

# OFAC Issues New Guidance on COVID-19 Humanitarian Aid and Trade to Sanctioned Countries

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On April 16, 2020, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) issued a Fact Sheet with guidance on providing COVID-19-related humanitarian assistance to Iran, Venezuela, North Korea, Syria, Cuba, and Crimea. In support of US commitments "to ensuring that humanitarian assistance continues to reach at-risk populations through legitimate and transparent channels," the Fact Sheet consolidates what OFAC refers to as the "most relevant" existing exemptions, exceptions, and authorizations that permit certain humanitarian trade with these jurisdictions, and provides certain new clarifications with respect to OFAC's regulatory and enforcement approach during the COVID-19 pandemic. This action comes in response to a wide range of industry and governmental questions related to the proper mechanisms for humanitarian relief amidst the pandemic.

Key elements of the Fact Sheet include the following:

**Prioritized licensing and guidance.** The Fact Sheet clarifies that OFAC will be "prioritiz[ing] applications, compliance questions, and other requests related to humanitarian support" for the people of the six identified jurisdictions going forward. Accordingly, for transactions not otherwise exempt or authorized by regulations, companies should consider submitting a license request to OFAC where appropriate as the new guidance suggests OFAC may act more quickly on such requests.

**Greater specifications related to Iran.** The Fact Sheet specifies by name COVID-19-related medical devices that do and do not fall within the scope of existing authorizations related to humanitarian exports to Iran. Specifically, the new guidance clarifies that certain personal protective equipment (PPE), medical gowns, medical eye shields and goggles, surgical gloves, face shields, certain respirators and masks such as N95, N99, and N100 masks, and certain ventilators do not require further authorization from OFAC as they are covered by existing authorizations. On the other hand, the provision of oxygen generators, full face mask respirators including Powered Air Purifying Respirators, certain diagnostic medical imaging equipment, and certain decontamination equipment are not authorized and will require a license. Again, however, OFAC has clarified that it "is prioritizing and expediting review of . . . license requests" for items falling outside the scope of existing authorizations.

**Clarification of sanctions targeting Iran's manufacturing sector.** Also in the Iran context, the Fact Sheet clarifies that recent sanctions targeting Iran's manufacturing sector in Executive Order 13902 do not apply to persons in Iran manufacturing medicines, medical devices, or products used for sanitation, hygiene, medical care, medical safety, and manufacturing safety. The Fact Sheet provides that such persons "will not be considered to be operating in the manufacturing sector of the Iranian economy" and thus, transactions involving such persons will not give rise to sanctions risk under EO 13902.

**International cooperation on Syria.** With respect to Syria, the Fact Sheet acknowledges that there remain significant restrictions related to transactions involving the Government of Syria and "illicit actors," such as Specially Designated Global Terrorists, among others, and implicitly indicates that broad authorizations for humanitarian relief to Syria are subject to more significant compliance obligations. Nevertheless, the Fact Sheet highlights OFAC's intent to

work closely with the international community to ensure humanitarian support reaches Syria and specifies that such support can include providing "testing kits, respiratory devices, personal protective equipment, and medicine used in the prevention, diagnosis, treatment, and recovery from COVID-19." Combined with the stated goal of expediting humanitarian license requests, Syria-related licenses should be submitted expeditiously.

**Other controls—including FEMA's—remain applicable** Finally, the Fact Sheet clarifies that the new rules issued by the Federal Emergency Management Agency (FEMA) remain applicable to the export of PPE outside of the United States. OFAC advises that those interested in exporting PPE "should review . . . the temporary [FEMA] rule . . . , which prohibits the export from the United States of five types of PPE without explicit FEMA approval." In other words, any such exports must clear both OFAC and FEMA controls.

On April 20, 2020, OFAC followed up the humanitarian trade Fact Sheet with an additional publication advising persons "affected by the COVID-19 global pandemic" and "experienc[ing] delays in [their] ability to meet deadlines associated with [OFAC] regulatory requirements" to "contact OFAC as soon as practicable."

Both of these publications from OFAC underscore the ways in which the COVID-19 pandemic has given rise to novel compliance considerations with respect to US economic sanctions and trade controls. Parties engaged in cross-border business, and particularly business related to humanitarian items such as medicine and medical devices, should carefully review OFAC's new announcements and incorporate them into a risk-based compliance program.

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