

Press Releases: Background Briefing on Public Guidance Related to Sections 223, 225, 226, 228, 232, and 233 of the Countering America's Adversaries Through Sanctions Act of 2017 (CAATSA)

Special Briefing
Senior Administration Officials
Via Teleconference
October 31, 2017

MODERATOR: Thank you and good afternoon, everyone. Thank you for joining us today. This is an on-background briefing with senior administration officials to discuss the public guidance related to Sections 223, 225, 226, 228, 232, and 233 of the Countering America's Adversaries Through Sanctions Act of 2017.

We are joined today by [Senior Administration Official One] as well as [Senior Administration Official Two]. They will make opening statements. And we also are joined by [Senior Administration Official Three] and [Senior Administration Official Four]. Going forward, [Senior Administration Official One] will be referenced as Senior Administration Official One, [Senior Administration Official Two] will be Senior Administration Official Two, [Senior Administration Official Three] will be referenced as Senior Administration Official Three, and [Senior Administration Official Four] will be referenced as Senior Administration Official Four.

As a reminder, this call is embargoed until the conclusion of the briefing and it is being conducted on background. So now I'll turn it over to [Senior Administration Official One] for opening remarks and then we'll go to [Senior Administration Official Two], and we'll take questions after that. Thank you.

SENIOR ADMINISTRATION OFFICIAL ONE: Thank you, and Happy Halloween, everyone. Since the August 2nd enactment of the Countering America's Adversaries Through Sanctions Act, or CAATSA, we've been working with our interagency colleagues and in consultation with other partners and allies to prepare public guidance related to the act.

On October 26th, so last week, the Department of State released public guidance on the implementation of Section 231 of CAATSA, which relates to the defense and intelligence sectors of the Russian Federation. Today, the

department is taking the next step by releasing public guidance related to Sections 225 and 232 of the act. These sections relate to special Russian oil projects and Russian energy export pipelines.

The release of guidance today is not a sanctions action but a publication of information intended to provide clarity regarding plans for implementing the sanctions. That is a key point that I'd like to emphasize: We are not announcing sanctions designations today; we're providing the clarity that is so important to our allies and partners and to the private sector.

The department is informing Congress, key U.S. industry stakeholders, and our allies and partners of this guidance, and we have posted the full public guidance on state.gov. We consulted extensively with allies and partners about this guidance, as the law states that we should, and we will continue to work with our allies and partners in order to impose costs on Russia while seeking to avoid unforeseen negative impacts to others. Let me reiterate that the goal of these sanctions provisions is to remind the Russian Government of the costs associated with not fulfilling its commitments to Minsk and other malign activities. It is to pressure the Russian Government to change its calculus.

The Department of the Treasury's Office of Foreign Assets Control, or OFAC, also published guidance today for the sections that they take lead on, and I'll refer any questions about those sections to our Treasury colleague on the call, [Senior Administration Official Two], who also has an opening statement to read.

[Senior Administration Official Two.]

SENIOR ADMINISTRATION OFFICIAL TWO: Thanks, [Senior Administration Official One], and thank you, everyone, for joining this call today on short notice. As [Senior Administration Official One] mentioned, earlier this afternoon the Department of the Treasury's Office of Foreign Assets Control, or OFAC, published materials related to CAATSA, the statute that our State Department colleague referenced.

First among these materials is a Modified Directive 4 under OFAC's Russia sanctions program. OFAC originally published Directive 4 in September of 2014 pursuant to UkraineRussia-related Executive Order 13662. Section 223(d) of CAATSA requires the Secretary of the Treasury to modify Directive 4 within 90 days of the statute's enactment, which is today.

In keeping with that requirement, today Treasury modified Directive 4 to expand the scope of its prohibitions as set out in CAATSA. Previously, Directive 4 prohibited U.S. persons, including persons within the United States, from providing, exporting, or re-exporting, directly or indirectly, goods, non-financial services, or technology in support of exploration or production for deep water, arctic, offshore, or shale projects that have the potential to produce oil in the Russian Federation or in maritime area claimed by the Russian Federation and extending from its territory, and that would involve any person determined to be subject to the directive or any earlier version.

Modified Directive 4, which was issued today, contains an additional CAATSA prohibition that will come into effect on January 29th, 2018. Currently, Directive 4 will also prohibit U.S. persons, including persons within the United States, from providing, exporting, or re-exporting, directly or indirectly, goods, non-financial services, or technology in support of the exploration or production for deep water, arctic, offshore, or shale projects either initiated on or after January 29th, 2018 that have the potential to produce oil in any location. I emphasize that. That's one of the new areas that changed from "the Russian Federation area" to "in any location."

The other criteria is it's also in which any person determined to be subject to Directive 4 has either a 33 percent or greater ownership interest or ownership of a majority of voting interest. That's another new area that we're implementing from the statute.

Concurrent with Modified Directive 4, OFAC published FAQs related to the new prohibitions in the modified directive. The FAQs provide guidance on issues of probable interest to the regulated community.

In addition to the Modified Directive 4 and the FAQs related to it, OFAC also published FAQs related to CAATSA sections 223(a), 226, 228, and 233. These statutory provisions pertain to potential targets of sectoral sanctions, the imposition of sanctions with respect to Russian and other foreign financial institutions, sanctions with respect to certain transactions with foreign sanctions evaders, and sanctions with respect to investment and/or facilitation of privatization of state-owned assets by the Russian Federation.

OFAC focused on these statutory provisions because comments from foreign partners and allies, industry, and others indicated high interest in them relative to other parts of the statute. The FAQs provide guidance on a range of issues of probable interest to the regulated community and reflect broad consultation across the interagency, including with our colleagues at the State Department and with Congress.

Now I'll turn it back to the moderator and happy to take any questions. Thank you.

MODERATOR: Thank you very much.

OPERATOR: And again – and again, ladies and gentlemen, at this time, if you would like to ask a question, please press * followed by 1. You will hear a tone indicating that you've been placed in queue. You may remove yourself from queue at any time by pressing the # key. And one moment for our first question.

MODERATOR: Take the first question, please.

OPERATOR: And our first question comes from Tolu Olorunnipa from Bloomberg News. I apologize.

QUESTION: Hello. This is Tolu. Thank you for doing the call. One question I have is about these – a couple of big projects that are – have been in the

news specifically in relation to these sanctions, the Nord Stream 2 project and the TurkStream projects. These are gas projects that involve both Russia and the European Union.

I'm trying to get a sense of whether or not they would be impacted by this, or whether or not the guidance you're putting out today is aimed at sort of specifically calming the minds of some of the interests there to let them know that they would not be impacted by these new sanctions.

SENIOR ADMINISTRATION OFFICIAL ONE: Thanks very much for the question. So we issued very clear guidance today. We encourage everyone to look closely at the guidance. And for companies that have questions about the guidance and whether or not it impacts what they're doing or not, we encourage those companies to come in to the State Department or Treasury, depending on the provision, and talk to us about it. But we're not going to go today project by project or company by company and talk about whether or not we think that the guidance affects them or not.

MODERATOR: Next question, please.

OPERATOR: Our next question comes from Matthew Lee with Associated Press. Please, go ahead.

QUESTION: Yeah, hi. I'm sorry, but I thought the entire point of this exercise today was to answer the questions of concerned companies and foreign governments about this, and your answer to that first question doesn't do that at all. In fact, I mean, it's kind of pointless if you don't – if someone asks you a specific question about this, that pipeline or another one, and you say, "Well, you have to come in and talk to us," how does this – how does this answer the question? It doesn't. You're basically passing the buck down the line, right?

SENIOR ADMINISTRATION OFFICIAL ONE: So I – this is – and [Senior Administration Official Two] can also weigh in on this, because he's got a lot of experience. But this is common practice across sanctions programs, and for a very long time, where we issue guidance generally to the public and we then rely on the private sector to look closely at that guidance, and if they have further questions or seek clarification, they come in and talk to us either here at State or at Treasury. That's how it's worked for a very long time and that's how we intend this guidance to be. It's very clear. We just issued it. I'm sure companies all over the place are looking at it right now, and if they have additional questions, I'm sure they'll come in.

SENIOR ADMINISTRATION OFFICIAL TWO: And I'd just add that the guidance is an iterative process. It's not a one stop where we expect to issue guidance today and not issue guidance in the future. We've been putting out guidance and additional implementing documents since the statute was passed, and we'll intend to continue to address questions that we receive from the private sector and elsewhere and update the guidance accordingly.

MODERATOR: Thank you. Next question, please.

OPERATOR: And again, if you would like to ask a question, please press * followed by 1. And our next question comes from Kylie Atwood from CBS News. Please, go ahead.

QUESTION: Hi, thanks. This is just a general question, doesn't have to do with one specific project or another, but you said that this applies to projects initiated on or after January 29th of next year. So if a company has initiated a project last year that's supposed to last for the next 10 years, are they able to move forward with that project in full?

SENIOR ADMINISTRATION OFFICIAL TWO: So I'll take – this is Treasury again. We used the language that was in the statute, and so when you look at – look – I urge you to take a look at the modified directive that we put out, because the directive basically has two sections. The first section applies to projects that were initiated from the date that that directive was put out in 2014, and so that does apply to projects that were, for example, within the territory of the Russian Federation, and that also would have dealt with those that were put on our – what we call the SSI list and their 50 percent or more owned entities. So those projects are still captured from years ago.

What Congress told us to do is add a additional restriction that would take effect in January of 2018. This wasn't something that OFAC decided to implement and put in a carve-out. This was the wording of the statute that they wanted us to look – be forward-looking, I think in an attempt to focus on any projects that may or may not begin in the future.

MODERATOR: Okay. Thank you. Next question, please.

OPERATOR: Our next question comes from Dave Clark with AFP. Please, go ahead.

QUESTION: Hi. It's Dave from AFP. Just a simple one: Where do I find this on the website? You say you've issued it. Is it up there already? I'm doing searches on every combination of CAATSA and energy and guidance and oil and Russia I can think of –

SENIOR ADMINISTRATION OFFICIAL TWO: So I think OFAC is – OFAC has tried to make it easy for you. If you just go to www.treasury.gov/ofac and then we have –

QUESTION: Oh, okay. I was looking on State. I'll look on Treasury. Sorry about that.

SENIOR ADMINISTRATION OFFICIAL TWO: And then when you go to that, it'll have something that says other – it'll have a list of our sanctions programs. If you hit "other sanctions programs," we have an entire section that is CAATSA, and it'll have all of the guidance and all of the documents that we have posted with respect to CAATSA, starting at some of the earlier provisions on, I think, day 60, and then we're now at day 90. I think we also may have a link to the State guidance at the bottom of that, so it's – can be one handy-dandy stop for you to go everywhere.

MODERATOR: And Dave, we also put the link in the notice to the press that was sent around to you all.

Okay, we'll go to the next question, please.

OPERATOR: And again, if you have a question, please press * followed by 1. And our question comes from Conor Finnegan with ABC News. Please, go ahead.

QUESTION: Hey, thanks very much for holding the call. Can you describe at all Secretary Tillerson's involvement in this process, and does his role – his former role as Exxon CEO preclude him from any involvement in any of this?

SENIOR ADMINISTRATION OFFICIAL ONE: So the Secretary was – reviewed our guidance and approved it. That was his role.

MODERATOR: All right. Thank you. Next question.

OPERATOR: And our next question comes from Dmitry Kirsanov with TASS. Please, go ahead.

QUESTION: Hi, can you hear me?

MODERATOR: Yes, we can.

QUESTION: I wanted to ask if the U.S. Government by now has a preliminary list of sorts, if you will, of those who you think are in violation of this expanded directive and whether you are in touch with those?

SENIOR ADMINISTRATION OFFICIAL TWO: From the –

MODERATOR: I think that might be for our Treasury.

SENIOR ADMINISTRATION OFFICIAL TWO: From the OFAC perspective, I'd say that we continue to look at all the invest – information that we receive and we will continue to follow up with any that we believe may or may not – or that may be violating or engaged in sanctionable conduct with respect to Directive 4, but I couldn't comment on any particulars of what we may be looking at.

MODERATOR: Thank you. We'll take the next question, please.

OPERATOR: Our next question comes from Haik Gugarats with Argus Media. Please, go ahead.

QUESTION: Yes, hi. This is Haik. A question for State: We've heard the sanctions had generated a lot of anxiety on the European side. I just wonder what kind of feedback you have received from your European colleagues. And a second question for Treasury: Do you plan to issue a technical definition of what a "shale formation" is? Obviously, there's an industry understanding of it, but I know of at least a few companies that have gone into Russia claiming a formation is not a shale or close enough that they will not be affected. So will you have a definition of what a shale is?

SENIOR ADMINISTRATION OFFICIAL ONE: Yeah. From the State perspective, we have been working very closely with our European partners and allies to consult with them. We took a trip out to Europe, we've hosted them here in Washington, in person, over video conference, et cetera. We plan to actually

go out again soon, so the consultation has been very close. As to their reaction, we just issued it moments ago, so we haven't gotten their reaction yet. But I can say that the close consultation – the close consultation has been very good and productive. And if – just looking to last week and our issuance of the Section 231 guidance, which we also consulted closely with European partners and allies about, there the reaction was very positive. So this kind of dialogue and collaboration we have with Europe is extremely important and positive and feeds into our process.

SENIOR ADMINISTRATION OFFICIAL TWO: And from Treasury, yes, we have defined the term “shale projects.” It had been in a previous FAQ that we updated today. The question on the website is question 418, but I can just tell you that we've said the terms, quote, “shale projects,” end quote, applies to projects that have the potential to produce oil from resources located in shale formations. Therefore, as long as the projects in question are neither deep-water nor Arctic offshore projects, the prohibitions in Directive 4 do not apply to exploration or production through shale to locate or extract crude oil or gas in reservoirs. So again, that sounds pretty technical, but it's on our website at FAQ 418.

MODERATOR: All right. Thank you. Thank you, everyone. And we have no further questions in the queue, so we will conclude the call now. The embargo is lifted. As a reminder, this call is on background to senior administration officials. Thank you to our speakers and thank you to everyone who dialed in. Have a great day.

The Office of Website Management, Bureau of Public Affairs, manages this site as a portal for information from the U.S. State Department. External links to other Internet sites should not be construed as an endorsement of the views or privacy policies contained therein.