



This document is scheduled to be published in the Federal Register on 03/15/2013 and available online at <http://federalregister.gov/a/2013-05766>, and on FDsys.gov

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 561

Iranian Financial Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final Rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control is amending the Iranian Financial Sanctions Regulations (the "IFSR") to implement sections 503 and 504 of the Iran Threat Reduction and Syria Human Rights Act of 2012, which amended section 1245 of the National Defense Authorization Act for Fiscal Year 2012; and section 1, portions of section 6, and other related provisions of Executive Order 13622 of July 30, 2012.

DATES: Effective Date: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622-2490, Assistant Director for Licensing, tel.: 202/622-2480, Assistant Director for Regulatory Affairs, tel.: 202/622-4855, Assistant Director for Policy, tel.: 202/622-, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622-2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (www.treasury.gov/ofac). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/ 622-0077.

Background

The Department of the Treasury's Office of Foreign Assets Control ("OFAC") originally published the Iranian Financial Sanctions Regulations, 31 CFR part 561 (the "IFSR"), on August 16, 2010 (75 FR 49836), to implement subsections 104(c) and (d) and other related provisions of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195) (22 U.S.C. 8501-8551) ("CISADA"), which had been signed into law by the President on July 1, 2010. Subsection 104(c) of CISADA required the Secretary of the Treasury to prescribe regulations to prohibit, or impose strict conditions on, the opening or maintaining in the United States of a correspondent account or a payable-through account for a foreign financial institution that the Secretary finds knowingly engages in specified sanctionable activities.

On February 27, 2012, OFAC amended the IFSR and reissued them in their entirety (77 FR 11724), in order to implement section 1245(d) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81) (22 U.S.C. 8513a) ("NDAA"), which had been signed into law by the President on December 31, 2011. Section 1245(d)(1) of the NDAA provides for 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 the President determines has knowingly conducted or facilitated any significant financial transaction with the Central Bank of Iran or another Iranian financial institution designated by the Secretary of the Treasury pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) ("IEEPA").

Section 1245(d)(2) of the NDAA excepted transactions for the sale of food, medicine, or medical devices to Iran from the imposition of sanctions under section 1245(d)(1). Section 1245(d)(3) of the NDAA limited the imposition of sanctions pursuant to section 1245(d)(1) on foreign financial institutions owned or controlled by the government of a foreign country, including the central bank of a foreign country, to significant transactions for the sale or purchase of petroleum or petroleum products to or from Iran. Section 1245(d)(4)(D) of the NDAA provided for an exception from the imposition of sanctions pursuant to section 1245(d)(1) on any foreign financial institution if the President determines and periodically reports to Congress that the country with primary jurisdiction over that foreign financial institution has significantly reduced its

crude oil purchases from Iran during the 180-day period preceding the report.

On July 30, 2012, invoking the authority of, inter alia, IEEPA, the President issued Executive Order 13622, "Authorizing Additional Sanctions With Respect to Iran" (77 FR 45897, August 2, 2012) ("E.O. 13622"). The President issued E.O. 13622 to take additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995, particularly in light of the Government of Iran's use of revenues from petroleum, petroleum products, and petrochemicals for illicit purposes, Iran's continued attempts to evade international sanctions through deceptive practices, and the unacceptable risk posed to the international financial system by Iran's activities.

Section 1(a) of E.O. 13622 authorizes the Secretary of the Treasury, in consultation with the Secretary of State and subject to certain exceptions, to impose correspondent and payable-through account sanctions on foreign financial institutions determined to have knowingly conducted or facilitated any significant financial transaction with the National Iranian Oil Company ("NIOC"); with Naftiran Intertrade Company ("NICO"); or for the purchase or acquisition of

petroleum, petroleum products, or petrochemical products from Iran. Section 10 of E.O. 13622 defines the terms NIOC and NICO as including any entity owned or controlled by, or operating for or on behalf of, respectively, NIOC and NICO.

Section 1(c) of E.O. 13622 provides that sanctions under subsections 1(a)(i) and (ii) for transactions with NIOC or NICO or for the purchase or acquisition of petroleum or petroleum products from Iran will apply only if (1) the President determines under subsections 1245(d)(4)(B) and (C) of the NDAA that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the purchase of petroleum and petroleum products from Iran by or through foreign financial institutions; and (2) a significant reduction exception under subsection 1245(d)(4)(D) of the NDAA does not apply with respect to the transaction.

Thus, transactions with NIOC or NICO or for the purchase or acquisition of petroleum or petroleum products from Iran are excepted from the imposition of sanctions under section 1(a) of E.O. 13622 if the transaction qualifies for the significant reduction exception under subsection 1245(d)(4)(D) of the NDAA. Transactions for the purchase or acquisition of petrochemical products from Iran are subject to sanctions under section 1(a)

of E.O. 13622 regardless of whether the President makes the determination that there is a sufficient supply of petroleum and petroleum products under subsections 1245(d)(4)(B) and (C) of the NDAA or whether a significant reduction exception under subsection 1245(d)(4)(D) of the NDAA applies. Section 1(d) of E.O. 13622 also provided an exemption from sanctions under section 1(a) for transactions for the sale of food, medicine, or medical devices to Iran or when the underlying transaction has been authorized by the Secretary of the Treasury. Executive Order 13628 of October 9, 2012 (77 FR 62139, October 12, 2012), amended E.O. 13622 by adding the sale of agricultural commodities to Iran to the list of exempt transactions in section 1(d) and by making other conforming changes to E.O. 13622.

Section 6 of E.O. 13622 provides that section 1(a) of the order, among other specified provisions, shall not apply to any person for conducting or facilitating a transaction involving a natural gas development and pipeline project initiated prior to July 31, 2012, to bring gas from Azerbaijan to Europe and Turkey, as described in section 6. Although it is not named in the section, section 6 refers to the Shah Deniz natural gas field in Azerbaijan's sector of the Caspian Sea and related

pipeline projects to bring the gas from Azerbaijan to Europe and Turkey.

On August 10, 2012, the President signed into law the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112-158) (22 U.S.C. 8701-8795) ("TRA"), which, inter alia, amends section 1245(d) of the NDAA. Section 503(a) of the TRA adds sales of agricultural commodities to Iran to the list of excepted transactions under section 1245(d)(2) of the NDAA, effective as if originally included in the NDAA. Section 503(b) of the TRA revises the timing of the reports on the availability and price of petroleum and petroleum products produced in countries other than Iran that, pursuant to section 1245(d)(4)(A) of the NDAA, the Administrator of the Energy Information Administration is required to submit to Congress. Beginning September 1, 2012, this report is to be submitted to Congress not later than October 25, 2012, and the last Thursday of every other month thereafter.

Section 504 of the TRA revises the types of foreign financial institutions and transactions that can be sanctioned under section 1245(d)(1) of the NDAA. Specifically, section 504(a)(1)(A) of the TRA amends the limitation on the imposition of sanctions in section 1245(d)(3) of the NDAA so that it only

applies to foreign central banks and not to other government-owned or -controlled foreign financial institutions. As a result, foreign financial institutions owned or controlled by the government of a foreign country, other than central banks, are subject to sanctions under section 1245(d)(1) of the NDAA (with certain exceptions, including the sale of agricultural commodities, food, medicine and medical devices) with respect to any significant financial transaction conducted or facilitated on or after February 6, 2013, including transactions that are not for the sale or purchase of petroleum or petroleum products to or from Iran.

Section 504(a)(1)(B) of the TRA amends section 1245(d)(4)(D) of the NDAA to limit the exception from sanctions imposed pursuant to section 1245(d)(1) previously available for countries determined to have significantly reduced their crude oil purchases from Iran to certain transactions conducted or facilitated by foreign financial institutions located in significantly reducing jurisdictions. This amendment applies with respect to financial transactions conducted or facilitated on or after February 6, 2013. As amended, the exception from sanctions set forth in NDAA section 1245(d)(4)(D) applies to a financial transaction conducted or facilitated by a foreign financial institution if (1) the financial transaction is only

for bilateral trade in goods or services between the country with primary jurisdiction over the foreign financial institution and Iran; and (2) any funds owed to Iran as a result of such trade are credited to an account located in the country with primary jurisdiction over the foreign financial institution. Furthermore, in order for this exception to apply to the financial transaction, there must be in effect a determination from the President either that the country with primary jurisdiction over the foreign financial institution has significantly reduced its crude oil purchases from Iran; or, in the case of a country that has previously received an exception under section 1245(d)(4)(D) of the NDAA, that, after receiving the exception, it has reduced its crude oil purchases from Iran to zero.

In addition, section 504 of the TRA amends section 1245(h) of the NDAA by adding a definition of the terms "reduce significantly," "significant reduction," and "significantly reduced." The definition provides that these terms, used with respect to purchases from Iran of petroleum and petroleum products, include a reduction in such purchases in terms of price or volume toward a complete cessation of such purchases.

Today, OFAC is making a number of changes to the IFSR to implement the amendments to section 1245(d) of the NDAA made by sections 503 and 504 of the TRA, as well as to implement section 1 and related provisions of E.O. 13622. To implement section 503 of the TRA, OFAC is amending redesignated paragraph (g) (formerly paragraph (f)) of section 561.203 in Subpart B to add the sale of agricultural commodities to Iran to the list of transactions exempt from the sanctions imposed pursuant to section 561.203(a). OFAC also is amending section 561.327 in subpart C to add a definition of the term agricultural commodities. In addition, the Note to redesignated paragraph (h) (formerly paragraph (g)) of section 561.203 is being revised to reflect the change in the due dates of reports that the Administrator of the Energy Information Administration is required to submit to Congress, pursuant to section 1245(d) (4) (A) of the NDAA, regarding the availability and price of petroleum and petroleum products produced in countries other than Iran.

To implement section 504 of the TRA, OFAC is amending section 561.203 in subpart B by revising paragraph (d) and redesignated paragraph (f) (formerly paragraph (e)), and adding new paragraph (e), to eliminate the distinction between foreign government-owned or -controlled financial institutions (other

than central banks) and privately owned financial institutions with respect to the types of transactions that would subject them to sanctions. Both types of financial institutions are now subject to sanctions under section 561.203(a) for any significant transactions knowingly conducted or facilitated with the Central Bank of Iran or other designated Iranian financial institutions, whether or not the transactions are for the sale or purchase of petroleum or petroleum products to or from Iran. The revision to redesignated paragraph (f) (formerly paragraph (e)) of section 561.203 clarifies that foreign central banks are the only institutions on which sanctions may be imposed only insofar as they engage in financial transactions for the sale or purchase of petroleum or petroleum products to or from Iran.

OFAC is revising redesignated paragraph (i) (formerly paragraph (h)) of section 561.203 to clarify that the significant reduction exception extends to countries that, having previously received a significant reduction determination, are determined to have reduced their imports of Iranian crude oil to zero during a subsequent reporting period. OFAC is adding new section 561.328 to Subpart C to define the terms reduce significantly, significantly reduced, and significant reduction, used with respect to purchases from Iran

of petroleum and petroleum products, as set forth in section 504(a)(2)(B) of the TRA.

In addition, OFAC is adding new paragraphs (j) and (k) to section 561.203 to implement the narrowing of the scope of the significant reduction exception, mandated by section 504(a)(1)(B) of the TRA, to cover only certain financial transactions for bilateral trade between Iran and the significantly reducing country. As set forth in new paragraphs (j) and (k) of section 561.203, the significant reduction exception is applicable to a qualifying bilateral trade transaction only if any funds owed to the country with primary jurisdiction over the foreign financial institution are paid to specified classes of payees and certain restrictions are placed on the funds owed to Iran in order to ensure that they remain in that country. Paragraph (k) of section 561.203 further specifies that funds owed to Iran from Iranian-origin exports to the country with primary jurisdiction over the foreign financial institution facilitating the transaction under the significant reduction exception may now be used only to pay for exports to Iran of goods or services that originate in that country. New Note 2 to section 561.203 explains that since transactions for the sale of agricultural commodities, food, medicine, or medical devices to Iran are not sanctionable under the section

561.203(a), the funds owed to Iran from Iranian-origin exports to the significantly reducing country may also be used to pay for the sale and export to Iran of agricultural commodities, food, medicine, or medical devices from third countries.

OFAC is adding new interpretive section 561.408 to Subpart D of the IFSR to explain what is meant by the requirement that goods or services originate in a country.

To implement section 1 of E.O. 13622, OFAC is adding new section 561.204 to Subpart B of the IFSR. Subject to certain exceptions, section 561.204 authorizes the Secretary of the Treasury to prohibit or impose strict conditions on the opening or maintaining of a correspondent account or a payable-through account in the United States by a U.S. financial institution for a foreign financial institution determined to have knowingly conducted or facilitated any significant financial transaction with NIOC, NICO, or any entity owned or controlled by, or operating for or on behalf of, NIOC or NICO, or for the purchase or acquisition of petroleum, petroleum products, or petrochemical products from Iran.

In addition, OFAC is adding new section 561.205 to Subpart B of the IFSR. This section sets forth the prohibition on any

transaction, on or after the applicable effective date, that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions in the IFSR and on any conspiracy formed to violate any such prohibitions.

Finally, OFAC is amending the IFSR to add definitions and make other technical and conforming changes.

Public Participation

Because the amendment of the IFSR involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601-612) does not apply.

Paperwork Reduction Act

The collections of information related to the IFSR are contained in 31 CFR part 501 (the "Reporting, Procedures and Penalties Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under

control number 1505-0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 561

Administrative practice and procedure, Banks, Banking, Brokers, Foreign trade, Investments, Loans, Petrochemicals, Petroleum, Petroleum products, Securities, Iran.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends part 561 of 31 CFR chapter V as follows:

PART 561—IRANIAN FINANCIAL SANCTIONS REGULATIONS

1. The authority citation for part 561 is revised to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601-1651, 1701-1706; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110-96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 111-195, 124 Stat. 1312 (22 U.S.C. 8501-8551); Pub. L.

112-81, 125 Stat. 1298 (22 U.S.C. 8513a); Pub. L. 112-158, 126 Stat. 1214 (22 U.S.C. 8701-8795); E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 13553, 75 FR 60567, 3 CFR, 2010 Comp., p. 253; E.O. 13599, 77 FR 6659, February 8, 2012; E.O. 13622, 77 FR 45897, August 2, 2012; E.O. 13628, 77 FR 62139, October 12, 2012.

Subpart B—Prohibitions

2. Amend § 561.203 by:

- a. Revising paragraphs (a) introductory text and (d).
- b. Redesignating paragraphs (e) through (h) as paragraphs (f) through (i) and revising redesignated paragraphs (f) through (i).
- c. Adding new paragraphs (e), (j), and (k) and a new Note to paragraphs (j) and (k).
- d. Redesignating the Note to § 561.203 as Note 1 to § 561.203 and revising redesignated Note 1.
- e. Adding a new Note 2 to § 561.203.

The revisions and additions read as follows:

§ 561.203 NDAA-based sanctions on certain foreign financial institutions.

(a) Imposition of sanctions. Subject to the limitations, exceptions, and conditions set forth in paragraphs (d) through (k) of this section, upon a determination by the Secretary of the Treasury that a foreign financial institution has knowingly conducted or facilitated any significant financial transaction with the Central Bank of Iran or a designated Iranian financial institution, consistent with section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81) (22 U.S.C. 8513a) (the "2012 NDAA"), as amended by the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112-158) (22 U.S.C. 8701-8795) (the "TRA"), the Secretary of the Treasury:

* * * * *

(d) Privately owned foreign financial institutions. (1) Subject to the exceptions set forth in paragraphs (g) and (i) through (k) of this section, sanctions may be imposed pursuant to paragraph (a) of this section beginning on February 29, 2012, with respect to any significant financial transaction conducted or facilitated by a privately owned foreign financial

institution that is not for the purchase of petroleum or petroleum products from Iran.

(2) Subject to the exceptions and conditions set forth in paragraphs (h) through (k) of this section, sanctions may be imposed pursuant to paragraph (a) of this section with respect to any significant financial transaction conducted or facilitated by a privately owned foreign financial institution on or after June 28, 2012, for the purchase of petroleum or petroleum products from Iran.

(e) Government-owned or -controlled foreign financial institutions, excluding foreign central banks. (1) Subject to the exceptions and conditions set forth in paragraphs (h) through (k) of this section, sanctions may be imposed pursuant to paragraph (a) of this section with respect to any significant financial transaction conducted or facilitated by a foreign financial institution owned or controlled by the government of a foreign country, excluding a central bank of a foreign country, on or after June 28, 2012, for the sale or purchase of petroleum or petroleum products to or from Iran.

(2) Subject to the exceptions and conditions set forth in paragraphs (g) and (i) through (k) of this section, sanctions

may be imposed pursuant to paragraph (a) of this section with respect to any significant financial transaction conducted or facilitated by a foreign financial institution owned or controlled by the government of a foreign country, excluding a central bank of a foreign country, on or after February 6, 2013, that is not for the sale or purchase of petroleum or petroleum products to or from Iran.

(f) Foreign central banks. Subject to the exceptions and conditions set forth in paragraphs (h) through (k) of this section, sanctions may be imposed pursuant to paragraph (a) of this section on a central bank of a foreign country only insofar as it engages in a financial transaction for the sale or purchase of petroleum or petroleum products to or from Iran conducted or facilitated on or after June 28, 2012.

(g) Sanctions will not be imposed under paragraph (a) of this section with respect to any foreign financial institution for conducting or facilitating a transaction for the sale of agricultural commodities, food, medicine, or medical devices to Iran.

(h) The Secretary of the Treasury may impose sanctions pursuant to paragraph (a) of this section with respect to any significant financial transaction conducted or facilitated by a foreign financial institution on or after June 28, 2012, for the purchase of petroleum or petroleum products from Iran only if the President determines, not later than March 30, 2012, and every 180 days thereafter, that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in petroleum and petroleum products purchased from Iran by or through foreign financial institutions. Such successive sufficiency determinations by the President shall render subject to sanctions under paragraph (a) of this section those financial transactions conducted or facilitated by a foreign financial institution for the purchase of petroleum or petroleum products from Iran during each successive 180-day period beginning 90 days after the President's determination.

Note to paragraph (h) of § 561.203: Under Section 1245(d)(4)(B) of the 2012 NDAA, the President is to make a determination, not later than March 30, 2012, and every 180 days thereafter, of whether the price and supply of petroleum and petroleum products produced in countries other than Iran is

sufficient to permit purchasers of petroleum and petroleum products from Iran to reduce significantly their purchases from Iran. This determination is to be based on reports on the availability and price of petroleum and petroleum products produced in countries other than Iran that, pursuant to section 1245(d)(4)(A) of the 2012 NDAA, the Administrator of the Energy Information Administration, in consultation with the Secretary of the Treasury, the Secretary of State, and the Director of National Intelligence, was to submit to Congress beginning not later than February 29, 2012, and every 60 days thereafter. Beginning September 1, 2012, pursuant to section 1245(d)(4)(A) of the 2012 NDAA, as amended by section 503(b) of the TRA, the report of the Administrator of the Energy Information Administration is to be submitted to Congress not later than October 25, 2012, and the last Thursday of every other month thereafter.

(i) Sanctions will not be imposed under paragraph (a) of this section with respect to a financial transaction described in paragraph (j) of this section that is conducted or facilitated by a foreign financial institution if, for the 180-day period during which the financial transaction is conducted or facilitated, the Secretary of State has determined and reported to Congress:

(1) That the country with primary jurisdiction over the foreign financial institution has significantly reduced its crude oil purchases from Iran, thus qualifying for a "significant reduction exception" for the 180-day period during which the financial transaction is conducted or facilitated; or

(2) That the country with primary jurisdiction over the foreign financial institution has received a significant reduction exception described in this paragraph in a previous period and, after receiving the exception, has reduced its crude oil purchases from Iran to zero during a subsequent 180-day reporting period.

Note to paragraph (i) of § 561.203: The Secretary of State is to determine whether a country qualifies for the "significant reduction exception" and report such determination to Congress not later than 90 days after the date on which the President makes the initial determination referenced in paragraph (h) of this section, and every 180 days thereafter. Accordingly, a significant reduction exception covers a period of 180 days.

(j) A financial transaction conducted or facilitated by a foreign financial institution is described in this paragraph (j) if:

(1) The financial transaction is only for trade in goods or services that either originate in the country with primary jurisdiction over the foreign financial institution and are exported and sold directly to Iran or originate in Iran and are exported and sold directly to the country with primary jurisdiction over the foreign financial institution;

(2) Any funds owed to the country with primary jurisdiction over the foreign financial institution as a result of such trade are paid to:

(i) Individuals who are citizens, nationals, or permanent residents of the country with primary jurisdiction over the foreign financial institution; or

(ii) Entities organized under the laws of the country with primary jurisdiction over the foreign financial institution that are not the Government of Iran, as defined in § 561.321;

(3) Any funds owed to Iran as a result of such trade are subject to the terms and conditions set forth in paragraph (k) of this section; and

(4) Funds owed as a result of such trade are not credited to an account held at any financial institution whose name appears on the List of Foreign Financial Institutions Subject to Part 561 (the "Part 561 List"), which is maintained on the Office of Foreign Assets Control's Web site (www.treasury.gov/ofac) on the Iran Sanctions page.

(k) In order for a transaction to qualify for the significant reduction exception from the sanctions imposed under paragraph (a) of this section described in paragraph (i), all funds owed to Iran as a result of a trade transaction described in paragraph (j)(1) of this section must be subject to the following conditions and restrictions:

(1) The funds must be credited to an account held at a foreign financial institution that conducted or facilitated the trade transaction described in paragraph (j)(1) of this section;

(2) The funds must be credited to an account held in the country with primary jurisdiction over that foreign financial institution;

(3) The funds must be credited to an account held in the name of the Central Bank of Iran, the Iranian party to the trade transaction, or an Iranian financial institution that is not a designated Iranian financial institution;

(4) Payments from the funds may be made only in the manner and to the persons specified in paragraph (k)(5) of this section for amounts owed to such persons for the direct exportation and sale to Iran of goods or services originating in the country with primary jurisdiction over the foreign financial institution holding the funds (but see Note 2 to § 561.203);

(5) Payments from the funds for the goods or services exported and sold to Iran, as described in paragraph (k)(4) of this section, may be made only by check payable to or to the order of, or by transfer to an account at a foreign financial institution in the country with primary jurisdiction over the foreign financial institution holding the funds that is held in the name of:

(i) Individuals who are citizens, nationals, or permanent residents of the country with primary jurisdiction over the foreign financial institution holding the funds; or

(ii) Entities that are organized under the laws of that country;

(6) The funds may not be withdrawn in cash, remitted to Iran or paid to anyone that is the Government of Iran, as defined in § 561.321, or credited to an account held at a financial institution whose name appears on the Part 561 List (see paragraph (j)(4) of this section); and

(7) Other than in payment for goods or services exported and sold to Iran as set forth in paragraphs (k)(4) through (k)(6) of this section, the funds may be transferred from the initial account described in paragraphs (k)(1) through (k)(3) of this section only to another account that is held at the same foreign financial institution, located in the country with primary jurisdiction over that foreign financial institution, and subject to the following conditions and restrictions:

(i) The account must be a separate, special purpose account holding only funds owed to Iran as a result of trade

transactions that qualify for the significant reduction exception described in paragraph (i) of this section and that are conducted or facilitated by the foreign financial institution holding the account; and

(ii) The conditions and restrictions on the funds owed to Iran set forth in paragraphs (k)(1) through (k)(6) of this section apply in full to the account described in this paragraph, except that the account must be held only in the name of the Central Bank of Iran or an Iranian financial institution that is not a designated Iranian financial institution.

Note to paragraphs (j) and (k) of § 561.203: See § 561.408 for a provision interpreting the phrases goods or services originating in the country with primary jurisdiction over the foreign financial institution and goods or services originating in Iran.

Note 1 to § 561.203: The sanctions regime described in § 561.203 is separate from the sanctions regimes described in §§ 561.201 and 561.204 and applies in addition to, and independently of, the sanctions regimes imposed under §§ 561.201 and 561.204.

Note 2 to § 561.203: Paragraph (g) of this section excepts transactions for the sale of agricultural commodities, food, medicine, or medical devices to Iran from the imposition of sanctions under paragraph (a) of this section. Therefore, funds owed to Iran as a result of a trade transaction described in paragraph (j)(1) of this section may be used for the purchase and export to Iran of agricultural commodities, food, medicine, or medical devices regardless of the country from which such goods are purchased and regardless of where such goods originate, and payment from the funds for such goods may be made to exporters in countries other than the country with primary jurisdiction over the foreign financial institution holding the funds.

3. Add new § 561.204 to subpart B to read as follows:

§ 561.204 Additional petroleum-related sanctions on certain foreign financial institutions.

(a) Imposition of sanctions. Subject to the limitations, exceptions, and conditions set forth in paragraphs (d) through (f) of this section, upon a determination by the Secretary of the Treasury that a foreign financial institution has knowingly

engaged in one or more of the activities described in paragraph (b) of this section, the Secretary of the Treasury may:

(1) Prohibit U.S. financial institutions from opening a correspondent account or a payable-through account in the United States for the foreign financial institution with respect to which the determination has been made; and either

(2) (i) Prohibit U.S. financial institutions from maintaining a correspondent account or a payable-through account in the United States for the foreign financial institution with respect to which the determination has been made; or

(ii) Impose one or more strict conditions on the maintaining of any correspondent account or payable-through account that had been opened in the United States for the foreign financial institution prior to the Secretary of the Treasury's determination with respect to the foreign financial institution.

Note 1 to paragraph (a) of § 561.204: The name of any foreign financial institution with respect to which a determination has been made pursuant to this paragraph (a), along with the relevant sanctions to be imposed (prohibition(s)

and/or strict condition(s)), will be added to the List of Foreign Financial Institutions Subject to Part 561 (the "Part 561 List"), which is maintained on the Office of Foreign Assets Control's Web site (www.treasury.gov/ofac) on the Iran Sanctions page, and published in the **Federal Register**.

Note 2 to paragraph (a) of § 561.204: See § 561.203(b) for examples of strict conditions that might be imposed, pursuant to paragraph (a)(2)(ii) of this section, on the maintaining of a pre-existing correspondent account or payable-through account for a foreign financial institution with respect to which the Secretary of the Treasury's determination has been made.

(b) Sanctionable activity. A foreign financial institution engages in an activity described in this paragraph if it knowingly conducts or facilitates any significant financial transaction:

(1) With the National Iranian Oil Company ("NIOC"), the Naftiran Intertrade Company ("NICO"), or any entity owned or controlled by, or operating for or on behalf of, NIOC or NICO, except for a sale or provision to any of the foregoing of the products described in section 5(a)(3)(A)(i) of the Iran Sanctions Act of 1996 (Pub. L. 104-172) (50 U.S.C. 1701 note),

as amended, provided that the fair market value of such products is lower than the applicable dollar threshold specified in that provision;

Note to paragraph (b) (1) of § 561.204: As of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the products described in section 5(a)(3)(A)(i) of the Iran Sanctions Act of 1996 (Pub. L. 104-172) (50 U.S.C. 1701 note), as amended, are refined petroleum products, and for the fair market value of such products to be lower than the applicable dollar threshold specified in that provision the products sold or provided to NIOC, NICO, or any entity owned or controlled by, or operating for or on behalf of, NIOC or NICO, must have a fair market value of less than \$1,000,000, and, during a 12-month period, an aggregate fair market value of less than \$5,000,000.

(2) For the purchase or acquisition of petroleum or petroleum products from Iran; or

(3) For the purchase or acquisition of petrochemical products from Iran.

(c) Prohibitions. (1) A U.S. financial institution shall not open a correspondent account or payable-through account in

the United States for a foreign financial institution for which the opening of such an account is prohibited pursuant to paragraph (a) (1) of this section.

(2) A U.S. financial institution shall not maintain a correspondent account or payable-through account in the United States for a foreign financial institution for which the maintaining of such an account is prohibited pursuant to paragraph (a) (2) (i) of this section.

(3) A U.S. financial institution shall not maintain a correspondent account or payable-through account in the United States for a foreign financial institution in a manner that is inconsistent with any strict condition imposed and in effect pursuant to paragraph (a) (2) (ii) of this section.

(4) The prohibitions in paragraphs (c) (1) through (c) (3) of this section apply except to the extent transactions are authorized by regulations, orders, directives, or licenses that may be issued pursuant to this part, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date of the prohibition.

(d) Exempt activity. Sanctions will not be imposed under paragraph (a) of this section with respect to any foreign financial institution for:

(1) Conducting or facilitating a transaction for the sale of agricultural commodities, food, medicine, or medical devices to Iran or when the underlying transaction has been authorized by the Office of Foreign Assets Control pursuant to any part of this chapter V; or

(2) Conducting or facilitating a transaction involving a natural gas development and pipeline project initiated prior to July 31, 2012, to bring gas from Azerbaijan to Europe and Turkey in furtherance of a production sharing agreement or license awarded by a sovereign government other than the Government of Iran before July 31, 2012.

Note to paragraph (d) (2) of § 561.204: The natural gas development and pipeline project referred to in this paragraph is the project to develop the Shah Deniz natural gas field in Azerbaijan's sector of the Caspian Sea and related pipeline projects to bring the gas from Azerbaijan to Europe and Turkey.

(e) The Secretary of the Treasury may impose sanctions pursuant to paragraph (a) of this section with respect to any significant financial transaction described in paragraphs (b) (1) and (b) (2) of this section only if the President makes the successive determinations that there is a sufficient supply of petroleum and petroleum products from countries other than Iran described in paragraph (h) of § 561.203.

(f) Sanctions will not be imposed under paragraph (a) of this section with respect to any significant financial transaction described in paragraphs (b) (1) and (b) (2) of this section that is conducted or facilitated by a foreign financial institution if:

(1) For the 180-day period during which the financial transaction is conducted or facilitated, the Secretary of State has determined and reported to Congress:

(i) That the country with primary jurisdiction over the foreign financial institution has significantly reduced its crude oil purchases from Iran, thus qualifying for the "significant reduction exception" for the 180-day period during which the financial transaction is conducted or facilitated; or

(ii) That the country with primary jurisdiction over the foreign financial institution has received a significant reduction exception described in this paragraph in a previous period, and, after receiving the exception, has reduced its crude oil purchases from Iran to zero during a subsequent 180-day reporting period; and

(2) The transaction satisfies the conditions and restrictions set forth in paragraphs (j) and (k) of § 561.203.

Note to paragraph (f) of § 561.204: The Secretary of State is to determine whether a country qualifies for the "significant reduction exception" and report such determination to Congress not later than 90 days after the date on which the President makes the initial determination referenced in paragraph (h) of this section, and every 180 days thereafter. Accordingly, a significant reduction exception covers a period of 180 days.

Note to § 561.204: The sanctions regime described in this section is separate from the sanctions regimes described in §§ 561.201 and 561.203 and applies in addition to, and independently of, the sanctions regimes imposed under §§ 561.201 and 561.203.

4. Add new § 561.205 to subpart B to read as follows:

§ 561.205 Evasions; attempts; causing violations; conspiracies.

(a) Any transaction on or after the effective date that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this part is prohibited.

Subpart C-General Definitions

5. Revise paragraph (a) of § 561.301 to read as follows:

§ 561.301 Effective date.

(a) The effective date of a prohibition or condition imposed pursuant to §§ 561.201, 561.203, or 561.204 on the opening or maintaining of a correspondent account or a payable-through account in the United States by a U.S. financial institution for a particular foreign financial institution is

the earlier of the date the U.S. financial institution receives actual or constructive notice of such prohibition or condition.

* * * * *

6. Revise § 561.318 to read as follows:

§ 561.318 Petroleum.

The term petroleum (also known as crude oil) means a mixture of hydrocarbons that exists in liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities.

7. Amend § 561.327 by revising the section heading, redesignating paragraphs (a) through (c) as paragraphs (b) through (d), and adding new paragraph (a) to read as follows:

§ 561.327 Agricultural commodities, food, medicine, and medical devices.

(a) The term agricultural commodities means:

(1) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, that fall within the term "agricultural commodity" as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602); and

(2) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, that are intended for ultimate use in Iran as:

(i) Food for humans (including raw, processed, and packaged foods; live animals; vitamins and minerals; food additives or supplements; and bottled drinking water) or animals (including animal feeds);

(ii) Seeds for food crops;

(iii) Fertilizers or organic fertilizers; or

(iv) Reproductive materials (such as live animals, fertilized eggs, embryos, and semen) for the production of food animals.

* * * * *

8. Add new § 561.328 to subpart C to read as follows:

§ 561.328 Reduce significantly, significantly reduced, and significant reduction.

The terms reduce significantly, significantly reduced, and significant reduction, used with respect to purchases from Iran of petroleum and petroleum products, include a reduction in such purchases in terms of price or volume toward a complete cessation of such purchases.

9. Add new § 561.329 to subpart C to read as follows:

§ 561.329 Iran.

The term Iran means the Government of Iran and the territory of Iran and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights, or jurisdiction, provided that the Government of Iran exercises partial or total de facto control over the area or derives a benefit from economic activity in the area pursuant to international arrangements.

10. Add new § 561.330 to subpart C to read as follows:

§ 561.330 Petrochemical products.

The term petrochemical products includes any aromatic, olefin, and synthesis gas, and any of their derivatives, including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol, and urea.

Subpart D-Interpretations

11. Revise § 561.403 to read as follows:

§ 561.403 Facilitation of certain efforts, activities, or transactions by foreign financial institutions.

For purposes of §§ 561.201, 561.203, and 561.204, the term facilitate or facilitated used with respect to certain efforts, activities, or transactions refers to the provision of assistance by a foreign financial institution for those efforts, activities, or transactions, including, but not limited to, the provision of currency, financial instruments, securities, or any other transmission of value; purchasing; selling; transporting;

swapping; brokering; financing; approving; guaranteeing; or the provision of other services of any kind; or the provision of personnel; or the provision of software, technology, or goods of any kind.

12. Amend § 561.404 by:

a. Revising the introductory text.

b. Revising paragraph (d).

c. Revising the introductory text of paragraph (e).

d. Revising paragraph (e)(1).

The revisions read as follows:

§ 561.404 Significant transaction or transactions; significant financial services; significant financial transaction.

In determining, for purposes of paragraph (a)(5) of § 561.201, whether a transaction is significant, whether transactions are significant, or whether financial services are significant, or, for purposes of paragraph (a) of § 561.203 and

paragraph (b) of § 561.204, whether a financial transaction is significant, the Secretary of the Treasury may consider the totality of the facts and circumstances. As a general matter, the Secretary may consider some or all of the following factors:

* * * * *

(d) Nexus. The proximity between the foreign financial institution engaging in the transaction(s) or providing the financial services and a blocked person described in paragraph (a) (5) of § 561.201, or between the foreign financial institution conducting or facilitating the financial transaction described in paragraph (a) of § 561.203 and the Central Bank of Iran or a designated Iranian financial institution, as defined in § 561.324, or between the foreign financial institution conducting or facilitating the financial transaction described in paragraph (b) of § 561.204 and the National Iranian Oil Company ("NIOC"), the Naftiran Intertrade Company ("NICO"), any entity owned or controlled by, or operating for or on behalf of, NIOC or NICO, or the activities described in paragraphs (b) (2) and (b) (3) of that section. For example, a transaction or financial service in which a foreign financial institution provides brokerage or clearing services to, or maintains an account or makes payments for, a blocked person described in

paragraph (a) (5) of § 561.201, the Central Bank of Iran, a designated Iranian financial institution, NIOC, or NICO in a direct customer relationship generally would be of greater significance than a transaction or financial service a foreign financial institution conducts for or provides to a blocked person described in paragraph (a) (5) of § 561.201, the Central Bank of Iran, a designated Iranian financial institution, NIOC, or NICO indirectly or in a tertiary relationship.

(e) Impact. The impact of the transaction(s) or financial services on the objectives of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, as amended by the Iran Threat Reduction and Syria Human Rights Act of 2012 ("TRA"), or of the financial transaction on the objectives of the National Defense Authorization Act for Fiscal Year 2012, as amended by TRA, or of the financial transaction on the objectives of Executive Order 13622 of July 30, 2012, including:

(1) The economic or other benefit conferred or attempted to be conferred on a blocked person described in paragraph (a) (5) of § 561.201, on the Central Bank of Iran or a designated Iranian financial institution, or on NIOC, NICO, any entity owned or controlled by, or operating for or on behalf of, NIOC

or NICO, or any person engaged in the activities described in paragraphs (b) (2) and (b) (3) of § 561.204;

* * * * *

13. Revise § 561.406 to read as follows:

§ 561.406 Country with primary jurisdiction over the foreign financial institution.

For purposes of § 561.203(i) and § 561.204(f), a country includes any jurisdiction that has its own central bank or contains a separate financial sector authority, and a foreign financial institution (including its foreign branches outside of the United States) is under a country's primary jurisdiction if the foreign financial institution is organized under the laws of the country or any jurisdiction within that country.

14. Add new § 561.408 to subpart D to read as follows:

§ 561.408 Goods or services originating in a country.

(a) Goods originating in a country are goods that have been grown, produced, manufactured, extracted, or processed, and goods that have been substantially transformed, in the country.

(b) Services originating in a country are services performed in that country or services performed in the country to which the services are being exported by a citizen, national, or permanent resident of the country from which the services originate who is ordinarily resident in that country.

(c) For purposes of this part, services originating in a country do not include the brokering of transactions for the sale and exportation of goods or services not originating in that country.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

15. Amend § 561.504 by revising the introductory text of paragraph (a) to read as follows:

§ 561.504 Transactions related to closing a correspondent account or payable-through account.

(a) During the 10-day period beginning on the effective date of the prohibition in § 561.201(c), § 561.203(c)(2), or § 561.204(c)(2) on the maintaining of a correspondent account or a payable-through account for a foreign financial institution whose name is added to the Part 561 List, which is maintained on the Office of Foreign Assets Control's Web site (www.treasury.gov/ofac) on the Iran Sanctions page, U.S. financial institutions that maintain correspondent accounts or payable-through accounts for the foreign financial institution are authorized to:

* * * * *

Subpart G—Penalties

16. Amend § 561.701 by:

- a. Revising paragraph (a)(1).
- b. Adding new paragraph (a)(3).
- c. Revising the Note to paragraph (a) of § 561.701.
- d. Revising paragraph (b).

The revisions and additions read as follows:

§ 561.701 Penalties.

(a) Civil Penalties. (1) As set forth in section 104(c) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195) (22 U.S.C. 8501-8551) ("CISADA") and section 1245(g)(2) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81) (22 U.S.C. 8513a) ("2012 NDAA"), a civil penalty not to exceed the amount set forth in section 206(b) of the International Emergency Economic Powers Act ("IEEPA") (50 U.S.C. 1705(b)) may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any prohibition contained in § 561.201 or § 561.203 or of any order, regulation, or license set forth in or issued pursuant to this part concerning such prohibitions.

* * * * *

(3) Pursuant to section 206 of IEEPA (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury under IEEPA, a civil penalty not to

exceed the amount set forth in section 206(b) of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any prohibition contained in § 561.204 or of any order, regulation, or license set forth in or issued pursuant to this part concerning such prohibition.

Note to paragraph (a) of § 561.701: As of the date of publication in the **FEDERAL REGISTER** of the final rule amending this part to implement sections 503 and 504 of the Iran Threat Reduction and Syria Human Rights Act of 2012 and section 1 and other related provisions of Executive Order 13622 of July 30, 2012 ([INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]), IEEPA provides for a maximum civil penalty not to exceed the greater of \$250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(b) Criminal Penalty. (1) As set forth in section 104(c) of CISADA and section 1245(g)(2) of the 2012 NDAA, a person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any prohibition contained in §§ 561.201 or 561.203 shall, upon conviction, be fined not more than \$1,000,000, or if

a natural person, be imprisoned for not more than 20 years, or both.

(2) Pursuant to section 206 of IEEPA (50 U.S.C. 1705), a person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any prohibition contained in § 561.204 or of any order, regulation, or license set forth in or issued pursuant to this part concerning such prohibition may, upon conviction, be fined not more than \$1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

* * * * *

Subpart H—Procedures

17. Revise § 561.802 to read as follows:

§ 561.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to subsections 104(c), (d), (h), or (i), or section 104A of the Comprehensive Iran Sanctions,

Accountability, and Divestment Act of 2010 (Pub. L. 111-195) (22 U.S.C. 8501-8551), as amended by the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112-158) (22 U.S.C. 8701-8795), pursuant to section 8 of Executive Order 13553 of September 28, 2010 (75 FR 60567, October 1, 2010), pursuant to section 10 of Executive Order 13599 of February 5, 2012 (77 FR 6659, February 8, 2012), pursuant to sections 1 and 12 of Executive Order 13622 of July 30, 2012 (77 FR 45897, August 2, 2012), or pursuant to section 16 of Executive Order 13628 of October 9, 2012 (77 FR 62139, October 12, 2012), and any action of the Secretary of the Treasury described in this part, may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

18. Revise § 561.803 to read as follows:

§ 561.803 Consultations.

In implementing sections 104 and 104A of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195) (22 U.S.C. 8501-8551), as amended by the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112-158) (22 U.S.C. 8701-8795), the Secretary of the Treasury shall

consult with the Secretary of State and may, in the sole discretion of the Secretary of the Treasury, consult with such other agencies and departments and such other interested parties as the Secretary considers appropriate.

Dated: March 7, 2013

Adam J. Szubin,
Director, Office of Foreign Assets Control.

BILLING CODE 04810AL

[FR Doc. 2013-05766 Filed 03/14/2013 at 8:45 am; Publication
Date: 03/15/2013]