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ADMINISTERING, USING AND ACCOUNTING FOR VESTED AND SEIZED IRAQI PROPERTY

1. References.

- A. International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.*
- B. Executive Order 13290, "Confiscating and Vesting Certain Iraqi Property," March 20, 2003.
- C. National Security Presidential Directive/NSPD-24, dated January 20, 2003.
- D. Secretary of the Treasury Memorandum, subject: Designation to Perform functions Relating to Vested Iraqi Property, dated April 10, 2003.
- E. Deputy Secretary of Defense Memorandum, subject: Delegation of Authority to Use Vested Iraqi Property for Assisting the Iraqi People and the Reconstruction of Iraq, dated April 11, 2003.
- F. Memorandum from President to Secretary of Defense, subject: Certain State- or Regime-Owned Property in Iraq, dated April 30, 2003.
- G. Secretary of Defense Memorandum, subject: Support for the Office of Reconstruction and Humanitarian Assistance, dated April 2, 2003.

2. Purpose. These procedures will ensure proper security, administration, use and accounting of all Iraqi property vested or seized in accordance with Reference a or the law and usages of war. To the maximum extent practicable, vested and seized property shall be secured, administered, used and accounted for under controls that are equivalent to those applicable to U.S. appropriated funds.

3. Applicability. These procedures shall apply to (1) all Iraqi property that the President has vested under Reference a, with respect to which the Secretary of Defense has been designated to determine the appropriate uses of, and make payments from the vested property or proceeds thereof; and (2) all Iraqi state- or regime-owned cash, funds, or realizable securities in Iraq that have been seized consistent with the laws and usages of war. Other forms of property seized in Iraq shall be safeguarded, administered, used and accounted for in accordance with applicable property accountability procedures.

4. Definitions.

- A. Disbursement of funds. A payment made by a disbursing official to an individual or organization for goods furnished or to be furnished, and services rendered or to be rendered. All disbursements must be supported by a written voucher specifically identifying the recipient and the purpose for which the payment is made. A proper disbursement terminates the personal liability of the disbursing official, with respect to the disbursed funds.

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- B. Distribution of funds. The physical transfer of funds to individual payees by an individual or entity to whom the funds have been disbursed by a DoD official.
- C. Humanitarian assistance. For purposes of these procedures, humanitarian assistance serves the basic economic and social needs of the people of Iraq. These activities include efforts to relieve or reduce the results of natural or manmade disasters or other endemic conditions such as human pain, disease, hunger, or privation that might present a serious threat to life or that can result in great damage to or loss of property.
- D. Reconstruction assistance. For purposes of these procedures, reconstruction assistance is conducted to build, repair, reconstitute, and reestablish the social and material infrastructure of the country of Iraq. This includes water/sanitation infrastructure, food production and distribution, agriculture, electrical power generation and distribution, healthcare, telecommunications, economic and financial policy and management, transportation, and the rule of law and governance.
- E. Seized property. State- or regime-owned property that coalition forces seized and possess under the laws and usages of war. These procedures only apply to state- or regime-owned cash, funds, or realizable securities.
- F. Vested property. Property that has been vested in accordance with Reference a. As used in these procedures, vested property includes only that property that the Secretary of Defense has been authorized to use, under designations executed in accordance with Reference a.
- G. Spending plan. A plan specifically describing the purposes and amounts of proposed expenditures of vested and seized Iraqi property, developed by ORHA and submitted through channels in accordance with these procedures and Appendix C.

5. Responsibilities.

- A. Under Secretary of Defense (Policy). Exercise overall oversight of plans, policies and procedures for receiving, transporting, safeguarding and using vested and seized Iraqi property.
- B. Under Secretary of Defense (Comptroller). Oversee the development of policies and procedures regarding all aspects of administering, accounting for and auditing vested and seized Iraqi property.
- C. Presidential Envoy to Iraq. Oversee the administration, accounting for, auditing and use of vested and seized property in Iraq.

- D. Commander, U.S. Central Command. Under the oversight of the Presidential Envoy to Iraq, issue and review plans, policies and procedures to ensure fiscal accountability and compliance with applicable laws and policy in connection with the disbursement of vested and seized property. Review spending plans submitted by ORHA.
 - E. Director, Office of Reconstruction and Humanitarian Assistance (ORHA). Under the direction, authority, and control of Commander, U.S. Central Command, execute plans, policies and procedures to ensure fiscal accountability and compliance with applicable laws and policy in connection with the disbursement and distribution of vested and seized property. Submit for approval spending plans through Commander, U.S. Central Command, the Presidential Envoy to Iraq, and the Chairman, Joint Chiefs of Staff. Coordinate contracting requirements through the Army as Executive Agent.
 - F. Secretary of the Army. Exercise responsibility for receiving, transporting and safeguarding vested and seized Iraqi property. As Executive Agent for ORHA, provide other administrative, contracting and logistical support as required.
 - G. Director, Defense Contract Audit Agency (DCAA). Provide audit support in connection with the administration, use and accounting of vested and seized Iraqi property.
 - H. Defense Finance and Accounting Service (DFAS). Provide accounting services as required to ensure appropriate financial management of vested and seized Iraqi property.
 - I. Defense Contract Management Agency (DCMA). Provide contract management services, as requested, in connection with the performance of DoD's responsibilities with respect to vested and seized property.
 - J. Department of Defense General Counsel. Provide final legal guidance regarding the receipt, administration, safeguarding, use and accounting of vested and seized property.
 - K. ORHA Requirements Review Board. Review and approve all funding requirements of ORHA prior to the submission of those requirements to the Office of the Secretary of Defense, through Commander, U.S. Central Command, the Presidential Envoy to Iraq and Chairman, Joint Chiefs of Staff. The ORHA Requirements Review Board shall include representatives from USCENTCOM and all executive agencies with employees detailed to ORHA.
6. Individual and Programmatic Accountability.
- A. General. Accountability for the custody and use of vested and seized Iraqi property will be assigned to specific DoD officials and continuously maintained.

Responsibility for authorizing, processing, recording, and reviewing transactions will be separated among individuals, with qualified and continuous supervision provided to ensure compliance with management control objectives. Only persons acting within the scope of their authority may authorize and execute transactions and other significant events. Access to resources and records is limited to authorized individuals.

- B. **Certifying and Disbursing Officials.** DoD certifying and disbursing officials shall be liable for vested Iraqi funds under their possession. The liability of these officials shall terminate with respect to vested Iraqi funds when those funds are properly transferred to the possession of another person or organization, in accordance with these procedures.
- C. **Programmatic Accountability.** Apart from the liability and accountability of individual DoD certifying and disbursing officials, ORHA shall assume programmatic accountability over vested and seized property, and shall be responsible for ensuring that such property is administered, used, and accounted for in accordance with these procedures and other applicable laws and regulations.

7. Receiving Property.

- A. **Vested property.** Vested property shall be received by the Department of Defense from the Department of the Treasury in accordance with the procedures set forth in Appendix A, "Shipment and Distribution of Cash for Emergency Payments to Critical Iraqi Civil Servants" or other approved procedures.
- B. **Seized property.** Upon assuming possession of seized property, Department of Defense officials shall take immediate action to ensure that the property is properly safeguarded, reported and administered in accordance with Appendix B, "Duties Upon Assuming Possession of Seized Property."
 - (1) In distinguishing between public and private property, DoD officials shall look beyond strict legal title and ascertain the character of the property on the basis of the beneficial ownership thereof. Thus, for example, trust funds, pension funds, and bank deposits generated by private persons are not to be regarded as public property simply by reason of their being held by a State-owned bank.
 - (2) The most cogent evidence of public character is such a complete or partial assumption by the state or regime of the economic risk involved in the holding and management of the property in question that the state or regime, rather than private individuals or corporation, would be subjected to a substantial portion of the loss were the property to be taken under the possession of DoD officials. If property that is ostensibly private is subject to a large measure of governmental control and management, or performs

functions that are essentially public, these facts would tend to indicate that the property should be regarded as public.

(3) If property that is taken under possession by DoD officials is beneficially owned in part by the state or regime and in part by private interests, DoD should compensate the private owners to the extent of their interest. Such compensation should bear the same relationship to the full compensation that would be paid if the property were entirely privately owned as their interest bears to the total value of the property concerned. Department of Defense officials may take appropriate measures deemed necessary to ensure that no portion of the compensation paid on account of private interests accrues to the state or regime.

(4) If it is unknown where certain property is public or private, it should be treated as public property until its ownership is ascertained.

C. Documenting receipt of vested and seized property. The Director, ORHA, shall be responsible for maintaining a written record describing all vested and seized property under the possession of DoD officials. This record shall be prepared in accordance with the format at Appendix C, "Statement of Vested and Received Iraqi Property." The record shall distinguish between vested property and seized property, and shall reflect the current and total amounts of each category of property, at all times.

8. Transporting Property.

A. Vested property. The transporting of vested property from the United States to the Iraqi theater of operations shall be carried out in accordance with Appendix A or other authorized procedures. In-theater transportation of vested property shall be accomplished as directed by Commander, CFLCC.

B. Seized property. Seized property shall be transported under procedures established by Commander, CFLCC.

9. Safeguarding Property. Vested and seized property shall be safeguarded as directed by Commander, CFLCC. In all respects, measures taken to safeguard vested and seized property will comply with physical security requirements applicable to the safeguarding of appropriated U.S. funds. Appropriate measures may be taken, if practicable, to preserve physical segregation of vested and seized property.

10. Using Property.

A. General. Seized property shall be regarded as property that the United States holds and administers in trust on behalf of, and for the benefit of, the Iraqi people and the reconstruction of Iraq. Vested and seized property shall be used only to assist the Iraqi people and to assist in the reconstruction of Iraq, under spending

plans that have been developed, staffed and approved in accordance with these procedures.

B. Spending Plans.

- (1) Frequency and content. As required, the Director, ORHA shall prepare proposed spending plans in accordance with Appendix D, "Development of Spending Plans for Vested and Seized Iraqi Property."
- (2) Submission. The Director, ORHA, shall submit all proposed spending plans through Commander, U.S. Central Command, the Presidential Envoy to Iraq, and Director, Joint Staff, to the Under Secretary of Defense (Policy) and the Under Secretary of Defense (Comptroller).
- (3) Approval. All spending plans shall be coordinated between the Under Secretary of Defense (Comptroller) and the Office of Management and Budget. Vested and seized property may be expended in accordance with spending plans only following express approval by the Under Secretary of Defense (Comptroller).

C. Disbursements and distributions. Vested and seized funds shall be disbursed and distributed in accordance with Appendix E, "Disbursement and Distribution Procedures." To the maximum extent practicable, these procedures shall comport with restrictions applicable to the disbursement of appropriated funds, and shall include all reasonable measures to ensure that vested and seized funds are provided only to proper recipients, for authorized purposes.

11. Reports.

- A. Monthly Inventory of Vested and Seized Property.** The Director, ORHA, shall prepare monthly reports describing all vested and seized property under the possession of DoD officials. These reports shall distinguish between vested and seized property. The format for these reports is set forth at Appendix F.
- B. Monthly Disbursement Reports.** The Director, ORHA, shall prepare monthly reports describing the purposes, amounts, and recipients of all disbursements of vested and seized Iraqi property. These reports shall distinguish between disbursements of vested and seized property. The format for these reports is set forth at Appendix G.
- C. Department of Defense Financial Statements.** Vested and seized assets shall be reported in Defense-wide financial statements under a separate heading in the Department's Statement of Custodial Activity, in accordance with Appendix H.
- D. After-Action Report.** The Director, ORHA, shall prepare and submit to the Deputy Secretary of Defense, through the Commander, U.S. Central Command

and the Chairman, Joint Chiefs of Staff, a report that comprehensively describes DoD's activities with regard to vested and seized Iraqi property; identifies issues associated with the conduct of these activities; and recommends appropriate initiatives to facilitate any future management and use of such property, no later than 60 days following the final disbursement of vested or seized property.

12. Accounting. To the maximum extent practicable, vested and seized Iraqi property shall be subject to accounting principles, standards and requirements equivalent to those applicable to U.S. appropriated funds. Management control systems and all transactions and other significant events will be clearly documented, promptly recorded, properly classified, and readily available for examination.

13. Auditing. The administration, use and accounting of vested and seized property shall be subject to audit under professional auditing standards by the Defense Contract Audit Agency. The Director, ORHA, shall request accounting and financial advisory services from DCAA as necessary and, to the extent practicable, shall ensure that these procedures are applied and amended as appropriate, consistent with such advice from DCAA.

14. Consultation and coordination. These procedures have been established in consultation with the Department of the Treasury, Department of State and Office of Management and Budget. The Under Secretary of Defense (Comptroller) shall be responsible for coordinating with OMB, in connection with proposed spending plans involving vested or seized property.

15. Exceptions and waivers. Any request for an exception to, or waiver of these procedures must be submitted, in writing, to the Under Secretary of Defense (Comptroller), who may grant such a request following consultation, as appropriate, with the Department of the Treasury, Department of State and OMB.

16. Effective Period. These procedures shall become effective upon approval by the Deputy Secretary of Defense and shall remain in effect until rescinded, in writing, by the Deputy Secretary of Defense.

APPENDICES

- A. "Shipment and Distribution of Cash for Emergency Payments to Critical Iraqi Civil Servants."
- B. "Duties Upon Assuming Possession of Seized Property." [To be published.]
- C. "Statement of Vested and Received Iraqi Property." [To be published.]
- D. "Development of Spending Plans for Vested and Seized Iraqi Property." [To be published.]

- E. "Disbursement and Distribution Procedures." [To be published.]
- F. "Monthly Inventory Report of Vested and Seized Property." [To be published.]
- G. "Monthly Disbursement Report." [To be published.]
- H. "Reporting of Vested and Seized Assets on DoD Financial Statements." [To be published.]