

OFFICE OF FOREIGN ASSETS CONTROL

Interpretive Guidance: Prohibitions Imposed by Executive Order 13412; Transshipments of Goods and Financial Transactions Conducted through Certain Areas of Sudan

This guidance is intended to assist U.S. persons in complying with provisions of the recently issued Executive Order 13412 of October 13, 2006 (“E.O. 13412”), and in understanding the relationship of these provisions to the sanctions imposed by Executive Order 13067 of November 3, 1997 (“E.O. 13067”), as implemented by the Sudanese Sanctions Regulations, 31 C.F.R. part 538 (the “SSR”).¹ The SSR are being revised to incorporate the provisions of E.O. 13412, and the amendments will be published in the *Federal Register* when completed.

Prohibitions

Section 1 of E.O. 13412 maintains the countrywide blocking of the property and interests in property of the Government of Sudan imposed by E.O. 13067; however, section 6(d) of E.O. 13412 excludes the regional government of Southern Sudan from the definition of the Government of Sudan. Section 2 of E.O. 13412 prohibits all transactions by U.S. persons relating to Sudan’s petroleum or petrochemical industries, including, but not limited to, oilfield services and oil or gas pipelines. Sections 1 and 2 of E.O. 13412 apply to the entire territory of Sudan.

Exempt Areas of Sudan

Section 4(b) of E.O. 13412 exempts from the prohibitions in section 2 of E.O. 13067 specific areas of Sudan: Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur, and marginalized areas in and around Khartoum. Thus, trade and humanitarian assistance are no longer prohibited in the exempt areas, provided that these activities do not involve Sudan’s petroleum or petrochemical industries or any property or interests in property of the Government of Sudan. The non-exempt areas of Sudan continue to be subject to the comprehensive sanctions set forth in E.O. 13067.

Please note that E.O. 13412 does not affect licensing requirements for exports of agricultural commodities, medicine, and medical devices pursuant to section 538.523 of the SSR. Even in cases where such exports are destined for the exempt area of Sudan, licensing remains required pursuant to section 906 of the Trade Sanctions Reform and Export Enhancement Act of 2000 (P. Law 106-387).

¹ Please note that compliance with the requirements of E.O. 13067 and E.O. 13412 does not excuse a U.S. person from the need to comply with other provisions of 31 C.F.R. chapter V, and with other applicable provisions of law. Such requirements include the Export Administration Regulations, 15 C.F.R. parts 730 *et seq.*, administered by the Department of Commerce, and the International Traffic in Arms Regulations, 22 C.F.R. parts 120 *et seq.*, administered by the Department of State.

Transshipments

Although trade and humanitarian assistance are exempt in the areas of Sudan listed above, all other areas of Sudan continue to be subject to the prohibitions imposed by E.O. 13067 as set forth in the SSR. These prohibitions apply to imports or exports that transit the non-exempt areas of Sudan, such as Khartoum and Port Sudan, en route to or from the exempt areas of Sudan.

Therefore, exports from the United States or by a U.S. person, wherever located, to the exempt areas of Sudan that do not transit non-exempt areas of Sudan do not require authorization from OFAC, provided that the Government of Sudan does not have an interest in the transaction and the transaction does not relate to Sudan's petroleum or petrochemical industries. Similarly, imports into the United States of Sudanese-origin goods from the exempt areas of Sudan that do not transit non-exempt areas of Sudan do not require authorization from OFAC, provided that the Government of Sudan does not have an interest in the transaction and the transaction does not relate to Sudan's petroleum or petrochemical industries.

For example, an export of household goods to a nongovernmental organization working in a private orphanage located in Blue Nile State is exempt to the extent it does not transit the non-exempt areas of Sudan.

Although section 538.405 of the SSR provides that transactions "ordinarily incident to a licensed transaction" are authorized, this provision does not apply to transactions exempted by section 4(b) of E.O. 13412. Thus, while transshipments or supporting financial transactions may be considered "ordinarily incident" to exports licensed by OFAC, they are not deemed to be ordinarily incident to transactions in the exempt areas of Sudan and therefore require authorization from OFAC.

Financial Transactions

Financial transactions involving third-country depository institutions or non-designated Sudanese depository institutions² located and headquartered in the exempt areas of Sudan that do not involve activity in the non-exempt areas of Sudan are no longer prohibited and do not require authorization from OFAC, provided that the Government of Sudan does not have an interest in the transaction and the transaction does not relate to Sudan's petroleum or petrochemical industries. However, unless otherwise authorized, financial transactions that involve in any manner depository institutions that are located in the non-exempt areas of Sudan are prohibited.

For example, if a financial transaction involves a branch of a depository institution in the exempt areas of Sudan, but that depository institution is headquartered in Khartoum and requires all

² OFAC has designated several financial institutions that are owned or controlled by the Government of Sudan, which are listed on OFAC's Specially Designated Nationals and Blocked Persons List, available at <http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>. However, please note that these financial institutions formally designated by OFAC are not the only financial institutions owned or controlled by the Government of Sudan. U.S. persons are prohibited from dealing with any financial institution owned or controlled by the Government of Sudan, regardless of where it is located or whether it has been formally designated by OFAC.

financial transactions to be routed through the headquarters or another branch located in the non-exempt areas of Sudan, that transaction is prohibited and requires authorization from OFAC.