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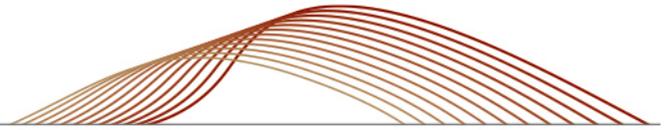
Humanitarian Aid to Iran Under Existing Sanctions—An Important Reminder in a Time of Pandemic

By [Scott M. Flicker](#), [Lauren Kelly D. Greenbacker](#), [Talya Hutchison](#) & [Holly S. Flynn](#)

As of April 16, 2020, Iran’s government had [confirmed](#) over 77,000 cases of the novel coronavirus (“COVID-19”) and over 4,800 deaths, with a report by the Iranian parliament estimating there may be up to 8 to 10 times more cases that are unconfirmed. Iranian officials have [attacked](#) U.S. sanctions for hindering Iran’s ability to import sufficient medical equipment such as ventilators and personal protective equipment. In light of the pandemic, there have been increasingly frequent calls to ease the impact of sanctions on Iran by members of international organizations and domestic politicians, including most recently from Democratic Presidential candidate former [Vice President Joe Biden](#), as well as [Senator Bernie Sanders](#) of Vermont, [Senator Chris Murphy](#) of Connecticut, and [Congresswoman Ilhan Omar](#) of Minnesota.

These calls for sanctions relief often fail to acknowledge that current U.S. policy already authorizes the provision of many forms of humanitarian aid to parties in Iran. In particular, existing U.S. sanctions regulations provide a general authorization, or a “general license,” for companies to supply medicine, medical devices, food, and agricultural commodities to Iran and other embargoed countries. The availability of this general license means that U.S. persons and organizations, as well as non-U.S. persons dealing in items produced in the United States, can donate humanitarian goods to Iran without first being required to seek specific approval from the Department of Treasury’s Office of Foreign Assets Control (“OFAC”). OFAC recently published a new [FAQ](#) specific to humanitarian aid to Iran during the COVID-19 pandemic and, shortly after, a [Fact Sheet on the Provision of Humanitarian Assistance and Trade to Combat COVID-19](#) (the “Fact Sheet”). In the Fact Sheet, OFAC emphasized the availability of this general license authorization, noting: “For COVID-19 related support, Treasury continues to stress that U.S. and non-U.S. persons may provide such humanitarian goods—including medicine and medical devices—to Iran under existing exemptions, exceptions, and authorizations in U.S. sanctions laws and regulations.”

This general license authorization, sometimes referred to as the “AgMed” general license, is codified in the regulations setting out the scope, restrictions and authorizations of the various U.S. sanctions programs. The version applicable to Iran is found in the Iranian Transaction and Sanctions Regulations, 31 C.F.R. Part 560, and is comprised of two parts: (i) an authorization to conduct commercial sales, exports or reexports of qualifying goods, at [31 C.F.R. § 560.530](#); and (ii) an



authorization to engage in transactions for the payment of exports and reexports of qualifying goods, at [31 C.F.R. §§ 560.532](#) and [560.533](#).

Any person who wishes to provide immediate humanitarian relief to Iran during the COVID-19 pandemic (or otherwise) may do so without the need for prior regulatory approval, simply by adhering to the parameters and conditions set forth in these regulations.

Provision of Medical Devices and Medicine

Hospitals in Iran, like so many hospitals around the world, are in need of ventilators and other medical devices and medicines that aid in the treatment of COVID-19. The AgMed general license authorizes the export (shipment from the United States) or the reexport (shipment from a third country) of eligible medical devices and medicine “to the Government of Iran, to any individual or entity in Iran, or to persons in third countries purchasing specifically for resale to any of the foregoing,” as well as various “related transactions” (such as shipping, insurance, entry into contracts, etc.), so long as the following conditions and restrictions are met and observed.

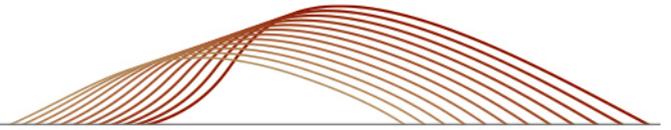
For **medical devices**, the item must satisfy the following eligibility criteria:

1. the item must meet the definition of a “device” in Section 201 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321;
2. the device must be designated as “EAR99” under the U.S. Export Administration Regulations (“EAR”), or be an item that, if not subject to the EAR because it is foreign-sourced, would be designated as EAR99 if it originated from the United States; and
3. the device must not be included on the [List of Medical Devices Requiring Specific Authorization](#) maintained by the OFAC.

For **medicine**, the item must satisfy similar criteria:

1. the medicine must meet the definition of the term “drug” in Section 201 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321;
2. the medicine must be designated as “EAR99” under the EAR, or be an item that, if not subject to the EAR, would be designated as EAR99 if it originated from the United States; and
3. the medicine must not be included on the following list of excluded medicines: non-NSAID analgesics, cholinergics, anticholinergics, opioids, narcotics, benzodiazapenes, and bioactive peptides.

All authorized exports and reexports of medicine or medical devices must be shipped “within the 12-month period beginning on the date of the signing of the contract for export or reexport.”¹ Given the urgent need for supplies, this requirement is unlikely to present an issue for those providing support to COVID-19 relief efforts. Further, no exportation or reexportation of medical devices or medicine is authorized “to military, intelligence, or law enforcement purchasers or importers;”² nor is any transaction or dealing with any person “whose property or interests in property are blocked under, or who is designated or otherwise subject to sanctions under” certain sanctions programs administered by OFAC.³ Accordingly, any person providing medicine or medical devices under this provision should



take care to understand who the end users and end customers in Iran are. Finally, payment terms and financing for such sales must meet the criteria in Section 560.532, outlined below.

The regulations also contain certain authorizations for the provision of training for the safe and effective use of medical devices and medicines, as well as replacement parts, software, and repairs for medical devices.⁴

The bottom line is that U.S. individuals, companies, and organizations can send most types of medical devices and medicines directly to many hospitals in Iran, even if they are affiliated with the Government of Iran.

Food and Agricultural Commodities

While much of the focus at this time is naturally on medicine and medical devices, U.S. persons may also send food and other agricultural commodities to Iran without a license under the existing sanctions.

“Food” includes “raw, processed, and packaged foods; live animals; vitamins and minerals; food additives or supplements; and bottled drinking water.” Other authorized agricultural commodities include most seeds, fertilizers, and live animal reproductive materials.⁵ Like medical devices and medicine, agricultural commodities must meet certain criteria:

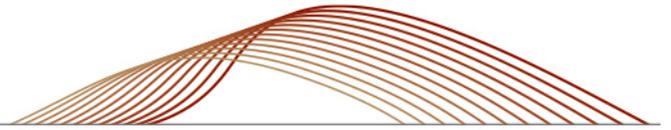
1. the item must meet the definition of “agricultural commodity” as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602);
2. the item must be designated as “EAR99” under the EAR, or be an item that, if not subject to the EAR, would be designated as EAR99 if it originated from the United States;
3. the item must not be included on a list of excluded agricultural commodities including castor beans, castor bean seeds, certified pathogen-free eggs (unfertilized or fertilized), dried egg albumin, live animals (excluding live cattle, shrimp, and shrimp eggs), embryos (excluding cattle embryos), Rosary/Jequirity peas, non-food-grade gelatin powder, peptones and their derivatives, super absorbent polymers, western red cedar, or all fertilizers.

It should also be noted that the AgMed license does not authorize the export of agricultural equipment (such as harvesters, plows, or hand tools).

Like medical devices and medicine, the same 12-month period for shipment applies. U.S. persons may also not export agricultural commodities to military, intelligence, or law enforcement purchasers or importers, or to other parties blocked under U.S. sanctions. Finally, payment terms and financing for such sales must meet the criteria in Section 560.532, outlined below.

Activities of Non-Governmental Organizations

As U.S. Non-Governmental Organizations (“NGOs”) respond to the COVID-19 pandemic around the world, they may undertake activities in Iran without contravening U.S. sanctions. [General License E](#) of the Iranian Transactions and Sanctions Regulations (“ITSR”) authorizes NGOs to provide services to Iran in support of the following activities, among others:



- the provision of donated health-related services;
- distribution of donated articles, such as food, clothing, and medicine, intended to be used to relieve human suffering; and
- donated training related to any of the foregoing activities.

There are a few requirements with which NGOs must comply. Transfers of funds in support of the activities outlined above by a single NGO may not exceed \$500,000 in the aggregate over a 12-month period. Any such transfers of funds must be made by the NGOs themselves, and not directly by U.S. individuals and NGOs that engage in authorized activities must submit a quarterly report to OFAC detailing their work, including the dollar amounts of transfers, and any Iranian partners and beneficiaries. Still, no license or other preapproval from OFAC is required. As always, NGOs must refrain from providing the services described above to any SDNs or other blocked parties.

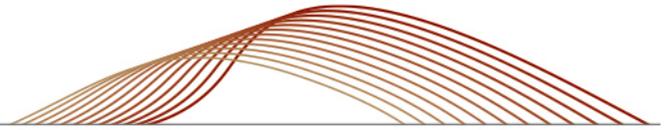
Payment for Qualifying Humanitarian Goods

While some entities may be seeking to donate humanitarian goods free of charge to combat the challenges posed by COVID-19, the following types of payment terms are authorized for sales that meet the criteria of 31 C.F.R. § 560.530(a) above:

1. payment of cash in advance;
2. sales on open account, provided that the account receivable is not transferred by the person extending the credit;
3. financing can be provided by “third-country financial institutions,” meaning:
 - a. not U.S. persons or owned or controlled by U.S. persons and established and maintained outside the United States; and
 - b. not Iranian financial institutions or the Government of Iran;⁶ or
4. letter of credit issued by an Iranian financial institution that is not otherwise sanctioned by the U.S. government, if the letter of credit is “initially advised, confirmed, or otherwise dealt in by a third-country financial institution” before it is advised, confirmed or dealt in by a U.S. financial institution or one that is owned or controlled by a U.S. person and established or maintained outside the United States.

General License 8 of the ITSR and Global Terrorism Sanctions Regulations (“GTSR”) permits certain transactions and activities involving the otherwise sanctioned Central Bank of Iran if they involve humanitarian activities authorized under the AgMed license.

While banks and other financial institutions may maintain their own stricter restrictions on processing financial transactions with parties in Iran, such restrictions would not be triggered by in-kind donations of humanitarian goods. Companies seeking to make sales of necessary medical equipment to Iran can work with counsel to demonstrate to financial institutions that their transactions involving authorized humanitarian aid do not violate U.S. sanctions.



Compliance with the AgMed License: Screening Is Key

These are extraordinary times, and companies and organizations that previously had little to no interaction with Iran or other embargoed countries may find themselves in a position to provide goods to assist the people of Iran respond to the COVID-19 crisis in their country. In the publication of its Fact Sheet, OFAC expressly endorsed this kind of humanitarian engagement: “OFAC encourages those interested in providing such assistance during the COVID-19 crisis to avail themselves of long-standing exemptions, exceptions, and authorizations pertaining to humanitarian assistance and trade available in many U.S. sanctions programs.” Entities that have never dealt with U.S. sanctions before may find these uncharted waters difficult to navigate. The cornerstone of basic sanctions compliance, including when engaging in humanitarian aid, is screening of counterparties against lists of restricted parties maintained by the U.S. Government. Those seeking to send humanitarian goods to Iran should work with qualified resources to ensure that their items qualify for the AgMed license and that proper screening takes place before shipments are made.

The level of due diligence required for humanitarian shipments is the same as for any other type of transaction: according to [OFAC FAQ #319](#) on medical device shipments, “*When engaging in activities pursuant to this [general license], exporters and reexporters are expected to undertake due diligence regarding all parties to the transactions, just as they would when acting pursuant to a specific license issued by OFAC.*” This guidance emphasizes that sanctioned party screening is key to prevent export of humanitarian goods to SDNs and other parties that are still blocked under the AgMed license.

Whether the pandemic prompts U.S. lawmakers to lift sanctions on Iran or not, there are already multiple avenues for Americans to help the people of Iran fight COVID-19. We regularly advise U.S. clients engaging in humanitarian aid to Iran and other sanctioned jurisdictions and are happy to assist with any questions on these topics during this unprecedented time.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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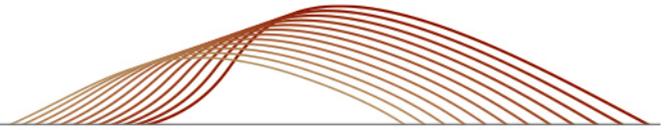
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¹ 31 C.F.R. § 560.530(a)(3)(i).

² 31 C.F.R. § 560.530(a)(3)(iv).

³ 31 C.F.R. § 560.530(d)(5). This restriction includes persons on the OFAC List of Specially Designated Nationals (“SDN List”), those entities that are 50% or more owned, in the aggregate, by one or more persons on the SDN List, or those entities that are designated as Foreign Terrorist Organizations, such as the Islamic Republican Guard Corps.

⁴ 31 C.F.R. §§ 560.530(a)(3)(v), (a)(4), and (a)(5).

⁵ *Id.* at § 560.530(e)(1)(ii).

⁶ Such financing can be confirmed or advised by U.S. financial institutions or those owned or controlled by U.S. persons and maintained and established outside the United States.

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