of an applicable United Nations Security Council resolution (as defined in NKSPEA, as amended);

(G) Directly or indirectly, facilitated a significant transfer to or from the Government of North Korea of bulk cash, precious metals, gemstones, or other stores of value not described under paragraph (a)(3)(vii)(J) of this section;

(H) Directly or indirectly, sold, transferred, or otherwise provided significant amounts of crude oil, condensates, refined petroleum, other types of petroleum or petroleum byproducts, liquefied natural gas, or other natural gas resources to the Government of North Korea (except for heavy fuel oil, gasoline, or diesel fuel for humanitarian use or as excepted under paragraph (a)(3)(vii)(K) of this section);

(I) Directly or indirectly, engaged in, facilitated, or was responsible for the online commercial activities of the Government of North Korea, including online gambling;

(J) Directly or indirectly, purchased or otherwise acquired fishing rights from the Government of North Korea;

(K) Knowingly, directly or indirectly, purchased or otherwise acquired significant types or amounts of food or agricultural products from the Government of North Korea;

(L) Directly or indirectly, engaged in, facilitated, or was responsible for the exportation of workers from North Korea in a manner intended to generate significant revenue, directly or indirectly, for use by the Government of North Korea or by the Workers' Party of Korea;

(M) Conducted a significant transaction or transactions in North Korea's transportation, mining, energy, or financial services industries; or

(N) Facilitated the operation of any branch, subsidiary, or office of a North Korean financial institution, except as specifically approved by the United Nations Security Council, and other than through a correspondent account as described in paragraph (a)(3)(vii)(N) of this section;

(ix) *Section 104(g) of NKSPEA, as amended.* Any person the Secretary of the Treasury determines, in consultation with the Secretary of State, knowingly:

(A) Directly or indirectly, engages in the importation from or exportation to North Korea of significant quantities of:

(1) Coal, textiles, seafood, iron, or iron ore;

(2) Refined petroleum products or crude oil above limits set by the United Nations Security Council and with which the United States concurs; or

(3) Services or technology related to goods specified in paragraph (a)(3)(ix)(A)(1) and (2) of this section;

(B) Facilitates a significant transfer of funds or property of the Government of North Korea that materially contributes to any violation of an applicable United Nations Security Council resolution (as defined in NKSPEA, as amended);

(C) Directly or indirectly, engages in, facilitates, or is responsible for the exportation of workers from North Korea, or the employment of such workers, in a manner that generates significant revenue, directly or indirectly, for use by the Government of North Korea or by the Workers' Party of Korea;

(D) Directly or indirectly, sells or transfers a significant number of vessels to North Korea, except as specifically approved by the United Nations Security Council;

(E) Engages in a significant activity to charter, insure, register, facilitate the registration of, or maintain insurance or a registration for, a vessel owned, controlled, commanded, or crewed by a North Korean person; or

(F) Contributes to and participates in:

(1) A significant act of bribery of an official of the Government of North Korea or any person acting for or on behalf of that official;

(2) The misappropriation, theft, or embezzlement of a significant amount of public funds by, or for the benefit of, an official of the Government of North Korea or any person acting for or on behalf of that official; or

(3) The use of any proceeds of any activity described in paragraph (a)(3)(ix)(A) or (B) of this section; or

(x) *Section 201B of NKSPEA, as amended.* Any foreign financial institution that the Secretary of the Treasury determines, in consultation with the Secretary of State, knowingly, on or after April 18, 2020, provides significant financial services to any person designated for the imposition of sanctions with respect to North Korea described in paragraphs (a)(3)(vii) through (ix) of this section and under an applicable Executive order (as defined in NKSPEA, as amended) or an applicable United Nations Security Council resolution (as defined in NKSPEA,

as amended), and with respect to which the Secretary of the Treasury has exercised the authority to block all property and interests in property.

Note 3 to paragraph (a)(3)(x): See § 510.210(c) for alternative sanctions that can be imposed on a foreign financial institution when the determination specified in paragraph (a)(3)(x) of this section is made.

Note 4 to paragraph (a): The names of persons listed in or designated or identified pursuant to E.O. 13551, E.O. 13687, E.O. 13722, or E.O. 13810 and whose property and interests in property are blocked pursuant to those orders and who are referenced in paragraph (a) of this section are published in the *Federal Register* and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) with the following identifiers: for E.O. 13551: "[DPRK];" for E.O. 13687: "[DPRK2];" for E.O. 13722: "[DPRK3];" and for E.O. 13810: "[DPRK4]." The names of persons designated or identified pursuant to NKSPEA, as amended, will be incorporated into the SDN List with the identifier "[DPRK-NKSPEA]." Certain transactions with persons blocked pursuant to paragraph (a) of this section, or blocked pursuant to other parts of 31 CFR chapter V in connection with North Korea-related activities, may result in the imposition of secondary sanctions, and therefore such blocked persons' entries on the SDN List will also include the descriptive prefix text "Secondary sanctions risk:", followed by information about the applicable secondary sanctions authority. Pursuant to § 510.214, persons owned or controlled by a U.S. financial institution are subject to certain prohibitions under this part; as a result, the entries of persons blocked pursuant to paragraph (a) of this section, or blocked pursuant to other parts of 31 CFR chapter V in connection with North Korea-related activities, will also include the descriptive prefix text "Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions:", followed by information about the

applicable sanctions authority. The SDN List is accessible through the following page on OFAC's website: *www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. See § 510.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section. The property and interests in property of persons who meet the definition of the term Government of North Korea, as defined in § 510.311, are blocked pursuant to paragraph (a) of this section regardless of whether the names of such persons are published in the *Federal Register* or incorporated into the SDN List.

* * * * *

3. Amend § 510.210 as follows:

a. In the heading of paragraph (b), add “prohibited by Executive Order 13810” after the word “institutions”.

b. Remove Note 1 to Paragraph (b).

c. Redesignate paragraphs (c) and (d) as paragraphs (d) and (e).

d. Add new paragraph (c).

e. In newly redesignated paragraph (d) introductory text, add “or (c)” after the words “paragraph (b)”.

f. Add Note 1 to § 510.210.

The additions read as follows:

§ 510.210 Prohibitions or strict conditions with respect to correspondent or payable-through accounts or blocking of certain foreign financial institutions identified by the Secretary of the Treasury.

* * * * *

(c) *Sanctionable activity by foreign financial institutions prohibited by NKSPEA, as amended.* The Secretary of the Treasury, in consultation with the Secretary of State, may determine that a foreign financial institution has, on or after April 18, 2020, knowingly provided significant financial services to any person designated for the imposition of sanctions with respect to North Korea described in § 510.201(a)(3)(vii) through (ix) and under an applicable Executive order (as defined in NKSPEA, as amended) or an applicable United Nations Security Council resolution (as defined in NKSPEA, as amended).

* * * * *

Note 1 to § 510.210: For information regarding persons blocked pursuant to this part, or another part of 31 CFR chapter V in connection with North Korea-related activities, including identifier information for entries on the SDN List, *see* Note 4 to § 510.201(a).

* * * * *

4. Amend § 510.213 by adding paragraph (f) to read as follows:

§ 510.213 Exempt transactions.

* * * * *

(f) *Exemptions under the North Korea Sanctions and Policy Enhancement Act of 2016, as amended by the Countering America's Adversaries Through Sanctions Act and the National Defense Authorization Act for Fiscal Year 2020.* The prohibitions contained in §§ 510.201(a)(3)(vii) through (x), 510.210(c), and 510.214 do not apply to the following activities:

(1) Activities subject to the reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.), or to any authorized intelligence activities of the United States.

(2) Any transaction necessary to comply with United States obligations under the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and entered into force November 21, 1947, or under the Convention on Consular Relations, done at Vienna April 24, 1963, and entered into force March 19, 1967, or under other international agreements.

(3) Any activities incidental to the POW/MIA accounting mission in North Korea, including activities by the Defense POW/MIA Accounting Agency and other governmental or nongovernmental organizations tasked with identifying or recovering the remains of members of the United States Armed Forces in North Korea.

5. Add § 510.214 to read as follows:

§ 510.214 Prohibitions on persons owned or controlled by U.S. financial institutions.

Except as otherwise authorized pursuant to this part, any person that is owned or controlled by a U.S. financial institution and established or maintained outside the United States is prohibited from knowingly engaging in any transaction directly or indirectly with the Government of North Korea or any person designated for the imposition of sanctions with respect to North Korea described in § 510.201(a)(3)(vii) through (ix) and under an applicable Executive order (as defined in NKSPEA, as amended) or an applicable United Nations Security Council resolution (as defined in NKSPEA, as amended).

Note 1 to § 510.214: For information regarding persons blocked pursuant to this part, or another part of 31 CFR chapter V in connection with North Korea-related activities, including identifier information for entries on the SDN List, *see* Note 4 to § 510.201(a).

Note 2 to § 510.214: A U.S. financial institution is subject to the civil penalties provided for in section 206(b) of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et*

seq.) if any entity that it owns or controls violates, attempts to violate, conspires to violate, or causes a violation of the prohibitions set forth in this section. *See* § 510.701.

Subpart C—General Definitions

6. Amend § 510.304 as follows:

a. In paragraph (a)(4), remove the period at the end of the paragraph and add in its place a semicolon.

b. In paragraph (a)(8), remove the word “and” after the semicolon.

c. In paragraph (a)(9), remove “§ 510.210” everywhere it appears and add in its place “§ 510.210(b)” and remove “such prohibition, condition, or blocking.” and add in its place “such prohibition or condition; and”.

d. Add paragraph (a)(10).

e. In paragraph (b), add “, or a notice of the imposition of a prohibition or strict condition pursuant to § 510.210,” after the words “interests in property”.

The addition reads as follows:

§ 510.304 Effective date.

(a) * * *

(10) With respect to the prohibition set forth in § 510.210(c), April 18, 2020. The effective date of a prohibition or strict condition imposed pursuant to § 510.210(c) on the opening or maintaining of a correspondent account or a payable-through account in the United States by a U.S. financial institution for a particular foreign financial institution is the earlier of the date the U.S. financial institution receives actual or constructive notice of such prohibition or condition.

* * * * *

§ 510.306 [Amended]

7. In § 510.306, remove “§ 510.201(a)(3)(ii)(E), (a)(3)(iii)(D), (a)(3)(iv)(G), and (a)(3)(v)(E),” and add in its place “§ 510.201(a),”.

8. Revise § 510.317 to read as follows:

§ 510.317 Luxury goods.

The term *luxury goods*, as used in § 510.201(a) includes those items listed in 15 CFR 746.4(b)(1) and supplement no. 1 to part 746, similar items, and items so designated under an applicable United Nations Security Council resolution (as defined by the North Korea Sanctions and Policy Enhancement Act of 2016, as amended by the Countering America’s Adversaries Through Sanctions Act and the National Defense Authorization Act for Fiscal Year 2020), except as specifically approved by the United Nations Security Council for import, export, or reexport to or into North Korea.

§ 510.319 [Amended]

9. In § 510.319(b), remove “§510.201(a)(3)(v)” and add in its place “§ 510.201(a)”.

Subpart D—Interpretations

10. Revise § 510.413 to read as follows:

§ 510.413 Significant activity or activities; significant transaction(s); significant financial service(s).

In determining, for purposes of §§ 510.201(a) and 510.210, whether an activity or activities, transaction(s), or financial service(s) are significant, the Secretary of the Treasury or the Secretary’s designee may consider the totality of the facts and circumstances. As a general matter, the Department of the Treasury may consider some or all of the following factors:

(a) *Size, number, and frequency.* The size, number, and frequency of the activity or activities, transaction(s), or financial service(s) conducted or performed over a period of time, including whether the activity or activities, transaction(s), or financial service(s) are increasing or decreasing over time and the rate of increase or decrease.

(b) *Nature.* The nature of the activity or activities, transaction(s), or financial service(s), including the type, complexity, and commercial purpose of the activity or activities, transaction(s), or financial service(s).

(c) *Level of awareness; pattern of conduct.* (1) Whether the activity or activities, transaction(s), or financial service(s) are performed with the involvement or approval of management or only by clerical personnel; and

(2) Whether the activity or activities, transaction(s), or financial service(s) are part of a pattern of conduct or the result of a business development strategy.

(d) *Nexus.* The proximity between the foreign financial institution engaging in the activity or activities, transaction(s), or financial service(s) and North Korea or a person blocked pursuant to § 510.201, a person sanctioned pursuant to § 510.210, or trade with North Korea.

(e) *Impact.* The impact of the activity or activities, transaction(s), or financial service(s) on the relevant U.S. sanctions program objectives including:

(1) The economic or other benefit conferred or attempted to be conferred on North Korea or a person blocked pursuant to § 510.201, or sanctioned pursuant to § 510.210; and

(2) Whether and how the activity or activities, transaction(s), or financial service(s) contribute(s) to North Korea's nuclear and ballistic missile programs, commission of serious human rights abuses, use of funds generated through international trade to support its nuclear and missile programs and weapons proliferation, money laundering and other illicit activities,

procurement of luxury goods, human rights violations, and violations of United Nations Security Council Resolutions.

(f) *Deceptive practices.* Whether the activity or activities, transaction(s), or financial service(s) involve(s) an attempt to obscure or conceal the actual parties or true nature of the activity or activities, transaction(s), or financial service(s) or to evade sanctions.

(g) *Other relevant factors.* Such other factors that the Department of the Treasury deems relevant on a case-by-case basis in determining the significance of an activity or activities, transaction(s), or financial service(s).

Subpart H—Procedures

11. Revise § 510.802 to read as follows:

§ 510.802 Delegation of certain authorities of the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13466 of June 26, 2008, Executive Order 13551 of August 30, 2010, Executive Order 13570 of April 18, 2011, Executive Order 13687 of January 2, 2015, Executive Order 13722 of March 15, 2016, Executive Order 13810 of September 20, 2017, and any further Executive orders relating to the national emergency declared in Executive Order 13466 of June 26, 2008, and any action that the Secretary of the Treasury is authorized to take pursuant to Presidential Memorandum of May 18, 2016: Delegation of Certain Functions and Authorities under the North Korea Policy Enhancement Act of 2016, Presidential Memorandum of September 29, 2017: Delegation of Certain Functions and Authorities under the Countering America's Adversaries Through Sanctions Act of 2017, the Ukraine Freedom Support Act of 2014, and the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014, and Presidential Memorandum of February 21, 2020: Delegation of Certain Functions and

Authorities under the National Defense Authorization Act for Fiscal Year 2020, may be taken by the Director of OFAC or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Dated: April 6, 2020.

Andrea Gacki,
Director, Office of Foreign Assets Control.

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