

Client Alert

August 2019

OFAC Enforces Reporting, Procedures and Penalties Regulations Compliance Obligations

What Happened: On August 8, 2019, the US Department of Treasury's Office of Foreign Assets Control (OFAC) issued a Finding of Violation to DNI Express Shipping Company (DNI) and to Southern Cross Aviation, LLC (Southern Cross) for violations of the Reporting, Procedures and Penalties Regulations (RPPR).

The Bottom Line: OFAC's enforcement action emphasizes the compliance obligations imposed by the RPPR, as well as the importance of cooperating with OFAC investigations and providing information during the course of an investigation in a way that is consistent with such obligations. This includes providing responses that are accurate, complete and timely. Failure to provide such complete and accurate information to OFAC is a violation of the RPPR.

The Full Story:

On August 8, 2019, OFAC issued Findings of Violation to DNI and Southern Cross for violations of the RPPR, which sets forth the standard reporting requirements, license application procedures and other procedures relevant to the economic sanctions programs OFAC administers.

DNI's violation resulted from OFAC's determination that DNI's responses to OFAC's administrative subpoena were contradictory and materially inaccurate and contained misleading statements. OFAC issued the administrative subpoena to DNI in late May 2019 to investigate DNI's involvement in the facilitation of the shipment, supply and sale of farm equipment to Sudan, in apparent violation of the Sudanese Sanctions Regulations (SSR). OFAC initially issued a cautionary letter to DNI regarding the violations of the SSR but determined that DNI's conduct during the investigation necessitated an administrative response. Thus, after seeking clarification on DNI's version of events in response to the administrative subpoena and confirming that DNI understood its obligations under the SSR and the RPPR, OFAC issued a Finding of Violation to DNI, finding that DNI provided false information and did not fully cooperate with OFAC's investigation.

Similarly, OFAC found that Southern Cross violated the RPPR by failing to provide accurate and complete information in response to OFAC's administrative subpoena seeking information and documentation regarding transactions involving the sale of helicopters to an Iranian businessman. After OFAC issued a second administrative subpoena to Southern Cross seeking similar information, Southern Cross then submitted documentation relating to the potential sale. Thus, OFAC determined that Southern Cross did not fully cooperate with its investigation and demonstrated reckless disregard for its compliance obligations pursuant to the RPPR.

Persons subject to US jurisdiction and engaging in activities related to the sanctions programs administered by OFAC should familiarize themselves with OFAC's regulations in order to comply with OFAC's procedures and requirements, and be thorough in the responses provided to OFAC. As evidenced by these Findings of Violation, failure to provide accurate, complete and timely responses and information could result in the aggravation of an administrative finding from a mere Cautionary Letter to a Finding of Violation or worse.

Hunton Andrews Kurth LLP will continue to closely monitor related developments regarding OFAC's regulations. Please contact us if you have any questions or would like further information regarding OFAC's interim final rule to amend the regulations.

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