

Guidance Related to the Issuance of the Executive Order “Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 and Additional Sanctions With Respect to Iran” and the Implementation of Certain Provisions of the Iran Freedom And Counter-Proliferation Act of 2012 (IFCA)

On June 3, 2013, the President signed an Executive Order (E.O.) “Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 and Additional Sanctions With Respect to Iran.” The E.O. implements certain statutory provisions of the Iran Freedom and Counter-Proliferation Act of 2012 (IFCA) and authorizes the imposition of additional sanctions with respect to Iran. Most of the IFCA provisions target conduct occurring on or after July 1, 2013. The E.O. becomes effective on July 1, 2013. [06-03-13]

General Questions

313. What is the Iran Freedom and Counter-Proliferation Act of 2012 (IFCA)?

IFCA was signed into law on January 2, 2013, as a part of the National Defense Authorization Act for Fiscal Year 2013, and provides for several new sanctions related to Iran. IFCA authorizes broad sanctions on: certain activities related to Iran’s energy, shipping, and shipbuilding sectors; the sale, supply, or transfer to or from Iran of precious and certain other metals, graphite, coal, and industrial software; the provision of underwriting services, insurance, or reinsurance to activities and persons targeted by U.S. sanctions against Iran; financial transactions involving sanctioned Iranian individuals and entities; and persons involved in the diversion of goods intended for the Iranian people. Most of the IFCA provisions target conduct occurring on or after July 1, 2013.

The U.S. Department of the Treasury will be issuing regulations to implement certain provisions in IFCA. In addition, the U.S. Department of State expects to adopt an interpretation of IFCA similar to that set forth below. [06-03-13]

288. What is the purpose of the Executive Order of June 3, 2013 entitled “Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 and Additional Sanctions With Respect to Iran” (E.O.)?

The E.O. implements certain statutory provisions of IFCA. The E.O. also authorizes the imposition of additional sanctions with respect to Iran, targeting certain transactions and other activity related to the Iranian rial, Iran’s automotive sector, and persons that materially assist Iranian persons on the list of Specially Designated Nationals and Blocked Persons (SDN List) as well as certain persons whose property and interests in property are blocked under the E.O. or Executive Order 13599. The

E.O. becomes effective at 12:01 a.m. eastern daylight time on July 1, 2013. Questions and Answers (Q&As) 20-26 below provide guidance regarding the E.O.

The Department of the Treasury will be issuing regulations to implement certain provisions in the E.O. In addition, the Department of State expects to adopt an interpretation of the E.O. similar to that set forth below [06-03-13]

Iran Freedom and Counter-Proliferation Act of 2012

289. How will the following IFCA terms be interpreted: “Iran,” “knowingly,” “significant,” “transfer,” “Iranian person included on the SDN List”?

As a general matter, we intend to rely, where applicable, on definitions of terms previously included in Treasury regulations.

“Iran”

The Iranian Financial Sanctions Regulations (31 CFR part 561) (IFSR) define “Iran” as the Government of Iran and the territory of Iran and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights, or jurisdiction, provided that the Government of Iran exercises partial or total de facto control over the area or derives a benefit from economic activity in the area pursuant to international arrangements. (31 CFR § 561.329)

“Iranian person included on the SDN List”

OFAC anticipates publishing on its website a list to assist in identifying Iranian persons included on the SDN List for purposes of IFCA and the E.O.

“knowingly”

The IFSR define “knowingly” with respect to conduct, a circumstance, or a result, to mean that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result. (31 CFR § 561.314)

“significant”

As a general matter, in determining for purposes of IFCA and the E.O. whether transactions, financial transactions, or financial services are significant, the Department of the Treasury will rely on the interpretation set out in §561.404 of the IFSR. The IFSR provide a list of broad factors that can play a role in the determination whether transactions, financial services, and financial transactions are significant, including: (a) the size, number, and frequency of the transactions, financial services, or financial transactions; (b) the type, complexity, and commercial purpose of the transactions, financial services, or financial transactions; (c) the level of awareness of management and whether the transactions are part of a pattern of conduct; (d) the nexus of the transactions, financial services, and financial transactions and blocked persons; (e) the impact of the transactions, financial services,

and financial transactions on statutory objectives; (f) whether the transactions, financial services, and financial transactions involve deceptive practices; (g) 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 (h) other relevant factors that the Secretary of the Treasury deems relevant. We anticipate adopting a similar approach to interpreting the term “significant” as it applies to goods or services.

“transfer”

“Transfer” includes import, transshipment, export, or re-export, whether direct or indirect. [06-03-13]

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290. Are payments or deliveries that are made on or after July 1, 2013, for contracts that existed prior to July 1, 2013, exempted from IFCA provisions?

There is no general exception for payments, sales, deliveries, or transfers arising out of contracts entered into prior to July 1, 2013, on or after which date certain activities become sanctionable under IFCA. The assessment of whether such payments are “significant” or result in the transfer of “significant goods or services” or “significant financial support” will be done on a case-by-case basis in line with the criteria discussed above. [06-03-13]

291. How does the Executive Order relate to the IFCA provisions?

The E.O. implements and builds upon certain provisions of IFCA as set out in more detail in Q&As 306 and 312 below. [06-03-13]

292. What are the implications of IFCA on the provision of humanitarian goods to the people of Iran?

IFCA generally excepts from sanctions transactions for the sale of agricultural commodities, food, medicine, or medical devices to Iran, as set out in more detail in Q&As 297 and 304. (See Q&A 312 for a similar exception in the E.O.) [06-03-13]

Sanctions Relating to Iran’s Energy, Shipping, and Shipbuilding Sectors

IFCA provides for sanctions involving activities or transactions related to Iran’s energy, shipping, and shipbuilding sectors.

293. What will the “energy, shipping, and shipbuilding sectors of Iran” mean for the purposes of IFCA?

We anticipate that regulations to be promulgated will define “energy sector of Iran” to include activities involving the exploration, extraction, production, refinement, or liquefaction of petroleum, natural gas, or petroleum products in Iran. (See also discussion of activities involving natural gas in Q&A 297.)

We anticipate that regulations to be promulgated will define “shipping sector of Iran” to include activities involving the transportation of goods by seagoing vessels, including oil tankers and cargo vessels, flying the flag of the Islamic Republic of Iran, or owned, controlled, chartered, or operated directly or indirectly by the Government of Iran. Two entities previously identified or designated under Treasury authorities that are part of the shipping sector of Iran are the National Iranian Tanker Company and the Islamic Republic of Iran Shipping Lines.

We anticipate that regulations to be promulgated will define “shipbuilding sector of Iran” to include activities involving the construction of seagoing vessels, including oil tankers and cargo vessels, in Iran. [06-03-13]

294. How will I know if someone is part of Iran’s energy, shipping, or shipbuilding sectors or is a port operator in Iran?

Persons determined to be part of Iran’s energy, shipping, or shipbuilding sectors, or a port operator in Iran for purposes of section 1244(c) will be identified as such on the SDN List. Knowingly providing certain significant support to persons determined to be part of Iran’s energy, shipping, or shipbuilding sectors, or a port operator in Iran will have exposure to sanctions, unless the transaction is excepted (see also Q&A 297). [06-03-13]

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295. What are or goods or services used in connection with Iran’s energy, shipping, or shipbuilding sectors for purposes of section 1244(d)(3)?

We anticipate that regulations to be promulgated will define goods and services used in connection with Iran’s energy, shipping and shipbuilding sectors to include:

- a. Energy Sector: In the case of Iran’s energy sector, goods or services that contribute to,
 - Iran’s ability to develop its domestic petroleum resources;
 - The maintenance or expansion of Iran’s domestic production of petroleum products; and
 - Iran’s ability to import or export petroleum or petroleum products.

- b. Shipping Sector: In the case of Iran’s shipping sector,
 - The provision of crude and product tankers to Iran;
 - The provision of registry, flagging, or classification services of any kind;
 - The supervision of and participation in the repair of ships and their parts;

- The inspection, testing, and certification of marine equipment materials and components;
- The carrying out of surveys, inspections, audits and visits, and the issuance, renewal or endorsement of the relevant certificates and documents of compliance, as they relate to ships and shipping; and
- Any other goods or services relating to the maintenance, supply, bunkering, and docking of vessels flying the flag of the Islamic Republic of Iran, or owned, controlled, chartered, or operated directly or indirectly by, or for or on behalf of the Government of Iran (GOI) or an Iranian person.

- c. Shipbuilding Sector: In the case of Iran's shipbuilding sector,
- The building and refit of vessels;
 - The provision or refit of items such as (i) steam turbines and their parts for marine propulsions, (ii) marine propulsion engines and parts used solely or principally with them, (iii) other gas turbines for marine propulsion, (iv) ship or boat propellers and blades, and (v) direction finding compasses and other navigational instruments and appliances solely for the maritime industry;
 - Other goods used in connection with building and propulsion of vessels; and
 - Technical assistance and training relating to, and financing of, the building, maintenance or re-fitting of vessels.

Sections 1244(d)(1) and (2) of IFCA make sanctionable certain transactions for the sale, supply, or transfer to or from Iran of such goods and services if they are significant goods or services used in connection with Iran's energy, shipping, or shipbuilding sectors. (See Q&A 289 above for an interpretation of "significant.") The provision of goods or services identified above could be sanctionable regardless of whether any person involved in the transaction has been determined to be part of Iran's energy, shipping, or shipbuilding sectors. [06-03-13]

296. Will payment for bunkering of third-country ships carrying non-sanctionable goods to or from Iran be subject to sanctions?

If a non-Iranian vessel is transporting non-sanctionable goods to or from Iran, bunkering in a third country will not be subject to sanctions provided that no other sanctionable activity is involved. [06-03-13]

297. Are there any exceptions to the sanctions provisions of section 1244 of IFCA?

The following transactions are excepted from the provisions of section 1244 of IFCA.

- Transactions for the sale of agricultural commodities, food, medicine, or medical devices to Iran or for the provision of humanitarian assistance to the people of Iran.
- The export of petroleum or petroleum products from Iran to a country with a significant reduction exception under section 1245(d)(4)(D)(i) of the National Defense Authorization Act for Fiscal Year 2012.
- A significant financial transaction conducted or facilitated by a foreign financial institution (FFI), provided that a significant reduction exception under 1245(d)(4)(D)(i) of the National Defense Authorization Act For Fiscal Year 2012 (NDAA) applies to the country with primary jurisdiction over

the FFI and the financial transaction is for trade in goods or services (i) between Iran and the country with primary jurisdiction over the FFI and (ii) not otherwise subject to sanctions under the law of the United States, and any funds owed to Iran as a result of the trade are credited to an account located in the country with primary jurisdiction over the FFI. We anticipate the implementation of these trade requirements to be similar to the trade requirements set forth in the IFSR, in particular 31 CFR §561.203(j) and 31 CFR §561.203(k).

d. The sale, supply, or transfer of natural gas to or from Iran. Section 1244, however, does set out sanctions that may apply to FFIs that conduct or facilitate a transaction for the sale, supply, or transfer of natural gas to or from Iran unless the financial transaction is for trade in goods or services (i) between Iran and the country with primary jurisdiction over the FFI and (ii) not otherwise subject to sanctions under the law of the United States, and any funds owed to Iran as a result of the trade are credited to an account located in the country with primary jurisdiction over the FFI. We anticipate the implementation of these trade requirements to be similar to the trade requirements set forth in the IFSR, in particular 31 CFR §561.203(j) and 31 CFR §561.203(k).

e. Certain activities relating to the pipeline project to supply natural gas from the Shah Deniz gas field in Azerbaijan to Europe and Turkey. [06-03-13]

Sanctions Relating to the Sale, Supply, or Transfer of Certain Materials to or from Iran

IFCA provides for sanctions involving the sale, supply, or transfer of certain materials to or from Iran.

298. What materials are considered graphite, raw or semi-finished metals?

For purposes of IFCA, we anticipate that regulations to be promulgated will define graphite, raw or semi-finished metals described in section 1245(d) of IFCA to include steels; aluminum metal and its alloys; base metals of single or complex borides of titanium; beryllium metal and its alloys; boron metal and its alloys; cobalt metal and its alloys; copper infiltrated tungsten metal; copper-beryllium metal; germanium metal and its alloys; graphites; hastelloy; inconel; magnesium metal and its alloys; molybdenum metal and its alloys; neptunium-237 metal and its alloys; nickel metal and its alloys; nickel aluminide metals; niobium metal and its alloys; niobium-titanium filaments; plutonium metal and its alloys; porous nickel metal; silver infiltrated tungsten metal; tantalum metal and its alloys; tellurium metal and its alloys; titanium aluminide metals; titanium metal and its alloys; tungsten metal, tungsten carbide metal, and their alloys; uranium titanium alloy metals; and zirconium metal and its alloys and compounds. [06-03-13]

299. What are considered precious metals?

For purposes of IFCA, we anticipate that regulations to be promulgated will define the term “precious metals” to include silver (including silver plated with gold or platinum) unwrought or in semi-manufactured forms or in powder form; gold (including gold plated with platinum) unwrought or in semi-manufactured forms or in powder form; base metals or silver, clad with gold, not further worked than semi-manufactured; platinum, unwrought or in semi-manufactured forms, or in

powder form; iridium; osmium; palladium; rhodium; ruthenium; base metals, silver or gold, clad with platinum, not further worked than semi-manufactured; waste and scrap of precious metal or of metal clad with precious metals, other waste and scrap containing precious metal or precious-metal compounds, of a kind used principally for the recovery of precious metal. [06-03-13]

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300. For purposes of sanctions under section 1245, how will I know which sectors are controlled by Iran’s Islamic Revolutionary Guard Corps?

By July 1, 2013, a report will be published in the Federal Register with respect to which sectors of the Iranian economy are controlled directly or indirectly by Iran’s Islamic Revolutionary Guard Corps. [06-03-13]

301. How will the determination be made as to whether materials are used in a manner that would make them subject to sanctions under section 1245 of IFCA?

A FFI, prior to conducting or facilitating a significant financial transaction for the sale, supply, or transfer to or from Iran of the materials will need to undertake due diligence to ensure that the transaction does not involve the materials listed in section 1245(d) – as described in part in Q&A 298 – being sold, supplied, or transferred, directly or indirectly, to or from Iran for sanctionable uses under section 1245. [06-03-13]

302. Are there any exceptions to section 1245 of IFCA?

A person will not be subject to sanctions under section 1245 of IFCA if a determination is made by the Department of the Treasury or the Department of State, as appropriate, that the person has established and enforced official policies, procedures, and controls to ensure that the person does not sell, supply, or transfer to or from Iran, or facilitate or conduct a significant financial transaction to sell supply, or transfer to or from Iran, materials listed in section 1245 as sanctioned under section 1245. The Department of the Treasury or the Department of State, as appropriate, will make this determination on a case by case basis as part of an investigation or enforcement action by the relevant Department. [06-03-13]

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Sanctions Relating to Insurance, Reinsurance, or Underwriting

303. Which insurance, reinsurance, or underwriting activities are potentially subject to sanctions under section 1246(a)(1)?

A number of insurance activities are subject to sanctions under IFCA, including providing insurance, reinsurance, or underwriting services to persons on the SDN List sanctioned for activities with respect to Iran. [06-03-13]

304. Are there exceptions to insuring, reinsuring, or underwriting sanctioned activities?

Yes. IFCA includes the following exceptions to insuring, reinsuring, or underwriting sanctioned activities.

a. Transactions for the sale of agricultural commodities, food, medicine, or medical devices to Iran or for the provision of humanitarian assistance to the people of Iran can be insured, reinsured, or underwritten.

b. A person that provides insurance, reinsurance, or underwriting services to sanctioned activity, if a determination is made by the Department of the Treasury or the Department of State, as appropriate, that the person has established and enforced official policies, procedures, and controls to ensure that the person does not underwrite or enter into a contract to provide insurance or reinsurance for activities targeted under section 1246 of IFCA. The Department of the Treasury or the Department of State, as appropriate, will make this determination on a case by case basis as part of an investigation or enforcement action by the relevant Department. [06-03-13]

Sanctions Relating to FFIs that Facilitate Transactions with SDNs

305. Sanctions under section 1247 of IFCA apply to FFIs that facilitate financial transactions on behalf of an Iranian person on the SDN List. How does the Executive Order relate to section 1247?

The E.O. tightens the financial sanctions applicable to FFIs under section 1247 of IFCA. (See Q&A 312 below for a discussion of the applicable financial sanctions and exceptions.) [06-03-13]

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Executive Order

306. How does the Executive Order relate to the IFCA provisions?

The E.O. provides additional tools related to the IFCA provisions by:

- a. Authorizing prohibitions or restrictions on the importation of goods; and
- b. Implementing the statutory requirements of section 105C of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, as added by section 1249 of IFCA, by blocking the property and interests in property and suspending the entry into the United States of persons

determined to have engaged, on or after January 2, 2013, in corruption or other activities relating to the diversion of goods intended for the Iranian people or the misappropriation of proceeds from the sale or resale of such goods. [06-03-13]

307. In addition to implementing certain IFCA provisions, what else does the Executive Order do?

In addition to implementing IFCA, the E.O. authorizes both new sanctions with respect to Iran and the broadening of existing sanctions.

The new sanctions under the E.O. target significant transactions related to (1) the purchase or sale of Iranian rials and derivative, swap, future, forward, or other similar contracts whose value is based on the exchange rate of the Iranian rial, as well as the maintenance of significant funds and accounts outside the territory of Iran denominated in the Iranian rial (see Q&A 309 below), and (2) Iran's automotive sector (see Q&As 310 and 311 below).

The broadened sanctions under the E.O. allow for the imposition of sanctions on:

- a. Persons that materially assist certain Iranian persons on the SDN List (see Q&A 308 below);
- b. Persons that materially assist certain other persons whose property and interests in property are blocked under Executive Order 13599 and the E.O. (see Q&A 308 below); and
- c. FFIs that knowingly conduct or facilitate a significant financial transaction on behalf of an Iranian person included on SDN List, and certain other persons whose property and interests in property are blocked under Executive Order 13599 or the E.O. (see Q&A 312 below). [06-03-13]

Sanctions Relating to the Provision of Material Assistance to Certain Persons

308. What are the implications of the material assistance provision of the Executive Order?

Subsection 2(a)(i) of the E.O. authorizes the Department of the Treasury to block the property and interests in property of persons determined to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, (i) Iranian persons included on the SDN List as well as other persons included on the SDN List whose property and interests in property are blocked pursuant to Executive Order 13599, in both cases other than Iranian depository institutions whose property and interests in property are blocked solely pursuant to Executive Order 13599, and (ii) persons whose property and interests in property are blocked pursuant to subsection 2(a)(i) of the E.O. Certain activities relating to the pipeline project to supply natural gas from the Shah Deniz gas field in Azerbaijan to Europe and Turkey are excepted from the material support provision of the E.O.

In implementing this provision, the United States Government will take appropriate steps to avoid, among other things, undue impacts on the access of the people of Iran to humanitarian items, telecommunications, and other basic services. [06-03-13]

Sanctions Relating to Certain Transactions Involving the Iranian Rial

309. What transactions involving the Iranian rial will be subject to sanctions?

FFIs risk correspondent and payable-through account and blocking sanctions for (i) knowingly conducting or facilitating, on or after July 1, 2013, significant transactions related to the purchase or sale of Iranian rials or a derivative, swap, future, forward, or other similar contract whose value is based on the exchange rate of the Iranian rial, or (ii) maintaining, on or after July 1, 2013, significant funds or accounts outside the territory of Iran denominated in the Iranian rial. [06-03-13]

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Sanctions Relating to Iran's Automotive Sector

310. What is considered Iran's automotive sector for purposes of the Executive Order?

The E.O. authorizes the imposition of correspondent and payable-through account and Iran Sanctions Act-style sanctions for certain transactions, on or after July 1, 2013, for the sale, supply, or transfer to Iran of significant goods or services used in connection with Iran's automotive sector. The E.O. defines the automotive sector of Iran as the manufacturing or assembling in Iran of light and heavy vehicles including passenger cars, trucks, buses, minibuses, pick-up trucks, and motorcycles, as well as original equipment manufacturing and after-market parts manufacturing relating to such vehicles. [06-03-13]

311. What are goods or services used in connection with Iran's automotive sector for purposes of the E.O.?

We anticipate that regulations to be promulgated will define goods or services used in connection with Iran's automotive sector to include goods or services that contribute to (i) Iran's ability to research, develop, manufacture, and assemble light and heavy vehicles, and (ii) the manufacturing or assembling of original equipment and after-market parts used in Iran's automotive industry.

The E.O. makes sanctionable certain transactions for the sale, supply, or transfer to Iran of "significant" goods or services used in connection with the automotive sector of Iran. (See Q&A 289 above for an interpretation of "significant.") [06-03-13]

Financial Sanctions Relating to Financial Transactions on Behalf of Certain Persons

312. How does the Executive Order tighten the financial sanctions applicable to FFIs under section 1247 of IFCA?

Section 3 of the E.O. tightens the financial sanctions applicable to FFIs under section 1247 of IFCA and provides for correspondent and payable-through account sanctions on FFIs that knowingly conduct or facilitate a significant financial transaction on behalf of an Iranian person included on the SDN List (other than Iranian depository institutions whose property and interests in property are blocked solely pursuant to Executive Order 13599) or any other person included on the SDN List whose property and interests in property are blocked pursuant to Executive Order 13599 (other than Iranian depository institutions whose property and interests in property are blocked solely pursuant to Executive Order 13599) or subsection 2(a)(i) of the E.O.

The following transactions would not be subject to sanctions under this section of the E.O.:

- a. Transactions for the provision of agricultural commodities, food, medicine, or medical devices to Iran.
- b. A significant financial transaction conducted or facilitated by a FFI for the purchase of petroleum or petroleum products from Iran if a significant reduction exception under section 1245(d)(4)(D) of the NDAA applies to the country with primary jurisdiction over such FFI and the financial transaction is for trade between Iran and the country with primary jurisdiction over the FFI, and any funds owed to Iran as a result of the trade are credited to an account located in the country with primary jurisdiction over the FFI. We anticipate the implementation of these trade requirements to be similar to the trade requirements set forth in the IFSR, in particular 31 CFR § 561.203(j) and 31 CFR § 561.203(k).
- c. A significant financial transaction conducted or facilitated by a FFI for the sale, supply, or transfer of natural gas to or from Iran only if the financial transaction is solely for trade between the country with primary jurisdiction over the FFI and Iran, and any funds owed to Iran as a result of such trade are credited to an account located in the country with primary jurisdiction over the FFI. We anticipate the implementation of these trade requirements to be similar to the trade requirements set forth in the IFSR, in particular 31 CFR § 561.203(j) and 31 CFR § 561.203(k).
- d. Certain activities relating to the pipeline project to supply natural gas from the Shah Deniz gas field in Azerbaijan to Europe and Turkey. [06-03-13]