

CLIENT ALERT

OFAC Issues Fact Sheet Regarding Humanitarian Trade Involving Sanctioned Countries and Provides COVID-19 Guidance

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In response to criticism that sanctions are hampering the global response to the COVID-19 pandemic, the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC) has released new guidance to encourage those interested in humanitarian trade involving jurisdictions sanctioned by the United States to “avail themselves of longstanding exemptions, exceptions, and authorizations” pertaining to that trade. On April 16, 2020, OFAC published an extensive [fact sheet](#) outlining relevant authorizations, exemptions, and guidance available to support the provision of humanitarian assistance under its Iran, Venezuela, North Korea, Syria, Cuba, and Ukraine/Russia-related sanctions programs, and how these might be applied to personal protective equipment (PPE) and other COVID-19 pandemic-related humanitarian assistance. OFAC provides specific examples by program of PPE and other medical and humanitarian assistance that qualifies under these provisions. Even when an exemption is not available, OFAC indicates that it will consider license requests on a case-by-case basis and that it will prioritize applications, compliance questions, and other requests related to humanitarian support. The fact sheet underscores the United States’ commitment “to ensuring that humanitarian assistance continues to reach at-risk populations through legitimate and transparent channels as countries across the globe fight [COVID-19].”

Separately, in an April 20, 2020 [announcement](#), OFAC encourages individuals and entities affected by COVID-19 to communicate to OFAC “as soon as practicable” any delays they may experience in meeting deadlines related to OFAC’s regulatory requirements, including blocking and reject reports, responses to administrative subpoenas, and reports required by general or specific licenses. OFAC also expresses a limited willingness to take the circumstances of the pandemic into account when considering enforcement.

Scope of Humanitarian Authorizations, Exemptions, and Exceptions in OFAC’s Fact Sheet

The fact sheet is the most comprehensive across-its-programs guidance OFAC has released thus far to pull together in one place the various authorizations, exemptions, and guidance that support humanitarian aid to these jurisdictions. It highlights in detail the scope of the most applicable “longstanding authorizations, exemptions, and guidance exceptions, and authorizations pertaining to humanitarian assistance and trade available” under OFAC’s programs against Iran, Venezuela, North Korea, Syria, Cuba, and Ukraine/Russia (Crimea). While there is similarity across programs, the scope of each varies, and each is subject to various conditions and limitations. We summarize these authorizations below:

Iran¹
Exports of certain agricultural commodities, food, medicine and medical devices, and the provision of certain related software and services pursuant to one-year

distribution contracts.
Services by non-governmental organizations (NGOs), including humanitarian projects, non-commercial development projects, and human rights and democracy building.
Transactions for the official business of the United Nations, World Bank, International Monetary Fund, International Atomic Energy Agency, International Labor Organization, and World Health Organization.
Certain non-commercial personal remittances to or from Iran that are processed by U.S. depository institutions or U.S. registered brokers or dealers in securities or that are carried to Iran.

Venezuela
Certain transactions incident to export and re-export of certain agricultural commodities, medicine, medical devices, and replacement parts, components, and software updates for medical devices.
Provision of nonscheduled emergency medical services, and the provision of other medical services involving the Government of Venezuela.
Official activities of certain international organizations such as the United Nations and the International Committee of the Red Cross.
Transactions involving the Government of Venezuela necessary to provide air ambulance and related medical services for individuals in Venezuela.
Transactions by NGOs involving the Government of Venezuela in support of humanitarian projects directly benefitting the Venezuelan people.

North Korea
Export and re-export by U.S. NGOs of services to North Korea for humanitarian purposes, including projects to support distribution of food, medicine, and clothing,

and the provision of health-related services.
Provision and receipt of nonscheduled emergency medical services.
Official activities of the United Nations and its specialized agencies, programs, funds, and related organizations by employees, contractors or grantees.
Non-commercial personal remittances to or from North Korea up to a maximum of \$5,000 per year.

Syria
Certain transactions ordinarily incident to export of items licensed or otherwise authorized by the U.S. Department of Commerce and certain related services and certain U.S. origin food and medicines.
Provision of nonscheduled emergency medical services.
Provision of certain services by NGOs that are in support of specified not-for-profit activities in Syria including humanitarian projects that meet basic human needs.
Official activities of the United Nations and its specialized agencies, programmes, funds, and related organizations by employees, contractors or grantees.
Certain non-commercial personal remittances to or from Syria.

Cuba
Certain transactions ordinarily incident to the export from the United States, or re-export from a third-country, to Cuba of Department of Commerce-licensed medicine and medical devices.
Provision of services to Cuba or Cuban nationals (including the Cuban government and state-owned entities) related to developing, repairing, maintaining, and enhancing Cuban infrastructure that directly benefit the Cuban people, such as hospitals.

Transactions, including travel-related transactions, that are related to authorized humanitarian projects in or related to Cuba, such as medical and health-related projects.

Certain remittances to persons in Cuba, including family remittances as well as remittances for certain individuals and NGOs in Cuba.

Ukraine/Russia-Related (Crimea Region)

Unlicensed export of certain agricultural commodities, medicine, and medical supplies to the Crimea Region of Ukraine.

Transfer of funds to or from the Crimea region of Ukraine provided that the transfer is of a non-commercial personal remittance and does not involve blocked persons.

Several types of medicine and medical devices, including certain PPE and other items used for COVID-19-related treatment such as surgical gloves, face shields, medical gowns, medical eyeshields and goggles, and certain respirators and masks, would qualify for export under the existing authorizations for the programs listed above. In cases where OFAC does not regulate the export of goods (e.g. Syria), transactions and services related to the export of those respirators and masks would be authorized.

OFAC notes that some PPE cannot be exported from the United States under a temporary rule issued by the Federal Emergency Management Agency (FEMA) on April 10, 2020. This rule bars exports of five types of PPE: ((1) N95 filtering facepiece respirators; (2) other filtering facepiece respirators; (3) elastomeric, air-purifying respirators and appropriate particulate filters/cartridges; (4) PPE surgical masks; and (5) PPE gloves or surgical gloves) without FEMA approval. The rule is effective from April 10, 2020, to August 10, 2020, and applies to exports from the United States to any international destination, not just U.S. sanctioned/embargoed countries. More information can be found [here](#).

In addition, any medical devices, such as PPE and ventilators, cannot be exported to Syria without a license from the U.S. Department of Commerce’s Bureau of Industry and Security.

Announcement on Sanctions Compliance Challenges During the Pandemic

Separately, OFAC announced on April 20, 2020, that the agency “understands that the COVID-19 pandemic can cause technical and resource challenges for organizations,” and as a result is encouraging persons impacted by COVID-19, including financial institutions and other businesses, to communicate to OFAC any delays in meeting deadlines associated with OFAC’s regulatory requirements. These would include required reports and submissions, filing blocking and reject reports within 10 business days,

responses to administrative subpoenas, and reports required by general or specific licenses. OFAC also encouraged the electronic submission of voluntary self-disclosures to OFACdisclosures@treasury.gov, rather than through physical mail.

Although OFAC reiterated its long-standing expectation that businesses implement a “risk-based” approach to sanctions compliance, it said that, “if a business facing technical and resource challenges caused by the COVID-19 pandemic chooses, as part of its risk-based approach to sanctions compliance, to account for such challenges by temporarily reallocating sanctions compliance resources consistent with that approach, OFAC will evaluate this as a factor in determining the appropriate administrative response to an apparent violation that occurs during this period.”

Practical Considerations

OFAC’s specific guidance on the application of these exemptions to particular types of medical and humanitarian aid implicated by the pandemic may be useful to companies seeking to export to sanctioned jurisdictions. At least as important is OFAC’s willingness to give expedited consideration to license requests relating to the humanitarian crisis – companies making such requests should be sure to highlight how the request relates to the pandemic and deadline drivers for approval of such requests to ensure that they are not lost in the large volume of requests OFAC typically faces.

With respect to its April 20 announcement regarding sanctions compliance, regulated parties should consider what OFAC did not say. It did not say that violations that occur during this period will be excused, or offer a “get out of OFAC jail” card as a result of the pandemic. Instead, it stated only that OFAC will consider any compliance program-related staffing or other challenges that result from COVID-19 as “a factor” in its determination, implicitly acknowledging that numerous other factors would be used to determine if an enforcement action was appropriate.

Ultimately, the most important part of OFAC’s April 20 announcement is its encouragement to persons that are affected by COVID-19 in ways that might impact their compliance with OFAC sanctions to contact OFAC “as soon as practicable.” Companies that identify potential challenges early and communicate them to OFAC in advance of a potential issue are likely to find themselves in a substantially better posture than companies forced to try to defend a violation through a retroactive COVID-19 related justification.

¹ The availability of exemptions relating to Iran must be considered against the requirement that any financial arrangements be conducted in accordance with a new “mechanism” created on October 25, 2019 - https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_humanitarian_20191025.pdf. Official statistics are not available, but to date only limited success has been reported - <https://home.treasury.gov/news/press-releases/sm890>. Separately, the United States has been critical of the European channel, called INSTEX, which has also begun processing transactions - <https://www.gov.uk/government/news/instex-successfully-concludes-first-transaction>. The United States has suggested that the use of INSTEX presents sanctions risk - <https://www.bloomberg.com/news/articles/2019-05-29/u-s-warns-europe-that-its-iran-workaround-could-face-sanctions> (quoting U.S. Treasury official as saying, “the European vehicle to sustain trade with Tehran, and anyone associated with it could be barred from the U.S. financial system if it goes into effect.”). Although such sanctions have not materialized yet, these threats have dissuaded many potential participants.

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