

Fact Sheet: Iran Freedom and Counter-Proliferation Act of 2012

Summary:

The National Defense Authorization Act for Fiscal Year 2013 (signed 02 Jan 2013) includes a subtitle, the “Iran Freedom and Counter-Proliferation Act of 2012” (IFCA), that sets out a number of new sanctions related to Iran. IFCA strengthens existing sanctions significantly. Such sanctions include, but are not limited to, new measures that require the imposition of sanctions set forth in the Iran Sanctions Act (ISA) on persons (i.e., individuals and entities) and activities connected to Iran’s energy, shipping, and shipbuilding sectors, as well as on persons involved in the sale, supply, or transfer of precious metals and certain materials to or from Iran that can be used in connection with nuclear, military, or ballistic missile programs. IFCA also makes sanctionable the provision of significant financial services in support of such sanctionable activities. In addition, IFCA provides for sanctions on the provision of underwriting services, insurance, or reinsurance to activities and persons targeted by U.S. sanctions against Iran, as well as sanctions on activities related to the diversion of goods intended for the Iranian people. These new authorities address the role of Iran’s energy, shipping, and shipbuilding sectors as a source of revenue for the Government of Iran’s (GOI) proliferation activities. Moreover, they hinder the GOI’s ability to continue to oppress the people of Iran. They also support an effort to increase pressure on the GOI to negotiate seriously on its nuclear program and return to compliance with its international obligations (including those under the relevant UN Security Council Resolutions, the Nuclear Non-Proliferation Treaty, and the IAEA Safeguards Agreement). The United States is resolved to make full use of its sanctions authorities and additional tools to sharpen the choices facing Iran’s leadership and convince the Iranian leadership to change its calculus, comply with its full range of nonproliferation obligations, and engage in constructive negotiations on the future of its nuclear program.

ISA sanctions under IFCA:

IFCA requires the President to impose five or more of the sanctions set forth in the Iran Sanctions Act (ISA), as amended, on persons that are determined to have knowingly engaged in the following activities on or after July 1, 2013:

- Selling, supplying, or transferring to or from Iran significant goods or services used in connection with the energy, shipping, or shipbuilding sectors of Iran, including the National Iranian Oil Company (NIOC), the National Iranian Tanker Company (NITC), and the Islamic Republic of Iran Shipping Lines (IRISL).
- Selling, supplying, or transferring, directly or indirectly, to or from Iran any precious metal.
- Selling, supplying or transferring, directly or indirectly, to or from Iran graphite, raw or semi-finished metals such as aluminum and steel, coal, or software for integrating industrial processes if such materials are: (a) determined to be used by Iran for barter, swap, or any other exchange or transaction, or listed as assets of the Government of Iran for purposes of Iran’s national balance sheet; (b) to be used in connection with the energy, shipping, or shipbuilding sectors of Iran or any sector of Iran’s economy that has been determined to be controlled, directly or indirectly, by Iran’s Islamic Revolutionary Guard Corps (IRGC); (c) sold, supplied, or transferred to or from any Iranian person included on OFAC’s list of specially designated nationals and blocked persons (SDN list) (except for certain Iranian financial institutions); (d) determined to be used in connection with the nuclear, military, or ballistic missile programs of Iran; or (e) resold, retransferred, or otherwise supplied to an end-user in the energy, shipping, or shipbuilding sectors of Iran or any other Iranian economic sector determined to be controlled, directly or indirectly, by the IRGC; to any Iranian person on the SDN list (except for certain Iranian financial institutions); or for Iran’s nuclear, military, or ballistic missile programs.
- Providing underwriting services or insurance or reinsurance: 1) for any activity with respect to Iran for which sanctions have been imposed under U.S. law, including IFCA; 2) to or for any person: (a) with respect to, or for the benefit of, any activity in the energy, shipping, or

shipbuilding sectors of Iran for which sanctions are imposed under IFCA; (b) for the sale, supply, or transfer to or from Iran of certain materials (i.e., graphite, raw or semi-finished metals such as aluminum and steel, coal, or software for integrating industrial processes) for which sanctions are imposed under IFCA; (c) designated for sanctioning under the International Emergency Economic Powers Act in connection with Iran's proliferation of Weapons of Mass Destruction (WMD) or WMD delivery systems or Iran's support for international terrorism; or 3) to or for any Iranian person included on the SDN list (except for certain Iranian financial institutions).

Humanitarian Exception – IFCA generally excepts from ISA sanctions any person conducting or facilitating a transaction, or providing underwriting services or insurance or reinsurance for a transaction, 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. *Note – this exception does not extend to ISA sanctions concerning precious and other metals and certain materials and software.*

**** See Annex 1 for the menu of sanctions set forth in ISA, as amended. ****

Financial sanctions of IFCA:

IFCA requires the President to prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by a foreign financial institution that is determined to have knowingly conducted or facilitated a significant financial transaction on or after July 1, 2013:

- (1) For the sale, supply, or transfer to or from Iran of significant goods or services used in connection with the energy, shipping, or shipbuilding sectors of Iran, including NIOC, NITC, and IRISL.
- (2) For the sale, supply, or transfer to or from Iran of certain materials (i.e., any precious metal, graphite, raw or semi-finished metals such as aluminum and steel, coal, or software for integrating industrial processes) the sale, supply, or transfer of which would subject a person to ISA sanctions under IFCA.
- (3) On behalf of any Iranian person included on the SDN list (except for certain Iranian financial institutions).

Humanitarian Exception – IFCA excepts from financial sanctions in the first and third categories above any person conducting or facilitating a transaction 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. *Note – this exception does not extend to sanctions concerning precious and other metals and certain materials and software.*

Blocking provision of IFCA:

IFCA requires the blocking of and a prohibition on dealings in all property and interests in property subject to U.S. jurisdiction of persons determined on or after July 1, 2013, to be:

- part of the energy, shipping, or shipbuilding sectors of Iran or operating a port in Iran; or
- knowingly providing significant financial, material, technological, or other support to, or goods or services in support of, any activity or transactions on behalf of or for the benefit of: (a) a person determined to be part of the energy, shipping, or shipbuilding sectors of Iran; (b) a person determined to be operating a port in Iran; or (c) any Iranian person included on the SDN list (except for certain Iranian financial institutions).

Note – IFCA requires that (blocking) sanctions be imposed on the Islamic Republic of Iran Broadcasting and its director, Ezzatollah Zarghami, so they have been included on the SDN list.

Diversion of goods intended for the people of Iran:

IFCA requires, among other sanctions, visa sanctions as well as sanctions pursuant to the International Emergency Economic Powers Act (IEEPA), such as the blocking of property subject to U.S. jurisdiction, to be imposed on persons found to be engaged in corruption or other activities related to:

- The diversion of goods, including agricultural commodities, food, medicine, and medical devices, intended for the people of Iran, or;
- The misappropriation of proceeds from the sale or resale of such goods.

Additional exceptions in IFCA sanctions:

IFCA provides that its sanctions (i.e., ISA, financial, and blocking) concerning the energy, shipping, and shipbuilding sectors of Iran and its financial sanctions concerning significant financial transactions on behalf of Iranian persons on the SDN list (except for certain Iranian financial institutions) shall generally not apply to:

- exportation of petroleum or petroleum products from Iran to countries to which a “significant reduction” exception applies at the time of the exportation;
- a financial transaction conducted or facilitated by a foreign financial institution if, at the time of the transaction, a “significant reduction” exception applies to the country with primary jurisdiction over the foreign financial institution, so long as the financial transaction: 1) is only for trade in goods and services not otherwise subject to U.S. sanctions and is between the country with primary jurisdiction over the financial institution and Iran; and 2) any funds owed Iran as a result of such trade are credited to an account located in the country with primary jurisdiction over the foreign financial institution. More guidance on the requirements for such bilateral trade and deposits resulting from such trade can be found at http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/ques_index.aspx#tra_504 ; and/or
- the sale, supply, or transfer to or from Iran of natural gas as long as a financial transaction conducted or facilitated by a foreign financial institution: 1) is only for trade in goods or services not otherwise subject to U.S. sanctions and between the country with primary jurisdiction over the financial institution and Iran; and 2) any funds owed Iran as a result of such trade are credited to an account located in the country with primary jurisdiction over the foreign financial institution.

****Annex 1****

ISA Sanctions provided for under IFCA:

With respect to the ISA sanctions set forth in sections 1244, 1245, and 1246 of IFCA, five or more of the following sanctions shall be imposed on any person determined to have knowingly engaged in the sanctionable activities. The available sanctions would prohibit:

1. Export assistance from the Export-Import Bank of the United States;¹
2. Specific licenses for export of U.S. military, “dual use,”² or nuclear-related goods or technology;
3. U.S. bank loans exceeding \$10 million in any 12-month period;
4. If the sanctioned person is a financial institution, designation as a primary dealer in USG debt instruments or service as a repository of USG funds;
5. Procurement contracts with the United States Government;
6. Foreign exchange transactions subject to U.S. jurisdiction;

¹ Export-Import Bank assistance: guarantees, insurance, and extensions of credit.

² Technologies that have both civilian and military uses.

7. Financial transactions subject to U.S. jurisdiction;
- 8*. Transactions with respect to property and interests in property subject to U.S. jurisdiction (i.e., blocking sanction);
9. Investment in equity or debt of the sanctioned person;
10. Entry into the United States (visa ban) of corporate officers of sanctioned entities;
11. Any of the above activities with respect to principal executive officers of sanctioned entities.

****IFCA Exemption*** – The imposition of sanctions relating to the importation of goods does not count toward the five sanctions required to be imposed under the above-referenced IFCA provisions. Thus, a separate ISA sanction that expressly authorizes restrictions on imports to the United States from the sanctioned person is not available under IFCA itself.