

Renewing the Iran Sanctions Waivers (Part 1): Nuclear Activities

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Brief Analysis

Neither blanket extension nor wholesale cancellation is the best course, but several of the expiring waivers would serve U.S. interests if properly—and publicly—revised.

This PolicyWatch is the first in a two-part series on how Washington should handle the upcoming waiver deadlines. *Part 2 looks at (<https://www.washingtoninstitute.org/policy-analysis/view/renewing-the-iran-sanctions-waivers-part-2-energy-and-afghan-trade>) energy waivers and the exemption for Chabahar port.*

As the May 2 deadline for waiver extensions approaches, much attention has been devoted to the temporary waivers for Iranian energy exports—namely, gas and electricity deliveries to Iraq, and oil deliveries to eight countries. On April 22, Secretary of State Mike Pompeo announced that the latter deliveries would no longer be permitted. By contrast, the waivers for some Iranian nuclear activities have received little attention, apart from an April 9 letter from nine senators to President Donald Trump demanding their end.

THE U.S. WAIVER TOOLKIT

All U.S. laws regarding sanctions on Iran permit national security waivers, usually temporary; some laws allow permanent exemptions, and of course the president can modify any executive order. During President Trump's term, the State Department appears to have granted waivers for the following sanctions:

- The Iran Freedom and Counterproliferation Act of 2012, specifically sections 1244 (covering energy, shipping, shipbuilding, and ports), 1245 (adding specially designated nationals and any sector of Iran's economy determined to be "controlled directly or indirectly by Iran's Revolutionary Guard Corps"), 1246 ("nuclear, military, or ballistic missile" items and precious metals), and 1247 (insurance for the previously cited activities). These sanctions can be

waived for up to 180 days.

- The Iran Threat Reduction and Syria Human Rights Act of 2012, sections 212(a) (covering insurance for Iranian oil shipments) and 213(a) (government borrowing), which can be waived for up to 180 days.
- The Iran Sanctions Act of 1996, section 5(a) (covering oil and gas investment), which can be waived for up to 180 days.
- The National Defense Authorization Act for fiscal year 2012, section 1245(d)(1) (covering foreign banks involved with Iran's oil trade), which can be waived for up to 120 days.

Individual waivers reportedly include language about permissible transactions, but none of the waivers has been made public, so governments, companies, and observers have no way of telling which transactions are sanctionable unless the State Department informs them directly. In addition to formal waivers, the U.S. government has the option of assuring certain parties that no action will be taken to enforce sanctions under some circumstances—an option the administration has apparently taken with regard to Iraqi imports of Iranian electricity.

IRAN'S NUCLEAR ACTIVITIES: USEFUL VS. DANGEROUS

U. S. nuclear waivers were last issued on November 5, 2018, and the only publicly available information about them is the cursory and ambiguous State Department press release disseminated at the time. It is not clear what exactly the waivers cover; the statement said they permit “nonproliferation projects at Arak, Bushehr, and Fordow,” implying that some activities at those sites are not covered. The only other guidance is that the waivers permit “continuation for a temporary period of certain ongoing projects that impede Iran's ability to reconstitute its weapons program and that lock in the nuclear status quo until we can secure a stronger deal,” referring to the administration's 2018 withdrawal from the Joint Comprehensive Plan of Action (JCPOA). The release also stated that “each of the waivers we are granting is conditional on the cooperation of the various stakeholders,” though no information was provided about what will be done to monitor compliance with any specific conditions.

Such ambiguity fits with the JCPOA pattern of releasing only minimal information. For instance, the “Elements of Iran's R&D Plan” that Tehran prepared as part of the nuclear deal has never been released, which means outside observers have no way of knowing if the regime is observing the many JCPOA provisions that use language such as “consistent with its plan.” The Obama administration reportedly allowed members of Congress to look at a description of the plan, but they likely lacked the technical expertise to evaluate such a document and were not permitted to share it with outside experts.

While it is difficult to evaluate waivers without more information, allowing some of Iran's nuclear activities to continue is clearly in America's national security interest. An obvious example is the shipment of used fuel from Bushehr back to Russia, rather than leaving that material—which contains elements that could be recovered for nuclear weapons—in Iranian cooling ponds. The same goes for some of the nuclear safety upgrades being discussed with European countries.

Yet the State Department's November announcement noted that waivers had also been provided for Fordow and Arak, respectively the site of centrifuges and a heavy water reactor. To be sure, it is America's interest that these facilities be modified to make them less capable of producing fissile material for a weapon. And there is much to be said for giving Iranian nuclear scientists something innocent to do rather than having them be unemployed. However, general unrestricted waivers for Fordow and Arak would be particularly worrisome given Iran's long history of deception about those sites—deception that continued this year.

On January 22, Ali Akbar Salehi, head of the Atomic Energy Organization of Iran, told a television interviewer that the regime had concealed extra equipment for the Arak reactor: “There are tubes where the fuel goes [in the calandria, the reactor's central component]. We had bought similar tubes, but I could not declare this at the time.

Only one person in Iran knew this. We told no one but the top man of the regime [Supreme Leader Ali Khamenei]...We did not tell [the other JCPOA parties] that we had other tubes. Otherwise, they would have told us to pour cement into those tubes as well. Now we have the same tubes.” Until this matter is thoroughly investigated and resolved, any waiver for Arak should be strictly conditioned, for instance, requiring a separate waiver for each item shipped.

Salehi went on: “As a matter of fact, I thank God that the JCPOA technical discussions left so many holes about the ways we can act that the other parties cannot claim there is a violation of the deal.” Unfortunately, he is correct. Consider this statement in Annex I of the JCPOA, covering how Iran is permitted to **develop advanced IR-8 centrifuges (<https://www.washingtoninstitute.org/policy-analysis/view/irans-holiday-prologue-to-exploiting-nuclear-loopholes>)**: “Iran will proceed from single centrifuges to small cascades to intermediate cascades in a logical sequence.” That highly generalized sentence does not define any of its terms, meaning the regime could do pretty much whatever it wants and claim it was observing the JCPOA.

Further, Iran can test its centrifuges “with or without uranium” so long as it “does not accumulate enriched uranium”—which begs the question of what constitutes accumulation. Presumably Iran would argue for the technical nuclear meaning (combining the “tails” after an enrichment run) rather than the common meaning (having a large stock of enriched material). If so, the restriction is toothless.

To prevent Iran from exploiting such ambiguities, any new waivers need tight wording and clear definitions. They should also be made available to the public, so that outside experts can evaluate them and supplier companies can be properly briefed on what is and is not allowed.

In addition, waivers should include an explicit verification mechanism—namely, international inspections to see how shipped items are being used—as well as stiff penalties for violations. The **example to be avoided (<https://www.washingtoninstitute.org/policy-analysis/view/irans-procurement-channel-part-1-salvaging-nonproliferation-gains-while-rei>)** is the JCPOA procurement channel, in which the obligation to report relevant shipments to Iran and verify how they are being used falls entirely on the supplier. The International Atomic Energy Agency has no role in that process; rather, its procedures apparently require it to remain silent on any violations because disclosing them would breach the commercial confidentiality guaranteed by its Safeguards Agreement with Iran. Even if that were not the case, violating the JCPOA procurement channel carries no penalties. Far from “trust but verify,” current U.S. policy on certain nuclear issues seems to be “trust and hope for the best,” which is definitely a bad idea in Iran’s case.

CONCLUSION

The debate about nuclear waivers would be better informed if all of them were published. Keeping them from the public is largely ineffective and/or counterproductive: word about many of them is quickly published, but sometimes in a distorted fashion that ill serves U.S. interests, while companies often have no way of knowing which shipments to Iran are sanctionable. Undue confidentiality also adds to the disturbing pattern of secrecy surrounding the nuclear program, facilitating Iran’s clandestine activities and evasion of controls. Sunshine is the best disinfectant.

Going forward, neither automatic extension of general waivers nor complete rejection of all waivers is the appropriate course. Activities that have a strong nonproliferation benefit (e.g., returning Bushehr’s spent fuel) should certainly be encouraged. At the same time, most nuclear waivers should be tied to strict monitoring and control, ensuring that the material is used only for civilian non-enrichment purposes at specified locations. This requires ongoing inspections to verify that the restrictions are being observed, and a willingness to make all of these findings publicly available. Ideally, Washington can forge international consensus in the coming months, convincing

its partners to prevent Iran from expanding its enrichment capacity and investigate past troubling activities.

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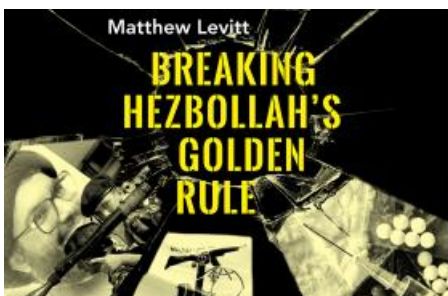
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