

Iran Threatens Partial JCPOA Suspension; US Imposes Sanctions on Certain Iranian Metals Sectors

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On May 8, 2019, following Iran's announcement that it intends to suspend certain nuclear proliferation-related commitments under the Joint Comprehensive Plan of Action (JCPOA), the United States issued a new Executive order (EO) imposing sectoral sanctions targeting the Iranian iron, steel, aluminum, and copper sectors.¹ In response, the current parties to the JCPOA (after US withdrawal from the JCPOA precisely one year ago)—including the European Union (EU), China and Russia—reiterated their support for the JCPOA and the importance of avoiding escalation.

Hours after Iranian President Hassan Rouhani announced that Iran intends to resume certain nuclear proliferation activities if the remaining parties to the JCPOA² do not "fulfil their obligations" under the JCPOA in the next 60 days, the White House and the US Department of the Treasury's Office of Foreign Assets Control (OFAC) announced new sanctions that supplement the existing sanctions provided for in the Iran Freedom and Counter-Proliferation Act of 2012 (IFCA).³ These new sanctions, which target Iran's second largest industry sector, were issued exactly one year after the United States' withdrawal from the JCPOA on May 8, 2018.⁴ A White House press statement issued in connection with the new sanctions warns other nations that the United States will not

¹ Executive order, Imposing Sanctions with Respect to the Iron, Steel, Aluminum, and Copper Sectors of Iran, [available here](#); OFAC, Recent Action, Issuance of Executive Order of May 8, 2019, "Imposing Sanctions with Respect to the Iron, Steel, Aluminum, and Copper Sectors of Iran," [available here](#).

² The current parties to the JCPOA are the so-called "E3/EU+3", i.e., China, France, Germany, Russia, and the United Kingdom, plus the EU as represented by the High Representative of the EU for Foreign Affairs and Security Policy. The JCPOA has been endorsed at UN level through UN Security Council Resolution 2231.

³ Iran Freedom and Counter-Proliferation Act of 2012 (IFCA), Pub. L. 112-239.

⁴ Our previous alert on the United States withdrawal from the JCPOA is available [here](#).

tolerate trade in Iranian industrial metals.⁵ As of May 10, 2019, no sanctions have been imposed against specific parties under this EO.

Iran announces intent to increase nuclear-related activities following key US sanctions-related actions

On May 8, 2019, the Iranian Ministry of Foreign Affairs announced Iran's issuance of a statement to certain parties to the JCPOA stating that it may take actions that contravene its nuclear commitments under the JCPOA.⁶ As of May 8, Iran announced that it "stops some of its measures under the JCPOA," specifically measures on stockpiling of enriched uranium and heavy water reserves. Iran further stated that "the remaining [JCPOA] countries will be given sixty days to fulfill their obligations, especially in banking and oil fields. If they fail to meet [Iran's] demands in the time given, then the Islamic Republic of Iran will suspend compliance with the uranium enrichment limits and measures to modernise the Arak Heavy Water Reactor. Whenever our demands are met, we will resume the same amount of suspended commitments, but otherwise, the Islamic Republic of Iran will suspend the implementation of other obligations step by step."⁷

This development comes days after the United States took several key sanctions-related actions relating to Iran as part of the US campaign of "maximum pressure."⁸

- On May 2, the United States allowed the "Significant Reduction Exception" waivers to expire, which previously allowed China, India, Italy, Greece, Japan, South Korea, Taiwan, and Turkey to purchase Iranian petroleum and petroleum products without violating the US sanctions reimposed as part of US withdrawal from the JCPOA, among other things.⁹
- On May 3, the US State Department announced sanctions targeting the provision of assistance to the expansion of Iran's Bushehr Nuclear Power Plant and involvement in transferring enriched uranium out of Iran in exchange for natural uranium, and prohibiting the storage of heavy water produced by Iran in excess of current limits.¹⁰ The State Department specifically "permitted" several nonproliferation activities for a renewable "duration" of 90 days, including the redesign of the Arak nuclear reactor to prevent it from becoming a weapons-grade plutonium factory, among other enumerated activities.
- Additionally, on May 5, the United States deployed a carrier group and bomber task force to the Persian Gulf in response to indications of an Iranian threat to US operations in the Middle East.¹¹

⁵ White House, Statements & Releases, Statement from President Donald J. Trump Regarding Imposing Sanctions with Respect to the Iron, Steel, Aluminum and Copper Sectors of Iran, [available here](#); State Department, Remarks, After the Deal: a New Iran Strategy, [available here](#).

⁶ Islamic Republic of Iran Ministry of Foreign Affairs, Latest News, SNSC in a statement addressing nuclear deal parties: Iran stops some of its measures under JCPOA, [available here](#).

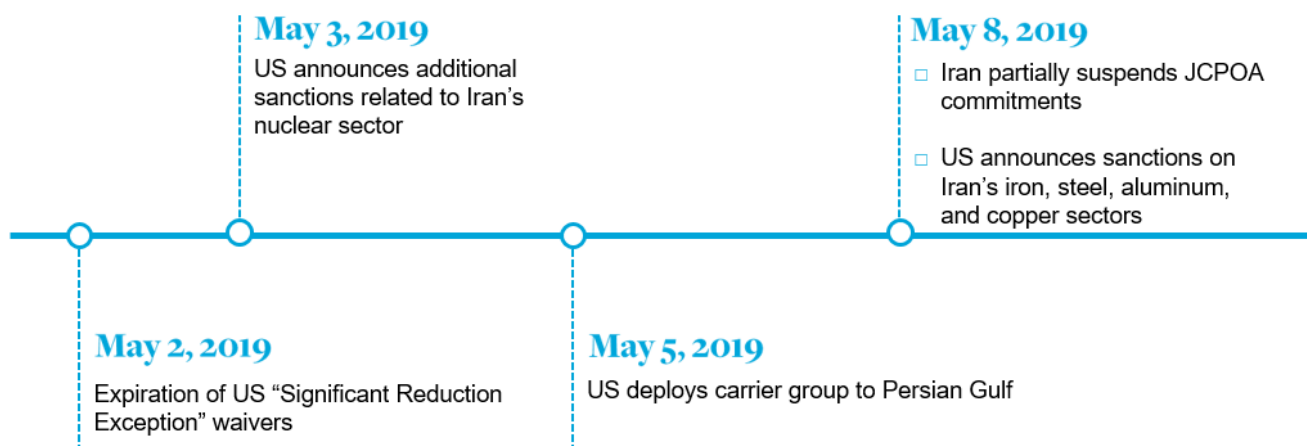
⁷ Islamic Republic of Iran Ministry of Foreign Affairs, Latest News, SNSC in a statement addressing nuclear deal parties: Iran stops some of its measures under JCPOA, [available here](#).

⁸ White House, Fact Sheet, President Donald J. Trump is Cutting Off Funds the Iranian Regime Uses to Support its Destructive Activities Around the World, [available here](#).

⁹ State Department, Fact Sheet, Advancing the US Maximum Pressure Campaign on Iran, [available here](#).

¹⁰ State Department, Fact Sheet, Advancing the Maximum Pressure Campaign by Restricting Iran's Nuclear Activities, [available here](#).

¹¹ White House, Statements & Releases, Statement from the National Security Advisor Ambassador John Bolton, [available here](#). This deployment was to the US Central Command region, which includes the Persian Gulf.



New US Executive Order

The new EO issued on May 8, "Imposing Sanctions with Respect to the Iron, Steel, Aluminum, and Copper Sectors of Iran," authorizes:

- (1) Blocking sanctions on certain persons determined to be involved with Iran's iron, steel, aluminum, and copper sectors,
- (2) Correspondent and payable-through account sanctions on foreign financial institutions (FFIs) determined to have knowingly conducted or facilitated certain significant financial transactions involving Iran's iron, steel, aluminum, and copper sectors.

The EO "supplements" existing menu-based sanctions related to steel and aluminum under the IFCA, but does not draw legal authority from the IFCA. IFCA § 1245 authorizes the imposition of five or more menu-based sanctions on persons determined to have knowingly sold, supplied, or transferred to or from Iran, directly or indirectly, graphite, raw or semi-finished metals such as steel and aluminum, coal, and software for integrating industrial processes.¹² The EO is separate and distinct from the IFCA.

On May 8, OFAC also issued six Frequently Asked Questions (FAQs) on the new sectoral sanctions.¹³ These FAQs state that there is a 90-day wind-down period for taking the necessary steps to wind down transactions that could be sanctioned under the EO. OFAC emphasizes that entering into new business that would be sanctionable under the EO will not be considered "wind down activity" and could be sanctioned during the wind-down period. This 90-day wind-down is not stated in the EO, nor has OFAC issued a general license to that effect as of May 10.

These FAQs also clarify that the EO became effective upon signing on May 8, and that the sanctions do not apply to transactions for the conduct of official business of the United States Government or the United Nations—including its specialized agencies, programmes, funds, and related organizations—by employees, grantees, or contractors thereof. The inclusion of this exemption is unusual for an EO of this nature, given that such exemptions typically appear in more expansive EOs, such as those instituting trade bans.

Blocking Sanctions

The EO authorizes designation to the List of Specially Designated Nationals and Blocked Persons (SDN List) and the blocking of the property and interests in property located in the United States or in the possession or control of

¹² IFCA § 1245(a)(1)(B-C).

¹³ OFAC FAQs 666-671, *available* [here](#).

a US person¹⁴ of any person—including non-US persons—determined by the Secretary of the Treasury in consultation with the Secretary of State:

- To operate in the iron, steel, aluminum, or copper sector of Iran;
- To be a person that owns, controls, or operates an entity that is part of the iron, steel, aluminum, or copper sector of Iran;¹⁵
- To have knowingly engaged in a significant transaction for the sale, supply, or transfer to Iran of significant goods or services used in connection with the iron, steel, aluminum, or copper sector of Iran on or after the date of this EO; and
- To have knowingly engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of iron, iron products, aluminum, aluminum products, steel, steel products, copper, or copper products from Iran on or after the date of this EO.

Especially relevant for non-US persons are the following two derivative designation grounds, which accompany most blocking sanctions. First, any person determined to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of any person blocked pursuant to the EO may be subject to designation and blocking. In addition, any person deemed to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person blocked pursuant to this EO may be subject to designation and blocking. The EO also prohibits transactions that evade or avoid, have the purpose of evading or avoiding, cause a violation of, or attempt to violate any of the prohibitions set forth in the EO, including any conspiracy to violate any of the prohibitions.

Any property of the persons blocked under this EO located in the United States or within the possession or control of a US person, wherever located, are considered blocked. US persons are prohibited from engaging in transactions with such property or interests in property absent a specific license from OFAC, and from engaging in transactions with entities that are owned 50 percent or more in the aggregate, directly or indirectly, by designated persons. The EO also imposes a travel ban on designated individuals by suspending their entry into the United States.

FFI Correspondent and Payable-Through Account Sanctions

The EO also authorizes sanctions prohibiting the opening of, and prohibiting or imposing strict conditions on maintaining, correspondent accounts or payable-through accounts in the United States by FFIs determined by the Secretary of the Treasury in consultation with the Secretary of State to have knowingly conducted or facilitated any significant financial transactions on or after the date of this EO:

- For the sale, supply, or transfer to Iran of significant goods or services used in connection with the iron, steel, aluminum, or copper sector of Iran;
- For the purchase, acquisition, sale, transport, or marketing of iron, iron products, aluminum, aluminum products, steel, steel products, copper, or copper products from Iran; and
- For or on behalf of any person blocked pursuant to this EO.

OFAC could amend the newly-created List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions (the CAPTA List) to include any FFIs sanctioned under this EO.¹⁶ The

¹⁴ US person is defined to include US citizens and permanent resident aliens, wherever located, entities organized under US law (including foreign branches), and individuals and entities located in the United States.

¹⁵ Other OFAC sanctions targeting economic sectors do not include language including “persons that own, control, or operate” entities, such as EO 13661 and 13662 on certain sectors of the Russian economy, and EO 13850 on certain sectors of the Venezuelan economy.

¹⁶ OFAC Press Bulletin, Introduction of the Correspondent Account or Payable-Through Account Sanctions (the “CAPTA List”) and Removal of the List of Foreign Financial Institutions Subject to Part 561 (the “Part 561 List”), [available here](#);

CAPTA List superseded the Part 561 List and includes all FFIs for which the opening or maintaining of a correspondent account or payable-through account in the United States is prohibited or subject to one or more strict conditions pursuant to an enumerated list of US sanctions laws and regulations.¹⁷ At present, the only FFI on the CAPTA List is Bank of Kunlun.

Significant transactions, goods and services, and financial transactions

For purposes of this EO, OFAC anticipates adopting the interpretation of “significant” set out in the Iranian Financial Sanctions Regulations (IFSR), as used for the IFCA and certain other Executive orders.¹⁸ Under the IFSR, in determining whether specific transactions, financial services, or financial transactions are “significant,” the Department of the Treasury may consider the totality of the facts and circumstances, including a list of eight factors. These factors include:

- The size, number, and frequency of transactions and services;
- The nature of such transactions and services, including their type, complexity, and commercial purpose;
- The level of awareness of management and whether the transactions are part of a pattern of conduct;
- The nexus of the transactions and services with blocked persons;
- The impact of the transactions and services on statutory objectives;
- Whether the transactions and services involve deceptive practices;¹⁹
- Whether the transactions solely involve the passive holdings of Central Bank of Iran (CBI) reserves or repayment by the CBI of official development assistance or the transfer of funds required as a condition of Iran’s membership in an international financial institution; and
- Other relevant factors that the Secretary of the Treasury deems relevant.²⁰

International Support for the JCPOA under Pressure

The EU, and particularly France, Germany, and the United Kingdom, face a difficult decision given Iran’s threat to contravene certain of its JCPOA commitments, and the United States’ imposition of new sanctions that could target the activity of European economic operators. A general EU statement issued following the Iranian and US developments on May 8 expressed support for the JCPOA, while calling on Iran and the United States to exercise restraint.²¹ In a press conference, the UK Foreign Secretary urged Iran not to take further escalatory steps and to adhere to its JCPOA commitments, stating that there would be consequences should Iran cease to observe the JCPOA.²² However, it is too early to tell at this stage what the potential impact of Iran’s statement could be on EU sanctions, for example, as the JCPOA parties have seemingly so far adopted a “wait and see” attitude.

OFAC Recent Actions, Introduction of the Correspondent Account or Payable-Through Account Sanctions (the “CAPTA List”) and Removal of the List of Foreign Financial Institutions Subject to Part 561 (the “Part 561 List”), [available here](#).

¹⁷ OFAC Recent Actions, Introduction of the Correspondent Account or Payable-Through Account Sanctions (the “CAPTA List”) and Removal of the List of Foreign Financial Institutions Subject to Part 561 (the “Part 561 List”), [available here](#); OFAC, List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions, [available here](#).

¹⁸ 31 C.F.R. § 561.404; OFAC FAQs 671, 289.

¹⁹ Deceptive practices include attempts to obscure or conceal the actual parties or true nature of the transactions or services, or attempts to evade sanctions. 31 C.F.R. § 561.404(f).

²⁰ 31 C.F.R. § 561.404; OFAC FAQ 289.

²¹ EEAS, Joint statement by High Representative of the European Union and the Foreign Ministers of France, Germany and the United Kingdom on the JCPoA [sic], [available here](#).

²² State Department, Remarks by Secretary of State, Press Availability with British Foreign Secretary Jeremy Hunt, [available here](#).

Previously, following the United States' withdrawal from the JCPOA and re-imposition of sanctions on Iran, the EU responded by updating Council Regulation (EC) No. 2271/96 (the "Blocking Regulation") in an effort to reduce the impact on Iran and preserve the JCPOA commitments.²³ The updated Blocking Regulation forbids EU natural and legal persons from complying with any requirement or prohibition based on or resulting from any of the statutes and regulations set out in its annex²⁴ where these apply extraterritorially, unless exceptionally authorized to do so by the European Commission.

Also in an effort to give effect to the JCPOA and protect European-Iranian business, France, Germany, and the UK implemented a special purpose vehicle on January 31, 2019, called INSTEX SAS, to enable payments related to "legitimate" trade between European economic operators and Iran that might otherwise be subject to US sanctions.²⁵ However, the general impact of this mechanism, and especially whether it could help ensure that payments to and from Iran are made despite certain US sanctions imposed on Iran-related financial transactions, remains unclear.

China reiterated its support for the JCPOA following the Iranian announcements, stating that the JCPOA should continue to be implemented fully despite the United States' JCPOA withdrawal.²⁶ China called on all involved parties to exercise restraint and to engage in discussion to prevent escalation. A Kremlin spokesperson stated on May 8 that Russian President Vladimir Putin sees no alternative to the JCPOA, and expressed Russia's intention to continue international discussions on these issues.²⁷

Conclusion

The United States advises that it will implement these new sanctions on Iran, which are effective as of May 8, 2019, including by adding offenders to the SDN List and enforcing against prohibited non-wind-down activities during the 90-day wind-down period. Companies involved in business activities related to Iran should carefully consider their obligations under both US and EU law (and any other applicable laws), as the ramifications of these conflicting rules can vary depending on a company's particular circumstances. Companies considering engaging in Iran-related business should exercise caution to ensure compliance with all applicable sanctions, including sanctions relating to persons designated on the SDN List pursuant to this Executive order. Foreign Financial Institutions face the particular compliance challenge of determining which financial transactions relate to targeted activities.

We will be monitoring how these various provisions are implemented in practice, including in the United States and the EU.

²³ Our previous alerts on the EU revisions to the Blocking Regulation are available [here](#) and [here](#), and [here](#).

²⁴ The EU Blocking Regulation annex lists the Iran Freedom and Counter-Proliferation Act of 2012 (IFCA); the Iran Sanctions Act of 1996; the National Defense Authorization Act for Fiscal Year 2012; the Iran Threat Reduction and Syria Human Rights Act of 2012; and the Iranian Transactions and Sanctions Regulations (ITSR) (as well as two statutes containing US sanctions against Cuba).

²⁵ Our previous alert on INSTEX is available [here](#).

²⁶ Ministry of Foreign Affairs of the People's Republic of China, Spokesperson's Remarks, Foreign Ministry Spokesperson Geng Shuang's Regular Press Conference on May 8, 2019, [available here](#).

²⁷ Washington Post, Iran announced it will stop complying with parts of landmark nuclear deal, [available here](#).

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