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Options to Cease Implementing the Iran Nuclear Agreement

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Summary

Trump Administration statements indicate that the Administration does not believe that the 2015 multilateral nuclear agreement with Iran, the Joint Comprehensive Plan of Action (JCPOA), addresses the full range of potential threats posed by Iran. Administration officials assert that the Administration is considering ending or altering U.S. implementation of the JCPOA. This report analyzes some of the options the Administration might use to end or alter U.S. implementation of the JCPOA, if there is a decision to do so. These options, which might involve use of procedures in the JCPOA itself or the Iran Nuclear Agreement Review Act (P.L. 114-17), are not necessarily mutually exclusive. This report does not analyze the advantages and disadvantages of any specific option, or examine in detail the implications of any particular course of action. Those issues are examined in: CRS Report R43333, *Iran Nuclear Agreement*, by Kenneth Katzman and Paul K. Kerr; and CRS Report RS20871, *Iran Sanctions*, by Kenneth Katzman.

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Overview of the Issue

Press reports in August 2017 indicated that President Trump told his top aides that he might not certify to Congress that Iran is meeting its nuclear obligations under the July 14, 2015 multilateral nuclear agreement (Joint Comprehensive Plan of Action, JCPOA) when the next certification is due on October 15, 2017.¹ There are several mechanisms or methods the Administration might use to cease implementing the JCPOA or to alter its implementation, if there is a decision to do so. One possible option could use provisions of the Iran Nuclear Agreement Review Act (INARA, P.L. 114-17) – which amended Section 135(d)(6) of the Atomic Energy Act of 1954 (42 U.S.C. 2160(e)). It requires that the Administration certify every 90 days that Iran is in compliance. The JCPOA was between Iran and the “P5+1” group of countries (United States, Russia, China, Britain, France, and Germany).

This report bases its analysis primarily on the text of key documents involved in the issue – the JCPOA itself,² U.N. Security Council Resolution 2231 of July 20, 2015,³ which endorsed the JCPOA, and the Iran Nuclear Agreement Review Act (INARA, P.L. 114-17, of May 22, 2015).

Presidential Decision to Cease Implementing the JCPOA

Administration statements indicate that the Administration does not believe that the JCPOA addresses the full range of potential threats posed by Iran. On August 1, 2017, Secretary of State Tillerson told a press briefing “The conversation on Iran does not begin and end with the JCPOA, the nuclear agreement, and I think if there’s one thing I hope I can help people understand it’s that agreement dealt with a very small slice of Iran’s threats, and that was their nuclear program.”⁴ On September 5, 2017, U.S. Ambassador to the United Nations Nikki Haley addressed a Washington D.C. think tank, saying, “The truth is, the Iran deal [JCPOA] has so many flaws that it’s tempting to leave it.”⁵ U.S. officials have stated that the United States will continue to fulfill its JCPOA commitments, pending the outcome of the review.⁶

Administration officials assert that Iran might be violating the “spirit,” if not necessarily the letter, of the JCPOA. For example, the JCPOA does not address Iran’s development of ballistic missiles or its importation or exportation of arms, including arms transfers to governments and factions in the region that Iran supports. These actions are restricted by United Nations Security Council

¹ Gardner Harris. “Trump’s Vow to Scrap Nuclear Deal May Have a Hitch: A Compliant Iran.” *New York Times*, August 28, 2017.

² The text of the JCPOA can be found on the website of the Department of State at: <https://www.state.gov/e/eb/tfs/spi/iran/jcpoa/>

³ The text of Security Council Resolution 2231 is at the following link: http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2231.pdf

⁴ Department of State. Remarks by Secretary of State Rex Tillerson at a Press Availability, August 1, 2017.

⁵ Ambassador Nikki Haley’s Remarks on Iran and the JCPOA. American Enterprise Institute, September 5, 2017.

⁶ Andrew Schofer. U.S. Statement, Agenda Item 6: Verification and Monitoring in Iran. IAEA Board of Governors Meeting, June 12-16, 2017.

Resolution 2231, which requires that, for a maximum period ending in October 2020, any Iranian importation of specified weapons systems requires explicit approval of the Security Council and exportation of any arms from Iran is banned. For a maximum period ending in October 2023, the Resolution calls on (but does not require) Iran to refrain from developing, including testing, ballistic missiles “designed to be capable of delivering nuclear weapons.” These restrictions would end, earlier than the maximum deadlines, upon a “Broader Conclusion” by the International Atomic Energy Agency (IAEA) that all nuclear material in Iran remains in peaceful activities.⁷ Iran has engaged in numerous ballistic missile tests since the JCPOA began implementation in January 2016, although both Obama and Trump Administration officials have termed the tests as “defiant of” and “inconsistent with” the Resolution rather than outright violations. Iran has openly supplied several governments and factions in the Middle East region with arms since JCPOA implementation began.

The JCPOA does not specifically provide for any party to the agreement to “withdraw.”⁸ Although European and other diplomats argue that Resolution 2231 makes the agreement binding on all parties under the U.N. Charter, officials in the Obama Administration asserted that the JCPOA is a nonbinding political commitment,⁹ and Trump Administration officials continue to make that assertion. Based on that assertion, President Trump could announce a cessation of U.S. implementation of the accord and he could reimpose all or some of the U.S. sanctions that were revoked or suspended to implement the deal. He could reinstate those sanctions imposed by Executive Order, decline to continue waiving provisions of sanctions laws, or re-designate for sanctions entities that were “de-listed” from sanctions to implement the JCPOA. It is unlikely that the President would require the approval of Congress for these courses of action.

A decision to re-impose most or all U.S. sanctions would likely encounter criticism from officials of other JCPOA parties, as well as Iran. European Union diplomats view the JCPOA as a binding international commitment. Iranian leaders indicate within the JCPOA how they would expect to react to a unilateral U.S. decision to reimpose those sanctions that were lifted or suspended. Paragraph 26 states: “...Iran has stated that it will treat such a reintroduction or reimposition of the sanctions specified in Annex II, or such an imposition of new nuclear-related sanctions, as grounds to cease performing its commitments under this JCPOA in whole or in part.”¹⁰

Use of JCPOA Provisions

The Administration might seek to use the provisions of the JCPOA itself to cease U.S. implementation of its commitments under the agreement. Paragraph 36 of the JCPOA outlines a complex “Dispute Resolution Mechanism” under which any party to the agreement can assert that another party is violating the accord and seek to resolve the issue. The Trump Administration could conceivably use this mechanism to accuse Iran of violating the letter - or spirit - of the JCPOA. The JCPOA mechanism outlines a process by which Iran can resolve such a dispute but provides that, “if the complaining participant deems the issue to constitute significant non-performance, then that participant could treat the unresolved issue as grounds to cease performing

⁷ These restrictions are contained in Annex B of Resolution 2231.

⁸ Some of this section is taken from a the legal analysis of this option provided in: CRS Report R44761, *Withdrawal from International Agreements: Legal Framework, the Paris Agreement, and the Iran Nuclear Agreement*, by Stephen P. Mulligan

⁹ Letter from Julia Frifield Assistant Secretary of State for Legislative Affairs, to then Rep. Mike Pompeo, November 19, 2015.

¹⁰ Paragraph 26 of the JCPOA.

its commitments under this JCPOA....”¹¹ The dispute resolution mechanism also provides for the United States to be able to “snap back” all U.N. sanctions that were in place prior to Implementation Day of the JCPOA (January 16, 2016).¹² The United States is a veto-wielding permanent member of the U.N. Security Council, and the dispute resolution mechanism enables any veto-wielding member to block a U.N. Security Council resolution that would continue the lifting of U.N. sanctions.

The dispute resolution mechanism generally refers to the ability of any party to complain about potential non-performance of only those issues that are directly addressed in the JCPOA – and not issues that are not covered by the agreement, such as ballistic missiles development or Iran’s regional activities. The International Atomic Energy Agency (IAEA) is the international body that is charged with monitoring and verifying Iran’s nuclear commitments. A U.S. accusation of Iranian non-compliance – in the absence of supporting evidence from the IAEA – would undoubtedly raise questions among other parties to the JCPOA about the U.S. accusations against Iran. The text of the JCPOA dispute resolution mechanism does not address the ability of any JCPOA party to accuse another of violating non-nuclear aspects of the accord.

¹¹ Paragraph 36 of the JCPOA.

¹² Paragraph 37 of the JCPOA.

Iranian Compliance with the JCPOA

On January 16, 2016, IAEA Director General Yukiya Amano reported to the agency's Board of Governors that Iran had implemented the nuclear measures required for the JCPOA's "Implementation Day." The agency has continued to monitor Iranian compliance with the agreement's nuclear-related requirements; all subsequent reports, the most recent of which Amano issued on August 31, 2017, document Iranian compliance with these obligations.¹³ ¹⁴Although the IAEA reports findings of its inspection and monitoring activities and the JCPOA-established Joint Commission monitors the parties' implementation of the agreement, compliance determinations are national decisions. President Donald Trump certified on July 17, 2017 that Iran had complied with the JCPOA and had "not taken any action, including covert activities, that could significantly advance its nuclear weapons program" - a reiteration of past U.S. assessments.

Although these reports and President Trump's certification indicate that Iran has not engaged in any JCPOA-prohibited activities, the agreement describes arrangements for agency inspectors to gain access to Iranian sites, including military sites, other than those that Tehran has declared to the agency, "if the IAEA has concerns regarding undeclared nuclear materials or activities, or activities inconsistent with" the JCPOA. Should such concerns arise, the IAEA is to "provide Iran the basis for such concerns and request clarification." The IAEA could request access to the site if Iran's explanation does not sufficiently clarify the matter. The JCPOA provides for a process to resolve the issue in question if Tehran initially declines to provide access to the site. Iran allowed the IAEA to visit the Parchin military site in September 2015 as part of an agreed process for resolving IAEA concerns about possible past Iranian military-related nuclear activities.

Amano's August report states that the IAEA has continued verification and monitoring of the restrictions described in Section T of the JCPOA, which prohibits a number of nuclear-weapons related activities.¹⁵ The IAEA has not reported whether it has requested access to any Iranian military facilities, but the agency has a number of methods other than inspections, such as analyzing open source information and receiving intelligence briefings from governments, to monitor Iranian compliance with these and other JCPOA commitments.

U.S. officials have expressed concern regarding Iran's accumulation of heavy water. According to the JCPOA, Iran has committed to refrain from accumulating heavy water "beyond Iran's needs" - an amount which the JCPOA specified is 130 metric tons of "nuclear grade heavy water or its equivalent in different enrichments" prior to commissioning the redesigned Arak reactor. Tehran is to "sell any remaining heavy water on the international market for 15 years." Iran's stock of heavy water has exceeded 130 metric tons on two occasions since the JCPOA began implementation. On February 17, 2016, the IAEA verified that Tehran's heavy water stock had exceeded 130 metric tons; On November 8, 2016, the IAEA verified that Iran's stock of heavy water had again exceeded the JCPOA limit. Iran resolved the issue on both occasions by exporting the excess heavy water. Iran has sent this material to Russia and the United States, shipping at least some of it via Oman. The IAEA verified on August 7, 2017, that Iran had 111 metric tons of heavy water.¹⁶

Use of INARA Provisions

The INARA law that provides for congressional oversight of the JCPOA gives the Administration a number of options to cease or alter U.S. implementation of the JCPOA.

Material Breach Report

INARA authorizes the President to provide Congress with "credible and accurate information relating to a potentially significant breach or compliance incident by Iran..." and, within 30 days

¹³ *Verification and Monitoring in the Islamic Republic of Iran in Light of United Nations Security Council Resolution 2231 (2015)*, GOV/INF/2016/1, January 16, 2016.

¹⁴ *Verification and Monitoring in the Islamic Republic of Iran in Light of United Nations Security Council Resolution 2231 (2015)*. Report by the Director General, International Atomic Energy Agency, GOV/2017/35, August 31, 2017.

¹⁵ Ibid.

¹⁶ Ibid.

of submitting such information, to determine whether the Iranian breach “constitutes a material breach” and whether Iran has “cured such material breach.”¹⁷ Under INARA, an Administration confirmation of an uncured material breach of the JCPOA by Iran would trigger expedited procedures for congressional consideration of legislation that would reimpose those U.S. sanctions that have been waived to implement the JCPOA – and prevent further such waivers. A summary of the expedited procedures is provided in the text box at the end of this report.

An Administration report to Congress of a material breach by Iran would almost certainly prompt other P5+1 parties to question whether U.S. assertions are corroborated by similar findings by the IAEA. The INARA material breach report does not appear to provide for the Administration to accuse Iran of an uncured breach on any grounds other than compliance with the nuclear commitments of the JCPOA. Other P5+1 parties might also question whether the United States has provided information on any potential Iranian breach to the IAEA for further investigation under the dispute resolution mechanism discussed above. If the Administration has not provided such information to the IAEA for investigation, its not doing so would likely raise questions about the credibility of the information or the motives of the Administration in reporting such accusations to Congress separately.¹⁸

Compliance Report

INARA requires the Administration to certify, every 90 days, that all of four main conditions of Iranian compliance have been met. The four points are that Iran: (1) is verifiably and fully implementing the JCPOA; (2) has not committed an uncured material breach; (3) has not taken any action that could advance a nuclear weapons program; and that (4) continued suspension of sanctions (including issuance of waivers of applicable sanctions laws) is vital to the national security interests of the United States.

These provisions raise the possibility of several courses of action.

Certification Renewed and U.S. Sanctions Waivers Continued

The Administration has the option of continuing to implement the JCPOA as it has been doing. The requirement that all four INARA compliance certification conditions be met implies that an Administration certification of compliance would automatically be accompanied by a renewal of the waivers of the several secondary sanctions provisions that were issued to implement the JCPOA. Still, such waiver renewals must be separately transmitted to Congress to comport with the requirements of the sanctions laws that were waived to implement the JCPOA.¹⁹

¹⁷ Text of INARA.

¹⁸ Richard Nephew. “Will Trump Recertify Iran? Much Hangs in the Balance.” *Bulletin of the Atomic Scientists*, August 23, 2017.

¹⁹ The latest such waiver notification was transmitted to Congress on July 17, 2017, simultaneous with an Administration certification of Iranian compliance. Letter from Charles Faulkner of the State Dept. Bureau of Legislative Affairs to Senate Foreign Relations Committee Chairman Bob Corker. July 17, 2017. The waivers required are for the following provisions: Section 1244(i), 1245(g), 1246(e), and 1247(f) of the Iran Freedom and Counter Proliferation Act of 2012 (P.L. 112-239) – every 180 days; Section 1245(d) of the National Defense Authorization Act for FY2012 (P.L. 112-81), every 120 days; Sections 212(d)(1) and 213(b)(1) of the Iran Threat Reduction and Syria Human Rights Act of 2012 (P.L. 112-158), every six months; and the Iran Sanctions Act of 1996 (P.L. 104-172), every six months.

Certification Withheld and Some or All U.S. Sanctions Reimposed

Should the Administration seek to alter or end U.S. implementation of the JCPOA, it could decide to withhold certification of Iranian compliance on any of the grounds stipulated by INARA. For example, the Administration could withhold a compliance certification by arguing that Iran has not complied with the spirit of the agreement and that continuing to waive U.S. sanctions is therefore not vital to the national security interests of the United States. Congress might still act additionally on legislation to reimpose U.S. sanctions under the expedited procedures prescribed in INARA.

If the Administration reimposes U.S. sanctions, Iran might potentially use the justification in Paragraph 26 of the JCPOA to cease performing its nuclear commitments. Iran's reaction might depend on whether other parties to the JCPOA, and companies in those countries, reimpose sanctions or exit the Iran market in response to the reimposition of U.S. sanctions.

Re-Designating "De-Listed" Entities for Sanctions

As an alternative to reimposing those sanctions provisions that have been waived or revoked, the Administration could instead restore the "Specially Designated National" (SDN) designation to some of the many entities that were "de-listed" to implement the JCPOA. The entities that were de-listed are those that involve Iran's civilian economy, such as banks, shipping firms, insurance entities, civilian manufacturers, and energy-related entities. Re-designating such entities would resume the application of some U.S. secondary sanctions to those entities, including provisions of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA, P.L. 111-195) that closes the U.S. financial sector to third-country financial institutions that conducts transactions with Iran-related SDNs.

Iran's reaction to re-designation of listed entities would likely depend on how the Administration implemented this option. Re-designation of a few entities that are marginal to Iran's economy might not cause Iran to cease implementing its commitments. However, re-designation of entities that are crucial to Iran's economy, such as the Islamic Republic of Iran Shipping Lines (IRISL) or Iran Air, could potentially cause Iran to assert that the United States has breached the agreement.

Alternative Scenario: Certification Withheld but Sanctions Waivers Continued

Alternatively, even if the Administration withholds certification of Iranian compliance, the Administration might decide to try to keep the accord in force by renewing the waivers of U.S. sanctions laws and otherwise declining to reimpose any sanctions. INARA does not require the Administration to reimpose U.S. sanctions if there is no certification of compliance, but it does, as noted above, give Congress the opportunity to enact legislation to do so, and under expedited procedures. The use of this option would signal Administration dissatisfaction with the JCPOA and perhaps suggest the Administration wants it renegotiated, but without necessarily causing the JCPOA to collapse.

An Administration decision to withhold compliance certification while keeping sanctions relief in place would likely not cause Iran to abrogate its commitments under the agreement. Iranian leaders would undoubtedly challenge a withholding of U.S. compliance certification, but Iran likely would continue to implement the agreement as long as sanctions are not reimposed and its economy is, therefore, not damaged by them.

Expedited Congressional Procedures

In the absence of the required certification, or after a presidential determination of non-compliance or an uncured breach, a House or Senate party floor leader may introduce, within 60 calendar days, a bill (with stipulated text) to reinstate sanctions. The bill is subject to expedited congressional procedures (though each chamber could choose to use its existing procedures instead). Committees that are referred the bill are automatically discharged if it has not been reported after 10 legislative days (House) or session days (Senate).

In the House, on or after the third legislative day after reporting/discharge, a majority could agree to a non-debatable motion to bring up the bill. In the Senate, after reporting/discharge, a majority could agree to a non-debatable motion to bring up the bill; no cloture process, with its associated three-fifths vote threshold, is necessary for the Senate to do so.

House floor consideration is limited to two hours. The Senate limit on floor consideration is 10 hours; thus, a numerical majority could pass the bill without the need for three-fifths to first invoke cloture. (A majority could also agree to a non-debatable motion to spend less time on the bill.) Floor amendments are precluded in both chambers. Other procedures would expedite second-chamber consideration of a bill received from the other house.

A bill agreed to by both chambers is subject to presidential veto, which can be overridden by two-thirds vote in both chambers. (Senate consideration of the veto message is limited to 10 hours; no cloture process would be required to reach the override vote.) For more information, see “Legislation to Reinstate Sanctions” in CRS Report R44085, *Procedures for Congressional Action in Relation to a Nuclear Agreement with Iran: In Brief*, by Valerie Heitshusen and Richard S. Beth.

Source: INARA congressional review provisions, 42 U.S.C. 2160(e)

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