

Failure to comply with the complex web of US sanctions laws and regulations carries significant risks both in terms of exposure to civil fines and penalties and reputational harm. To help maritime sector stakeholders navigate these regulations, the US Department of Treasury's Office of Foreign Assets Control (OFAC) has published scenario-based [sanctions compliance guidance](#) on October 31, 2024, to aid commodities brokers, insurers, ship management service providers, shipbroking companies, port authorities and other industry participants to identify attempts at sanctions evasion, address due diligence issues and implement best practices. This guidance supplements OFAC's [previously published guidance](#) related to the maritime sector, including the May 14, 2020 "Sanctions Advisory for the Maritime Industry, Energy and Metal Sectors, and Related Communities."

OFAC administers and enforces US economic sanctions against targeted foreign countries, regions, entities and individuals. In recent years, OFAC and other US government agencies involved in trade regulation and enforcement have focused increasingly on "intermediaries" or "facilitators" of potentially illicit transactions, such as shipping companies, logistics service providers, freight forwarders and transport intermediaries, as well as insurance companies. For example, in December 2023, Treasury and four other US agencies issued a joint ["Quint-Seal Compliance Guidance"](#) entitled "Know Your Cargo: Reinforcing Best Practices to Ensure the Safe and Compliant Transport of Goods in Maritime and Other Forms of Transportation," which set out best practices for maritime transportation of cargo. The US Department of Commerce, Bureau of Industry and Security (BIS) had also issued guidance specifically for [freight forwarders](#) on steps that should be taken to protect against export control and sanctions violations. BIS recently, in July 2024, updated an older [publication](#) that highlights the consequences of violating US export controls and sanctions, with multiple case studies involving freight forwarders, shippers or logistics companies.

The recurring themes in all these compliance guidance communiques and publications are:

- Responsibility for compliance lies not just with the buyers or sellers in a transaction, but with all the services intermediaries – particularly the transportation and logistics companies, and others that support marine transportation, including freight forwarders and insurance companies
- It is essential that participants in the maritime and shipping industry have compliance policies and procedures that mitigate the risk of violations
- There will be an increasing enforcement focus by the US government regulatory agencies involved, that targets violations by transportation intermediaries or facilitators

This most recent OFAC compliance guidance further clarifies steps that key stakeholders in the maritime shipping sector should take to avoid sanctions violations. OFAC also highlights a number of the more sensitive areas or scenarios, which we outline below.

Deceptive Shipping Practices to Conceal Sanctions Nexus

The OFAC guidance highlights situations in which buyers or sellers in transactions, or even the charterer of a vessel, may engage in deceptive practices to conceal sanctions violations. In one case study presented, other parties became aware of falsified certificates of origin and inconsistencies between the automatic identification system (AIS) data and the ship's logs. OFAC goes on to note the responsibilities of the ship operator, the port agent and the protection and indemnity insurer (P&I club) to identify, investigate and report such irregularities.

For example, OFAC notes that insurers which provide insurance coverage for shipments using a falsified certificate of origin could themselves be in violation of sanctions laws, if the false documents were used to conceal the involvement of a sanctioned country in the transaction. To protect themselves, OFAC recommends that P&I clubs and other maritime stakeholders conduct rigorous transaction due diligence to ensure shipping documentation accurately reflects the origin and destination of the cargo, particularly when facilitating transactions that involve areas known for potential sanctions evasion (e.g., jurisdictions commonly listed on falsified documentation or waters known for frequent ship-to-ship transfer operations of sanctioned oil).

Finally, OFAC also warns about deceptive practices involving the manipulation of a vessel's location via its AIS to conceal the origin of certain oil cargoes. OFAC explains that if there are AIS abnormalities, insurers should stay vigilant for (1) a potential misclassification of the vessel and class of trade, (2) extended periods without AIS transmission, (3) abnormal traffic or voyage patterns and (4) instances of Maritime Mobile Service Identity manipulation to disguise the ship's name or location.

Inadvertent Engagement With Specially Designated Nationals

The guidance identifies circumstances where US maritime stakeholders may violate sanctions laws by engaging unintentionally with a Specially Designated National (SDN). For example, the guidance highlights a scenario where a US entity participates inadvertently in a transaction with the proxy of an SDN leading to sanctions violations.

OFAC mentions situations where a participant in the transaction or a bank informs the transacting party that it will not go ahead with the transaction if the SDN is involved, and the transacting party simply replaces the SDN with a newly formed proxy entity. OFAC identifies a number of red flags that maritime stakeholders should investigate to avoid these types of potential sanctions violations, including:

- Modifications to original documentation or letters of engagement in a commercial transaction to hide or remove evidence of a nexus to sanctionable activity
- Sudden changes to shipping instructions out of line with normal business practice
- Refusals to provide additional information in response to reasonable, industry-standard requests

OFAC notes that non-US persons can also be subject to enforcement for “causing” U.S. persons to violate US sanctions, or for evading or conspiring to violate US sanctions. Further, non-US persons may be subject to US secondary sanctions for engaging in certain transactions involving blocked persons or other specified activity. Thus, both US and non-US entities should develop and implement an internal compliance framework to prevent inadvertent engagement with SDNs.

Sanctions Exclusion Clauses

The OFAC guidance discusses situations where US insurance or reinsurance brokers may be in violation of sanctions law if they provide insurance coverage for sanctioned entities. It is not uncommon that sanctioned entities will create complex ownership structures, and function through subsidiaries that clear compliance checks without raising red flags. OFAC recommends that maritime stakeholders include sufficient sanctions exclusion clauses in their policies and contracts, so they can easily exit or terminate agreements with such sanctioned entities once they are identified. OFAC’s [FAQ 102](#) provides additional guidance on such clauses. Such clauses should be regularly updated to include the latest changes to the sanctions framework.

Mid-voyage or Post-voyage Notification of Sanctions Risk

OFAC notes that there may be scenarios where maritime sector stakeholders only learn of potential sanctionable activity mid-voyage or after the voyage’s completion. If sanctions issues arise mid-voyage, such as through discovery of an illicit ship-to-ship transfer, maritime sector stakeholders should conduct additional due diligence to understand their sanctions-related risk in continuing to provide services. Parties involved in such cases may consider applying to OFAC for a specific license related to the continued provision or wind down of the services. If the stakeholder learns of the violation after the voyage’s completion or after it has completed its services, it should consider disclosing the apparent violation to OFAC via a voluntary self-disclosure.

Opaque Vessel Ownership

OFAC recommends that shipowners, ship brokers, financial institutions and others involved in the sale of vessels be wary of attempts made by buyers to conceal the ultimate beneficial owner of vessels. Those involved in vessel sales should conduct a risk-based assessment on counterparties involved in the sale and pay attention to the use of complex ownership and management structures, shell companies, intermediaries and escrow agents that could be used to conceal the ultimate beneficial owner of the vessel. These mitigation measures can help protect parties to the transaction from engaging inadvertently in sales of vessels to sanctioned entities, or entities engaging in sanctionable activities.

Going Forward

With media reports of Russia’s shadow fleet or dark fleets, the ongoing conflict in Ukraine and regular updates to the OFAC SDN list and other global restricted parties lists, OFAC’s recently issued guidelines serve as a reminder of the increasing focus on international seaborne commerce as a means to enforce international economic sanctions. Considering the very high cost of non-compliance, stakeholders throughout the maritime transportation, logistics and services sector should consult with experienced counsel to ensure that their sanctions compliance programs pass muster in the current environment.

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