§ 95a. Regulation of transactions in foreign exchange of gold and silver; property transfers; vested interests, enforcement and penalties

(1) During the time of war, the President may, through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinafter provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinafter provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this section or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this section, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term “United States” means the United States and any place subject to the jurisdiction thereof; Provided, however, That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. As used in this subdivision the term “person” means an individual, partnership, association, or corporation.

(4) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news
wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 2404 of title 50, Appendix, or under section 2405 of title 50, Appendix to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of title 18.


**Codification**

Section 5(b) of act Oct. 6, 1917, is part of the Trading with the Enemy Act and is also classified to section 5(b) of the Appendix to Title 50, War and National Defense.

Words “, including the Philippine Islands, and the several courts of first instance of the Commonwealth of the Philippine Islands shall have jurisdiction in all cases, civil or criminal, arising under this section in the Philippine Islands and concurrent jurisdiction with the district courts of the United States of all cases, civil or criminal, arising upon the high seas” following “to the jurisdiction thereof:” in subsec. (3) were omitted on authority of 1946 Proc. No. 2695, which granted the Philippine Islands independence, and which was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse. Proc. No. 2695 is set out as a note under section 1394 of Title 22.

**Amendments**

1994—Par. (4). Pub. L. 103–236 amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The authority granted to the President in this section does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, of publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, or other informational materials, which are not otherwise controlled for export under section 2404 of title 50, Appendix, or with respect to which no acts are prohibited by chapter 37 of title 18.”


1977—Par. (1). Pub. L. 95–223, §§ 101(a), 102, substituted “During the time of war, the President may, through any agency that he may designate, and under such rules and regulations” for “During the time of war or during any other period of national emergency declared by the President, the President may, through any agency, that he may designate, or otherwise, and under such rules and regulations” in the provisions preceding subpar. (A), and, in the provisions following subpar. (B), struck out “;” and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of the subdivision” after “control of such person”. Par. (3). Pub. L. 95–223, § 103(b), struck out provisions that whoever willfully violated any of the provisions of this subdivision or of any license, order, rule, or regulation issued thereunder, could be fined not more than $10,000, or, if a natural person, could be imprisoned for not more than ten years, or both; and that any officer, director, or agent of any corporation who knowingly participated in that violation could be punished by a like fine, imprisonment, or both.

1941—Act Dec. 18, 1941, broadened the powers of the President to take, administer, control, use and liquidate foreign-owned property and added a flexibility of control which enabled the President and the agencies designated by him to cope with the problems surrounding alien property, its ownership or control, on the basis of the particular facts in each case.

1940—Act May 7, 1940, included dealings in evidences of indebtedness or ownership of property in which foreign states, nationals or political subdivisions thereof have an interest.

1933—Act Mar. 9, 1933, amended section generally by, among other things, extending the President’s power to any time of war or national emergency, by permitting regulations to be issued by any agency designated by the President, by providing for the furnishing under oath of complete information relative to transactions under this section and by placing sanctions on violations to the extent of a $10,000 fine or ten years imprisonment.

1918—Act Sept. 24, 1918, inserted provisions relating to the hoarding or melting of gold or silver coin or bullion or currency and to the regulation of transactions in bonds or certificates of indebtedness.
Delegation of Powers

Delegation of President’s powers under this section to Secretary of the Treasury and Alien Property Custodian; and transfer of Alien Property Custodian’s powers to Attorney General, see Ex. Ord. Nos. 9095 and 9788, set out as notes under section 6 of the Appendix to Title 50, War and National Defense.

All powers conferred upon President by this section delegated to Secretary of the Treasury by Memorandum of the President dated Feb. 12, 1942, 7 F.R. 1409.

Administration of Export Administration Act

For provisions relating to the administration of the Export Administration Act, see Executive Orders set out as notes under section 2403 of Title 50, Appendix, War and National Defense.

Limitation on Exercise of Emergency Authorities

Section 525(b)(2) of Pub. L. 103–236 provided that: “The authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act [this section], which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on the date of the enactment of this Act [Apr. 30, 1994], do not include the authority to regulate or prohibit, directly or indirectly, any activity which, under section 5(b)(4) of the Trading With the Enemy Act, as amended by paragraph (1) of this subsection, may not be regulated or prohibited.”

Section 2502(a)(2) of Pub. L. 100–418 provided that: “The authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act [this section], which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on the date of the enactment of this Act [Aug. 23, 1988], do not include the authority to regulate or prohibit, directly or indirectly, any activity which, under section 5(b)(4) of the Trading With the Enemy Act, as added by paragraph (1) of this subsection, may not be regulated or prohibited.”

Extension and Termination of National Emergency Powers Under the Trading With the Enemy Act

Section 101(b), (c) of Pub. L. 95–223 provided that:

“(b) Notwithstanding the amendment made by subsection (a) [amending par. (1) of this section], the authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act [this section], which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, may continue to be exercised with respect to such country, except that, unless extended, the exercise of such authorities shall terminate (subject to the savings provisions of the second sentence of section 101(a) of the National Emergencies Act [section 1601 (a) of Title 50, War and National Defense]) at the end of the two-year period beginning on the date of enactment of the National Emergencies Act [Sept 14, 1976]. The President may extend the exercise of such authorities for one-year periods upon a determination for each such extension that the exercise of such authorities with respect to such country for another year is in the national interest of the United States.

“(c) The termination and extension provisions of subsection (b) of this section supersede the provisions of section 101 (a) [section 1601 (a) of Title 50, War and National Defense] and of title II [section 1621 et seq. of Title 50] of the National Emergencies Act to the extent that the provisions of subsection (b) of this section are inconsistent with those provisions.”

Removal of Limitations and Restraints in Financing Exports

Pub. L. 92–126, § 2, Aug. 17, 1971, 85 Stat. 346, provided that: “In connection with section 2 of Executive Order Number 11387, dated January 1, 1968 [formerly set out below] and any rule, regulation, or guideline established by the Board of Governors of the Federal Reserve System in connection with a voluntary foreign credit restraint program, there shall be no limitation or restraint, or suggestion that there be a limitation or restraint, on the part of any bank or financial institution in connection with the extension of credit for the purpose of financing exports of the United States.”

World War II Alien Property Custodian

Reestablishment and termination of Office of Alien Property Custodian during World War II, see notes under section 6 of the Appendix to Title 50, War and National Defense.

Diplomatic Property of Germany and Japan

Executive Order No. 6260


Executive Order No. 6560

Ex. Ord. No. 6560, Jan. 15, 1934, as amended by Ex. Ord. No. 8389. April 10, 1940, 6 p.m. E. S. T., 5 F.R. 1400; Ex. Ord. No. 8405, May 10, 1940, 7:55 a.m. E. S. T., 5 F.R. 1677; Ex. Ord. No. 8493, July 25, 1940, 5 F.R. 2667, formerly set out as a note under this section, which declared the existence of a national emergency and prescribed regulations for the investigation, regulation, and prohibition of transactions in foreign exchange, transfers of credit between or payments by banking institutions, and export of currency or silver coin by persons within the United States or subject to its jurisdiction, was based on authority of section 95a of this title (act Oct. 6, 1917, ch. 106, § 5(b), 40 Stat. 415, comprising part of the Trading With the Enemy Act) which was amended in 1977 to remove the powers of the President to regulate transactions during a period of national emergency other than a war.

Ex. Ord. No. 8389. Regulating Transactions in Foreign Exchange and Foreign-Owned Property, Providing for the Reporting of All Foreign-Owned Property


section 1. certain foreign banking transactions prohibited

All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, if (i) such transactions are by, or on behalf of, or pursuant to the direction of any foreign country designated in this Order, or any national thereof, or (ii) such transactions involve property in which any foreign country designated in this Order, or any national thereof, has at any time on or since the effective date of this Order had any interest of any nature whatsoever, direct or indirect:

A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside the United States, of a banking institution within the United States);

B. All payments by or to any banking institution within the United States;

C. All transactions in foreign exchange by any person within the United States;

D. The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States;

E. All transfers, withdrawals or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States; and

F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

section 2. dealings in foreign securities; regulations

A. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise:

(1) The acquisition, disposition or transfer of, or other dealing in, or with respect to, any security or evidence thereof on which there is stamped or imprinted, or to which there is affixed or otherwise attached, a tax stamp or other stamp of a foreign country designated in this Order or a notarial or similar seal which by its contents indicates that it was stamped, imprinted, affixed or attached within such foreign country, or where the attendant circumstances disclose or indicate that such stamp or seal may, at any time, have been stamped, imprinted, affixed or attached thereto; and
(2) The acquisition by, or transfer to, any person within the United States of any interest in any security or evidence thereof if the attendant circumstances disclose or indicate that the security or evidence thereof is not physically situated within the United States.

B. The Secretary of the Treasury may investigate, regulate, or prohibit under such regulations, rulings, or instructions as he may prescribe, by means of licenses or otherwise, the sending, mailing, importing or otherwise bringing, directly or indirectly, into the United States, from any foreign country, of any securities or evidences thereof or the receiving or holding in the United States of any securities or evidences thereof so brought into the United States.

section 3. foreign countries affected; effective date of prohibitions

The term “foreign country designated in this Order” means a foreign country included in the following schedule, and the term “effective date of this Order” means with respect to any such foreign country, or any national thereof, the date specified in the following schedule:

(a) April 8, 1940—
Norway and
Denmark;
(b) May 10, 1940—
The Netherlands,
Belgium and
Luxembourg;
(c) June 17, 1940—
France (including Monaco);
(d) July 10, 1940—
Latvia, Estonia and
Lithuania;
(e) October 9, 1940—
Rumania;
(f) March 4, 1941—
Bulgaria;
(g) March 13, 1941—
Hungary;
(h) March 24, 1941—
Yugoslavia;
(i) April 28, 1941—
Greece; and
(j) June 14, 1941—
Albania,
Andorra,
Austria,
Czechoslovakia,
Danzig,
Finland,
Germany,
Italy,
Liechtenstein,
Poland,
Portugal,
San Marino,
Spain,
Sweden,
Switzerland, and
Union of Soviet Socialist Republics;
(k) June 14, 1941—
China and
Japan;
(l) June 14, 1941—
Thailand;
(m) June 14, 1941—
Hong Kong.
The “effective date of this Order” with respect to any foreign country not designated in this Order shall be deemed to be June 14, 1941.

section 4. records of foreign banking and security transactions; investigations

A. The Secretary of the Treasury and/or the Attorney General may require, by means of regulations, rulings, instructions, or otherwise, any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, from time to time and at any time or times, complete information relative to, any transaction referred to in section 5(b) of the Act of October 6, 1917 (40 Stat. 415) [this section], as amended, or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect, including the production of any books of account, contracts, letters, or other papers, in connection therewith, in the custody or control of such person, either before or after such transaction is completed; and the Secretary of the Treasury and/or the Attorney General may, through any agency, investigate any such transaction or act, or any violation of the provisions of this Order.

B. Every person engaging in any of the transactions referred to in sections 1 and 2 of this Order shall keep a full record of each such transaction engaged in by him, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least one year after the date of such transaction.

section 5. definitions

A. As used in the first paragraph of section 1 of this Order “transactions (which) involve property in which any foreign country designated in this Order, or any national thereof, has * * * any interest of any nature whatsoever, direct or indirect,” shall include but not by way of limitation (i) any payment or transfer to any such foreign country or national thereof, (ii) any export or withdrawal from the United States to such foreign country, and (iii) any transfer of credit, or payment of an obligation, expressed in terms of the currency of such foreign country.

B. The term “United States” means the United States and any place subject to the jurisdiction thereof, and the term “continental United States” means the States of the United States, the District of Columbia, and the Territory of Alaska: Provided, however, That for the purposes of this Order the term “United States” shall not be deemed to include any territory included within the term “foreign country” as defined in paragraph D of this section.

C. The term “person” means an individual, partnership, association, corporation, or other organization.

D. The term “foreign country” shall include, but not by way of limitation,

(i) The state and the government thereof on the effective date of this Order as well as any political subdivision, agency, or instrumentality thereof or any territory, dependency, colony, protectorate, mandate, dominion, possession or place subject to the jurisdiction thereof.

(ii) Any other government (including any political subdivision, agency, or instrumentality thereof) to the extent and only to the extent that such government exercises or claims to exercise de jure or de facto sovereignty over the area which on such effective date constituted such foreign country, and

(iii) Any territory which on or since the effective date of this Order is controlled or occupied by the military, naval or police forces or other authority of such foreign country;
section 6. construction with ex. ord. no. 6560; saving clause

Executive Order No. 8389 of April 10, 1940, as amended, shall no longer be deemed to be an amendment to or a part of Executive Order No. 6560 of January 15, 1934. Executive Order No. 6560 of January 15, 1934, and the Regulations of November 12, 1934, are hereby modified in so far as they are inconsistent with the provisions of this Order, and except as so modified, continue in full force and effect. Nothing herein shall be deemed to revoke any license, ruling, or instruction now in effect and issued pursuant to Executive Order No. 6560 of January 15, 1934, as amended, or pursuant to this Order; provided, however, that all such licenses, rulings, or instructions shall be subject to the provisions hereof. Any amendment, modification or revocation by or pursuant to the provisions of this Order of any orders, regulations, rulings, instructions or licenses shall not affect any act done, or any suit or proceeding had or commenced in any civil or criminal case prior to such amendment, modification or revocation, and all penalties, forfeitures and liabilities under any such orders, regulations, rulings, instructions or licenses shall continue and may be enforced as if such amendment, modification or revocation had not been made.

section 7. regulations by secretary of the treasury

Without limitation as to any other powers or authority of the Secretary of the Treasury or the Attorney General under any other provision of this Order, the Secretary of the Treasury is authorized and empowered to prescribe from time to time regulations, rulings, and instructions to carry out the purposes of this Order and to provide therein or otherwise the conditions under which licenses may be granted by or through such officers or agencies as the Secretary of the Treasury may designate, and the decision of the Secretary with respect to the granting, denial or other disposition of an application or license shall be final.
section 8. offenses and penalties under act oct. 6, 1917

Section 5(b) of the Act of October 6, 1917, as amended, provides in part:

“Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.”

section 9. amendments of order and regulations prescribed thereunder

This Order and any regulations, rulings, licenses or instructions issued hereunder may be amended, modified or revoked at any time.

[Ex. Ord. No. 8389 and the regulations and general rulings issued thereunder by the Secretary of the Treasury were approved and confirmed by Res. May 7, 1940, ch. 185, § 2, 54 Stat. 179.]


Executive Orders Nos. 8446, 8484, 8565, 8701, 8711, 8721, 8746


Ex. Ord. No. 9747. Functions of Alien Property Custodian and Treasury Department Continued in Philippines

Ex. Ord. No. 9747, July 3, 1946, 11 F.R. 7518, provided:

The terms and provisions of Executive Order 9095 of March 11, 1942, as amended [formerly set out as a note under section 6 of the Appendix to Title 50, War and National Defense], and Executive Order No. 8389 of April 10, 1940, as amended [set out above], shall continue in force in the Philippines after July 4, 1946, and all powers and authority delegated by the said Executive Orders to the Alien Property Custodian and to the Secretary of the Treasury, respectively, shall after July 4, 1946, continue to be exercised in the Philippines by the said officers, respectively, as therein provided.

Executive Order No. 10348

Ex. Ord. No. 10348, Apr. 26, 1952, 17 F.R. 3769, which provided that Ex. Ord. No. 8389, Apr. 10, 1940, 5 F.R. 1400, as amended, set out above, and all delegations, designations, regulations, rulings, instructions, and licenses issued under such order, should be continued in force according to their terms for the duration of the period of the national emergency proclaimed by Proclamation No. 2914 of December 16, 1950, set out as a note preceding section 1 of the Appendix to Title 50, War and National Defense, was superseded by Ex. Ord. No. 11281, May 13, 1966, 31 F.R. 7215, set out as a note under section 6 of the Appendix to Title 50.

Executive Order No. 11387

Ex. Ord. No. 11387, Jan. 1, 1968, 33 F.R. 47, which prohibited transfers of capital to or within a foreign country or to any national thereof outside the United States by a person subject to the jurisdiction of the United States who owns a 10 percent interest in a foreign business venture, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

Ex. Ord. No. 11825. Revocation of Executive Orders Pertaining to Regulation of Acquisition of, Holding of, or Other Transactions in Gold

Ex. Ord. No. 11825, Dec. 31, 1974, 40 F.R. 1003, provided:

By virtue of the authority vested in me by section 1 of the Act of August 8, 1950, 64 Stat. 419, and section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95a) [this section], and as President of the United States, and in view of the provisions of section 3 of Public Law 93–110, 87 Stat. 352, as amended by section 2 of Public Law 93–373, 88 Stat. 445, [set out as notes under section 442 of former Title 31, Money and Finance], it is ordered as follows:

of July 20, 1962; the fifth and sixth paragraphs of Executive Order No. 6073, March 10, 1933 [formerly set out as a note under section 95 of this title]; sections 3 and 4 of Executive Order No. 6359 of October 25, 1933 [formerly set out as a note under section 248 of this title]; and paragraph 2(d) of Executive Order No. 10289 of September 17, 1951 [set out as a note under section 301 of Title 3, The President], are hereby revoked.

Section 2. The revocation, in whole or in part, of such prior Executive orders relating to regulation on the acquisition of, holding of, or other transactions in gold shall not affect any act completed, or any right accruing or accrued, or any suit or proceeding finished or started in any civil or criminal cause prior to the revocation, but all such liabilities, penalties, and forfeitures under the Executive orders shall continue and may be enforced in the same manner as if the revocation had not been made.

This order shall become effective on December 31, 1974.

Gerald R. Ford.