



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

OFFICE OF FOREIGN ASSETS CONTROL
GUIDANCE ON CERTAIN PUBLISHING ACTIVITIES

The Office of Foreign Assets Control (OFAC) is issuing interpretive guidance on the publishing general licenses (the “Publishing GLs”) and certain exemptions found in the Iranian Transactions and Sanctions Regulations (ITSR), 31 C.F.R. §§ 560.210, 560.538, the Cuban Assets Control Regulations (CACR), 31 C.F.R. §§ 515.206, 515.577, the Sudanese Sanctions Regulations (SSR), 31 C.F.R. §§ 538.212, 538.529, and the Syrian Sanctions Regulations (SySR), 31 C.F.R. §§ 542.211, 542.532. We refer throughout this guidance to the governments of Iran, Cuba, Sudan, and Syria as “sanctioned governments.”

This guidance addresses three issues that have been raised under the Publishing GLs: (1) the circumstances under which an individual would constitute a “person acting or purporting to act directly or indirectly on behalf of [a sanctioned government]” with respect to publishing transactions such that the individual would fall within the definition of a sanctioned government under the Publishing GLs, rendering the general license unavailable, (2) whether and, if so, under what circumstances government ministries, divisions within government ministries, and entities otherwise characterizable as “agencies or instrumentalities” of governments may be considered “academic and research institutions” for purposes of the carve-out from the definition of the sanctioned governments under the Publishing GLs, and (3) whether providing peer review, style and copy-editing, and marketing services to representatives of the sanctioned governments would be exempt from regulation under the ITSR, CACR, SSR, and SySR.

OFAC offers the following interpretive guidance on the issues:

- (1) Publishing activities listed in the Publishing GLs and engaged in with an individual employed by a sanctioned government but who is publishing in his or her personal capacity (not as an official representative or otherwise on behalf of a sanctioned government) are generally authorized.
- (2) Publishing activities engaged in by individuals employed at an academic *or* a research institution are generally authorized by the Publishing GLs if research and/or teaching is the primary function of the employing entity, even if the entity may be characterizable as an agency or instrumentality of a sanctioned government.
- (3) Certain types of peer review, style and copy editing, and marketing activities are outside the scope of the information and informational materials exemption under the ITSR, CACR, SSR, and SySR but are authorized by the Publishing GLs, other than for sanctioned governments, as those terms are defined under the Publishing GLs (e.g., an individual employed by a sanctioned government publishing in his or her professional capacity).¹

¹ The Publishing GLs do not authorize transactions prohibited by other sanctions programs administered by OFAC, such as the restrictions under the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 C.F.R. part 544 or the Global Terrorism Sanctions Regulations, 31 C.F.R. part 594.

General licenses are self-executing; therefore, if a person's activities fall within the scope of one of the Publishing GLs, it is not necessary to obtain further OFAC authorization to engage in the transaction. Indeed, it is the policy of OFAC not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. 31 C.F.R. § 501.801(a). Whether an individual employed by a sanctioned government is acting in his/her personal capacity such that publishing activities would be authorized under one of the Publishing GLs is a case-by-case determination to be evaluated by the person relying on a Publishing GL. While OFAC is not in a position to prescribe a specific compliance program that is applicable in all cases, due diligence in this case could include obtaining information from the author or other sources, to ensure that he or she is publishing in his or her personal capacity and not as an official representative or otherwise on behalf of a sanctioned government. Although certain factors, including the contract party, the recipient of payments, and the party listed in the credit line, may be relevant to this analysis, these factors are not determinative as to whether an individual is publishing in his or her personal capacity.

Likewise, whether an organization is a "research institution" within the scope of the authorizations under the Publishing GLs is a case-by-case determination to be evaluated by the person relying on a Publishing GL. Such persons may wish to look at indicia such as whether research is the organization's primary function. To offer one example, while it is possible that an organization in the healthcare field might qualify as a "research institution," the mere fact that an organization's material function is healthcare is not sufficient.

OFAC issued certain interpretive guidance letters on September 30, 2003 and April 2, 2004 discussing the exemption for information and informational materials. We are now providing updated guidance regarding the information and informational materials exemption. The importation from any country and the exportation to any country of information and informational materials, whether commercial or otherwise, regardless of format or medium of transmission, is exempt from the ITSR, CACR, SSR, and SySR. ITSR, § 560.210(c), CACR, § 515.206(a), SSR, § 538.212(c)(1), and SySR, § 542.206(b)(1). The term information and informational materials includes publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMS, artworks, and news wire feeds. ITSR, § 560.315(a), CACR, § 515.332(a), SSR, § 538.306(a), and SySR § 542.307(a). The term information or informational materials, with respect to exports, does not include items controlled pursuant to section 5 of the Export Administration Act of 1979 (EAA) or section 6 of the EAA to the extent that such controls promote the non-proliferation or anti-terrorism policies of the United States. ITSR, § 560.315(b), CACR, § 515.332(b), SSR, § 538.306(b), and SySR § 542.307(b).

The information and informational materials exemption does not exempt from regulation or authorize transactions related to information or informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services. ITSR, § 560.210(c)(2), CACR, § 515.206(a)(2), SSR, § 538.212(c)(2), and SySR § 542.211(b)(2). Therefore, services related to peer review, style and copy editing, and marketing of individual articles submitted by authors from sanctioned countries that involve the

substantive or artistic alteration or enhancement of informational materials, or the provision of marketing and business consulting services, remain prohibited unless licensed by OFAC.

There are, however, certain limited aspects of these activities that may qualify as exempt because they do not involve the substantive or artistic alteration or enhancement of informational materials, or the provision of marketing and business consulting services to a sanctioned person. Specifically, preexisting, “camera ready” articles submitted by authors from sanctioned countries, including from sanctioned country government officials, are exempt. In addition, while peer review that returns an article to the author with editorial comments or general suggestions or otherwise makes any substantive or artistic alteration is prohibited unless licensed, peer review simply to determine whether or not to select for publication an article in the form submitted is exempt. Likewise, style and copy editing simply to conform an article to the physical format of the publication, limited to font selection, margin size, spacing, type weight and size selection, sizing and positioning of illustrations, formatting references to conform to U.S. style manuals, ensuring no “widow and orphan” occurrences, inserting a uniform biography and photo, and adding page folios with publication titles and page numbers, would be exempt, while any substantive or artistic alteration or enhancement of the article would remain prohibited unless authorized. Marketing of an article written by a person from the sanctioned country is prohibited unless licensed; however, marketing of a journal that contains an article by an author from a sanctioned country (where such marketing services are not provided to or on behalf of individual contributors and are independent of the individual submissions) is not prohibited.

OFAC is issuing this guidance to update two earlier interpretive guidance letters, one of which was issued September 30, 2003 and 040405-FARCL-IA-15, which was issued April 2, 2004, both of which pre-date the publication of the Publishing GLs under the ITSR, SSR, CACR, and SySR. With the exception of the activities noted above, peer review, style and copy editing, and marketing activities would be prohibited unless licensed. However, these activities are now authorized under the Publishing GLs, provided that the party to the transaction does not include a sanctioned government, any person acting or purporting to act directly or indirectly on behalf of a sanctioned government with respect to the publishing transaction(s), or any person whose property and interests in property are blocked pursuant to another program administered by OFAC that does not contain a Publishing GL. This Guidance as well as the authorizations under the Publishing GLs supersedes those previous guidance letters.

To the extent that a U.S. person seeks to engage in activities that are not exempt from or generally authorized by the applicable regulations, OFAC will consider the issuance of specific licenses on a case-by-case basis. In order to consider such a request, OFAC would require the details surrounding such transactions, including the parties involved. OFAC generally does not respond to questions about hypothetical situations. Applications for such OFAC authorization may be submitted via the OFAC Web site at <https://licensing.ofac.treas.gov/Apply/Introduction.aspx>.

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