

KIRKLAND ALERT

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U.S. Sanctions and Export Controls Update: Amended Regulations Expand Opportunities for Companies to Export and Reexport to Syria and Iran

At the end of July, U.S. administering authorities for economic sanctions and export control regulations took actions to expand the potential for U.S. and other companies to export and reexport certain items to Syria and Iran. Such actions are particularly notable in the current political environment in which U.S. authorities have continuously expanded sanctions and other restrictions with regard to exports and other transactions related to these two countries. U.S. authorities, however, have described the recent liberalization as consistent with U.S. national security and other policy aims. These actions are intended to allow the provision of important assistance to the ordinary people of these countries who have suffered under the current governmental regimes, which are primary targets of U.S. punitive international trade measures. U.S. and other companies in numerous sectors have the potential to benefit from these latest actions.

Additional Items Eligible for Export and Reexport Under License to Syria

Effective July 23, 2013, U.S. and non-U.S. companies may seek authorization to supply an expanded array of items in multiple sectors to Syria that previously were subject to a policy of denial under relevant U.S. export control authority.¹ The U.S. Department of Commerce, Bureau of Industry and Security (“BIS”) has announced that it will review license applications for the export or reexport of items “necessary for the support of the Syrian people” on a case-by-case basis. In applying for such a license, applicants will want to focus on how the exports or reexports would address “critical needs” of the Syrian people and “facilitate reconstruction in Syria,” as well as their contribution to supporting the national security interests of the United States. Items that are eligible for potential export or reexport under this new authority include, but are not limited to, commodities, software and technology related to water supply and sanitation, agricultural production and food processing, power generation, oil and gas production, construction and engineering, transportation, and educational infrastructure. Licenses for Syria previously were issued only for exports and reexports of medical devices and certain telecommunication commodities. Previous waivers already authorized exports and reexports of food and medicine classified as EAR99 to Syria.

This expansion of export authorization, which is aimed at supporting a political transition, restoring stability and countering destabilizing influences in the region, is reflected in amendments to General Order No. 2 and Section 746.9 of the Export Administration Regulations. Such amendments implement a limited waiver of the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 that was published by the Secretary of State on June 12, 2013. Although exporters and reex-

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porters may immediately submit license applications for consideration under the new waiver, it is not yet clear how the waiver will be administered by BIS or how broadly BIS will interpret this authority in terms of the types of products covered by the waiver.

Additional Items Added to the Basic Medical Supplies General License for Export and Reexport to Iran

On July 25, 2013, the U.S. Department of the Treasury, Office of Foreign Assets Control (“OFAC”) expanded the list of basic medical supplies eligible for supply to Iran. Newly authorized medical supplies include dialysis machines, electroencephalography machines (EEGs) and electrocardiography machines (EKGs). These items, which are covered by a general license set forth under Section 560.530(a)(3) of OFAC’s Iranian Transactions and Sanctions Regulations (ITSR), join the list of items eligible for export or reexport to Iran without requesting authorization from OFAC through a so-called specific license.

In an effort to provide guidance regarding the scope and limitations of the general license, OFAC also published “frequently asked questions” relating to the general license on its website.² Further, in response to inquiries received from medical suppliers and financial institutions with respect to the humanitarian exceptions to sanctions on Iran, OFAC released new guidance relating to the sale of food, agricultural commodities, medicine and medical devices by non-U.S. persons to Iran.³ Due to their concerns regarding the many sanctions targeting Iran, including sanctions that target financial institutions that process payments related to Iran, banks have been unwilling to process payments for companies exporting or reexporting to Iran. Among other things, the guidance underscores that sales made pursuant to these exceptions do not trigger sanctions under U.S. law and that the financing or facilitation of such sales by non-U.S. persons also do not trigger sanctions as long as the transaction does not involve certain persons designated by the U.S. government or proscribed conduct, including, for example, routing a payment directly from Iran to the United States or otherwise evading other U.S. sanctions authorities through deception or other means.

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¹ See 78 Fed. Reg. 43972 (July 23, 2012).

² See http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/ques_index.aspx#iran_med.

³ See http://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_guidance_med.pdf.

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