



# Regulatory Alert

## Regulatory Insights



September 2022

### U.S. Actions to Russia-Ukraine War: OFAC Guidance on Russian Oil Price Cap

**KPMG Insights.** As part of ongoing, increasing, and evolving U.S. sanctions activity directed toward the Russia-Ukraine war, OFAC has published preliminary guidance for complying with a price cap related to transactions in Russian oil. Treasury has indicated that financial services providers, including insurers, will be integral to the effectiveness of, and compliance with, the price cap and has sought the industry's input in developing a compliance regime that is "as simple as possible." Beyond the preliminary guidance, OFAC intends to publish more guidance related to the services permitted subject to the price cap as well as how the price cap will be published and updated. Impacted entities, including traders, financial institutions, and insurers, should begin to review their business operations, identify potential risk areas, and address the steps needed to implement compliance with the price cap through additional measures within their existing sanctions compliance program. Notably, these latest prohibitions require greater due diligence from those in the impacted industries; when assessing these new measures, consideration should be given to each of OFAC's essential components, including management commitment, risk assessment, internal controls, testing and auditing, and training.

**Sanction on certain Russian oil transactions.** As part of a coalition of countries, including the G7 and EU, the United States plans to implement a policy that would ban, subject to a price cap exception (discussed below), a broad range of services (including trade finance, banking, brokering, and insurance) related to the maritime transportation of Russian Federation origin crude oil and petroleum products (together, "seaborne Russian oil"). The ban on crude oil will take effect on December 5, 2022, and the ban on petroleum products will take effect on February 5, 2023. Failure to comply with the ban would result in a sanctions violation.

**Price cap exception.** The price cap exception to the banned services will be made available to jurisdictions and/or "actors" that purchase seaborne Russian oil at or below a price cap to be established by the coalition. The U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC), has issued [preliminary guidance](#) on compliance with this price cap exception. In particular, compliance will be dependent on a recordkeeping and attestation process that requires each party in the supply chain of seaborne Russian oil (including traders/brokers, financial institutions, and insurers) to demonstrate or confirm that the oil has been purchased at or below the price cap (see table below).



**Table.** OFAC Example of the recordkeeping and attestation process.

Category	Sample actors	Expectations	Examples of information or documentation	Recommendations for risk-based measures for compliance with price exception
Tier 1 — Actors with direct access to price information	Refiners, importers, commodities brokers, traders, customs brokers	Retain and share price information and provide attestation to Tier 2 or Tier 3, as needed	Invoices, contracts, receipts/ proof of accounts payable	Updating terms and conditions of contracts, updating invoice structure to include itemized price for oil purchase (excluding shipping, freight, and customs costs)
Tier 2 — Actors sometimes able to request price information	Financial institutions providing trade finance, shippers	Request, retain, and share, as needed, price information (when practicable) or attestation from Tier 1 (when direct receipt of price information is not practicable)	Invoices, contracts, receipts/ proof of accounts payable; price cap attestation	Providing guidance to trade finance department/ relationship managers/ compliance staff, updating requests for information (RFIs) or sanctions questionnaire templates, updating bill of lading templates to include attestations
Tier 3 — Actors without direct access to price information	Insurance brokers, cargo / Hull and Machinery (H&M) insurers, reinsurers, P&I clubs	Receive attestation from Tier 1 or Tier 2 regarding compliance with the price cap	Attestation tied to an annual policy	Updating policies and terms and conditions, providing guidance to staff

Source: U.S. Department of the Treasury, Office of Foreign Assets Control, *Preliminary Guidance on Implementation of a Maritime Services Policy and Related Price Exception for Seaborne Russian Oil*.

**Safe Harbor.** The recordkeeping and attestation process is intended to create a “safe harbor” from liability for inadvertent violations because of illicit actors. In general, service providers for seaborne Russian oil will not face an OFAC sanctions enforcement action, provided that the service provider obtains, and reasonably relies on, certain documentation or attestations that the purchase price of the oil is at or below the price cap.

**Red Flags.** OFAC identifies several examples of possible red flags for evasion of the price cap, including:

- Evidence of deceptive shipping practices
- Refusal or reluctance to provide requested price information

- Unusually favorable payment terms, inflated costs, or insistence on using circuitous or opaque payment mechanisms
- Indications of manipulated shipping documentation, such as discrepancies of cargo type, voyage numbers, weights or quantities, serial numbers, shipment dates
- Newly formed companies or intermediaries, especially if registered in high-risk jurisdictions
- Abnormal shipping routes

**Additional guidance.** OFAC intends to publish additional materials including:

- A determination pursuant to Executive Order 14071 (Prohibiting New Investment In And Certain Services

To The Russian Federation in Response to Continued Russian Federation Aggression), which will (i) permit the exportation, re-exportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of services related to the maritime transportation of seaborne Russian oil, if the seaborne Russian oil is purchased at or below the price cap and (ii) prohibit such services if the seaborne Russian oil is purchased above the price cap.

- Guidance on services subject to the policy (the Maritime Services Policy – see note below), including implementation of the policy and the price cap exception.
- Guidance on how the level of the price cap will be published and updated.
- Information on possible red flags for evasion of the price cap.

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*Note:* The U.S. has imposed a prohibition on the importation of Russian Federation origin crude oil; petroleum; and petroleum fuels, oils, and products of their distillation pursuant to Executive Order 14066

*(Prohibiting Certain Imports and New Investments With Respect to Continued Russian Federation Efforts To Undermine the Sovereignty and Territorial Integrity of Ukraine).* This prohibition will remain in place; the price cap exception does not authorize the importation of seaborne Russian oil into the United States.

The U.S. policy to ban a broad range of services (including trade finance, banking, brokering, and insurance) related to the maritime transportation of Russian Federation origin crude oil and petroleum products is referred to as the Maritime Service Policy.

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**Relevant KPMG Thought Leadership:**

- KPMG Regulatory Alert: [U.S. actions to Russia-Ukraine war: FinCEN Alert](#)
- KPMG Regulatory Alert: [U.S. actions to Russia-Ukraine war: New Sanctions, Evasion Coordination & Cyber Risks](#)

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