



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

**Case No. MUL-2012-298212-1**

Peter L. Flanagan, Esq.  
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Dear Mr. Flanagan:

This responds to your request to the Office of Foreign Assets Control (“OFAC”) for interpretive guidance dated October 4, 2012, on behalf of the American Petroleum Institute (“API”), a U.S. non-profit trade association representing America’s oil and natural gas industry, and to supplemental correspondence from API dated April 22, 2013, and August 27, 2013 (collectively, the “Request”), requesting guidance from OFAC. In the Request, you state that API is a leader in the development of petroleum and natural gas equipment and operating standards and that API maintains more than 600 standards and recommended practices, many of which have been incorporated into state and federal regulations.

The Request seeks guidance in two areas. First, API seeks guidance as to whether it may license its pre-existing technical standards to the International Organization for Standardization (“ISO”), a federation of more than 100 standards groups based in Geneva, Switzerland, including representatives from U.S.-sanctioned countries such as Iran, Cuba, Syria, Sudan, Burma, Zimbabwe, Belarus, and North Korea. In the Request, you state that it is API’s understanding that licensing pre-existing standards to ISO for use by or distribution by its members would be permissible under the “informational materials” exemption in the International Emergency Economic Powers Act (“IEEPA”) (50 U.S.C. § 1702(b)(3)) and/or general licenses in certain OFAC regulations. You further state that ISO asserts that its members may then adopt, exploit, reprint, translate, or redraft the ISO standards licensed by API, and you request guidance as to whether this is permissible under the “informational materials” exemption.

Second, you seek guidance as to whether U.S. persons may participate in standards development committees and other closed working groups that may include participants from U.S.-sanctioned countries where information exchanged may be non-public and subject to regulation under the Department of Commerce’s Export Administration Regulations, 15 C.F.R. Parts 730-774 (the “EAR”), and/or whether a U.S. person may engage in discussions of a technical nature regarding materials or concepts that may not ultimately be included in subsequent written publications. You state that the information exchanged may be non-public technical data not otherwise specifically controlled as defense, dual-use, or nuclear-related technology (*i.e.*, EAR99) disclosed in a closed environment, and the information may further not be created and in existence at the date of the transaction. Finally, you seek guidance as to whether a U.S. person may participate in activities that are only indirectly related to the collaboration on the creation and enhancement of written publications, such as evaluating proposals as to whether or not to develop a particular

standard, committee technical discussions that may or may not result in a standard being developed, or participating in committees not directly related to standards development.

### ***Licensing the Right to Adopt, Exploit, or Modify API Standards***

The importation from any country, and the exportation to any country, of information or informational materials, commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions in the Belarus Sanctions Regulations, 31 C.F.R. Part 548 (“BESR”); Burmese Sanctions Regulations, 31 C.F.R. Part 537 (“BSR”); Cuban Assets Control Regulations, 31 C.F.R. Part 515 (“CACR”); Iranian Transaction and Sanctions Regulations, 31 C.F.R. Part 560 (“ITSR”); Sudanese Sanctions Regulations, 31 C.F.R. Part 538 (“SSR”); Syrian Sanctions Regulations, 31 C.F.R. Part 542 (“SYSR”); and Zimbabwe Sanctions Regulations 31 C.F.R. Part 541 (“ZSR”). BESR, § 548.206(b)(1); BSR, § 537.210(b)(1); CACR, § 515.206(a)(1); ITSR, § 560.210(c)(1); SSR, § 538.212(c)(1); SYSR, § 542.206(b)(1); ZSR, § 541.206(b)(1); *see also* 50 U.S.C. § 1702(b)(3); Executive Order 13551 and Executive Order 13570 (regarding North Korea). The term “information or informational materials” includes publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and newswire feeds. *See, e.g.*, BESR, § 548.304(a); BSR, § 537.308; CACR, § 515.332(a)(1); ITSR, § 560.315(a)(1); SSR, § 538.306(a)(1); SYSR, § 542.304(a); ZSR, § 541.304. Please note that this exemption does not apply to transactions related to information or informational materials not fully created and in existence at the date of the transactions; to the substantive or artistic alteration or enhancement of information or informational materials; or to the provision of marketing and business consulting services. *See, e.g.*, BESR, § 548.206(b)(2); BSR, § 537.210(b)(2); CACR, § 515.206(a)(2); ITSR, § 560.210(c)(2); SSR, § 538.212(c)(2); SYSR, § 542.206(b)(2); ZSR, § 541.206(b)(2). The exemption also does not apply to transactions incident to the exportation of software subject to the EAR.

Further, to the extent that such activities are not exempt, section 515.577 of the CACR, section 560.538 of the ITSR, and section 538.529 of the SSR authorize, subject to certain restrictions, U.S. persons to engage in all transactions necessary and ordinarily incident to the publishing and marketing of manuscripts, books, journals, and newspapers in paper or electronic form (collectively, “written publications”). These sections authorize, among other things, collaborating on the creation and enhancement of written publications, augmenting written publications through translation, the payment of royalties for written publications, and creating or undertaking a marketing campaign to promote a written publication. CACR, § 515.577(a); ITSR, § 560.538(a); SSR, § 538.529(a). Please note that these general licenses do not authorize transactions involving the provision of goods and services not necessary and ordinarily incident to the publishing and marketing of written publications, such as accounting, legal, design, or consulting services. *See* ITSR, § 560.538(b)(1); SSR, § 538.529(b); CACR, § 515.577(b). These general licenses also do not authorize transactions with the Governments of Iran, Sudan, or Cuba, with the exception of government academic and research institutions and their personnel. *See, e.g.*, ITSR, § 560.538(a). Please note that the SYSR do not contain this general license.

We view simply providing pre-existing technical standards to ISO, including for a fee, for use by or distribution to ISO members from Iran, Syria, Sudan, and Cuba as exempt from the prohibitions of the BESR, BSR, CACR, ITSR, SYSR, SSR, and ZSR, pursuant to the

information or informational materials exemption. However, we understand that licensing of these pre-existing technical standards to ISO would be made with the understanding that ISO will market and make available the technical standards to all of its members, including members from sanctioned countries, with the right to revise and create derivative works from such standards. We do not view licensing the right to revise and create derivative works from the standards as either exempt or authorized by general licenses authorizing transactions necessary and ordinarily incident to publishing. Therefore, the activities you describe would be prohibited without a specific license from OFAC.

We will consider a request for authorization to license API's pre-existing petroleum and natural gas equipment and operating standards to the ISO, which standards may be then adopted, exploited, and modified by representatives from U.S.-sanctioned countries such as Iran, Cuba, Syria, Sudan, Burma, Zimbabwe, Belarus, and North Korea.<sup>1</sup> If API is interested in seeking such a license, please submit a new request outlining the complete details of your proposed transactions, and please refer to Case No. MUL-2012-298212-1 in all future correspondence related to this matter.<sup>2</sup>

### ***Participation in ISO Committees and Working Groups***

You have also requested guidance as to whether a U.S. person participating in standards development committees and other closed working groups that may include participants from certain OFAC-sanctioned countries, specifically Belarus, Burma, Cuba, Iran, North Korea, Sudan, Syria, and Zimbabwe, may share information that is non-public and/or not fully created and in existence at the date of the transaction. You clarify that your question is about the exchange of information that is (1) non-public technical data not otherwise specifically controlled as defense, dual-use, or nuclear-related technology (*i.e.*, EAR99); and (2) not fully created and in existence at the time of the transaction. To the extent that the technical data is fully created and in existence at the time of the transaction and fits within the definition of "information or informational materials," the sharing of the technical data would be exempt, as discussed above. To the extent that the technical data is not fully created and in existence at the time of the transaction or does not fit within the definition of "information or informational materials," provision of the technical data to a person ordinarily resident in Iran, Cuba, Syria, or Sudan would constitute a prohibited exportation of services or goods that would require an OFAC license. CACR, § 515.201(a)(1); ITSR, § 560.204; SSR, § 538.201 and Executive Order 13582 of August 17, 2011, § 2(b). Further, to the extent that the technical data is not fully

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<sup>1</sup> Please be aware that the scope and prohibitions of OFAC sanctions programs vary, and that some jurisdictions may involve overlapping sanctions programs. For example, some persons in Iran subject to the ITSR may also be subject to additional prohibitions of the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 C.F.R. Part 544, and the Global Terrorism Sanctions Regulation, 31 C.F.R. Part 594. In general, U.S. persons are prohibited from engaging in unlicensed transactions with any individual or entity that is listed on OFAC's list of Specifically Designated National and Blocked Persons or whose property and interests in property are otherwise blocked ("SDNs") under any sanctions program administered by OFAC. We encourage API to identify, to the extent API may be aware, any SDNs that have historically been involved in the activities described in this Request in any forthcoming application for a specific license.

<sup>2</sup> Applications for specific licenses may be submitted online at [www.treasury.gov/resource-center/sanctions/Pages/licensing.aspx](http://www.treasury.gov/resource-center/sanctions/Pages/licensing.aspx), or alternatively by mail or courier pursuant to section 501.801 of the Reporting, Procedures and Penalties Regulations, 31 C.F.R. Part 501, to the Office of Foreign Assets Control, U.S. Department of the Treasury, Treasury Annex, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220.

created and in existence at the time of the transaction or does not fit within the definition of “information or informational materials,” provision of the technical data to a person designated pursuant to the Belarus, Burma, North Korea, or Zimbabwe sanctions programs would likewise be prohibited without authorization from OFAC. *See, e.g.*, BESR, § 548.201; BSR, § 537.201; North Korea Sanctions Regulations, 31 C.F.R. § 510.201; ZSR, § 541.201.

In addition, you seek guidance as to whether a U.S. person may participate in activities that you characterize as indirectly related to the collaboration on the creation and enhancement of written publications, such as evaluating proposals as to whether or not to develop a particular standard, committee technical discussions that may or may not result in a standard being developed, or participating in committees not directly related to standards development. Based on the information provided, all U.S. person engagement of this nature, as described in the Request, appears to involve either (1) exempt exportation of information or informational materials or (2) where applicable in the Iran, Sudan, and Cuba sanctions programs, licensed collaboration on the creation and enhancement of written publications, noting the limitations in the relevant general licenses on dealing with the Governments of Iran, Sudan, and Cuba.

To the extent not exempt or authorized as discussed above, OFAC would consider a request for a license for U.S. persons to participate in standards development committees and other closed working groups that may include participants from certain OFAC-sanctioned countries, specifically Belarus, Burma, Cuba, Iran, North Korea, Sudan, Syria, and Zimbabwe. Should API elect to submit such a request, please submit a copy of a Commodity Classification Automated Tracking System (CCATS) document issued by BIS for the type of data API seeks to disclose in connection with the creation or updating of a particular ISO standard, the evaluation of proposals to develop or update particular ISO standards, technical discussions that may or may not result in a standard being developed, or discussions in background industry technical research conducted by third parties.

The guidance in this letter is limited to sanctions programs administered by OFAC. It does not address regulations administered by other agencies, such as those administered by the Department of Commerce’s Bureau of Industry and Security, which may apply.

If you have any additional questions, you may refer to the OFAC website at [www.treas.gov/ofac](http://www.treas.gov/ofac) or call our office at (202) 622-2480.

Sincerely,



Mar. 14, 2014

Andrea Gacki  
Assistant Director for Licensing  
Office of Foreign Assets Control