

The Effect of Non-Certification under the Iran Nuclear Agreement Review Act (INARA)

The Iran Nuclear Agreement Review Act (INARA, P.L. 114-17), at subsection 135(d)(6)(A), adds to the Atomic Energy Act of 1954 a requirement that the President determine, every 90 days, whether he can certify that:

“(i) Iran is transparently, verifiably, and fully implementing the agreement, including all related technical or additional agreements;

“(ii) Iran has not committed a material breach with respect to the agreement or, if Iran has committed a material breach, Iran has cured the material breach;

“(iii) Iran has not taken any action, including covert activities, that could significantly advance its nuclear weapons program; and

“(iv) suspension of sanctions related to Iran pursuant to the agreement is—

“(I) appropriate and proportionate to the specific and verifiable measures taken by Iran with respect to terminating its illicit nuclear program; and

“(II) vital to the national security interests of the United States;”

and to so certify, if he can do so.

As the October 15 deadline for another certification approaches, President Trump has raised the possibility of not making this certification. The Center and many other groups have made clear that there is no substantive case for non-certification. But it is important also to understand just what non-certification would prompt, pursuant to INARA. What are the legal implications of failing to make this certification?

Here are some points to consider as the prospect of non-certification is analyzed and debated:

- The President could decline to certify under Sec. 135(d)(6) due to Iranian non-implementation, a material breach, Iranian actions "that could significantly advance its nuclear weapons program," or the clause regarding proportionality and "vital to the national security interests of the United States."
- Indeed, as the law is written, the President may simply fail to certify within 90 days of the last certification; he need not even state why he declined to certify. For political and diplomatic reasons, he likely would make a statement explaining his inaction; but it could be as simple as, "I never liked the JCPOA."
- Whatever the reason for inaction pursuant to Sec. 135(d)(6), it would trigger a 60-day period during which any qualifying legislation would receive expedited consideration pursuant to Sec. 135(e).
- Note that Congress does not need INARA to enact legislation snapping back US sanctions. It can do this under normal procedures whenever it has the votes to do so. That would require 60 votes in the Senate to overcome any filibuster, however, and of course 67 votes to overturn any presidential veto.

- In either house of Congress, qualifying legislation (essentially a snap-back of some or all US sanctions waived or suspended under the JCPOA) could be introduced only by the majority leader or the minority leader. In practice, therefore, **Sen. Mitch McConnell (RKY) and Rep. Kevin McCarthy (R-CA) could jointly prevent qualifying legislation from being introduced during a given 60day period.**
- **Any such display of statesmanship would have to be joint, however.** If, for example, Sen. McConnell were to refrain from introducing qualifying legislation, but Rep. McCarthy did introduce such legislation, the House bill would receive expedited procedures in the House and, once passed by the House, in the Senate as well.

Expedited procedures mean no debate on a motion to proceed, no amendments, no motions to recommit, etc., no debate on a motion to overrule an adverse parliamentary ruling by the chair, and only 10 hours of debate in each house. In the Senate, with so many motions out of order and debate limited to 10 hours, there would be no need for a cloture process. But just in case those rules were too liberal, under subsection 135(e)(5)(D), "[a] motion to further limit debate is in order and not debatable." Thus, a numerical majority could pass the bill without restriction.

Note: A reader asked whether the "qualifying legislation" could specify a future effective date, so as to use snap-back sanctions as a threat, rather than an immediate action. The answer appears to be "no." Section 135(e)(2) of the Atomic Energy Act of 1954, as added by INARA, specifies both the title and the text after the enacting clause of the "qualifying legislation," with the only "blank space being filled in with the law or laws under which sanctions are to be reinstated." The enacting clause cannot be used to add an effective date, as its text is specified by 1 U.S.C. §101: "The enacting clause of all Acts of Congress shall be in the following form: 'Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.'" The INARA-specified text is clearly written, moreover, to take immediate effect; sanctions "are hereby reinstated" and any further waiver or other relief "is hereby prohibited."