

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****31 CFR Part 575****Iraqi Sanctions Regulations; Licensing of Performance on Certain Contracts With the Government of Iraq**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendment.

SUMMARY: This final rule amends the Iraqi Sanctions Regulations to provide a statement of licensing policy regarding specific licensing of U.S. persons seeking to purchase Iraqi-origin petroleum and petroleum products from Iraq. Statements of licensing policy are also provided regarding sales of essential parts and equipment for the Kirkuk-Yumurtalik pipeline system, and sales of humanitarian goods to Iraq, pursuant to United Nations approval. A general license is being added to authorize dealings in Iraqi-origin petroleum and petroleum products that have been exported from Iraq with United Nations and U.S. Government approval. The rule also adds definitions and makes technical amendments.

EFFECTIVE DATE: December 10, 1996.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief, Licensing Division, tel.: 202/622-2480, or William B. Hoffman, Chief Counsel, tel.: 202/622-2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:**Electronic and Facsimile Availability**

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Background

On April 14, 1995, the United Nations Security Council (the "UNSC") adopted Resolution 986, which creates a framework, subject to agreement of the Government of Iraq, that would permit the Government of Iraq to sell \$2 billion worth of petroleum and petroleum products over a 6-month period, with all proceeds placed in a United Nations ("UN") escrow account for designated uses. On May 20, 1996, a Memorandum of Understanding Between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council Resolution 986 (1995) (the "Memorandum of Understanding") was signed by representatives of the Government of Iraq and the UN. The Memorandum of Understanding contains agreements preparatory to implementation of Resolution 986. On August 12, 1996, Procedures to be Employed by the Security Council Committee Established by Resolution 661 (1990) Concerning the Situation Between Iraq and Kuwait in the Discharge of its Responsibility as Required by Paragraph 12 of Security Council Resolution 986 (1995) (the "Guidelines") further elaborated the procedures necessary to implement Resolution 986. A portion of the proceeds in the escrow account will be available for Iraq's purchase of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs, to be specified in a list prepared by Iraq and submitted to and approved by the UN Secretary-General. At the UN level, this program will be administered by the UNSC Committee established pursuant to UNSC Resolution 661 (the "661 Committee"), which has established guidelines concerning procedures for permitted Iraqi purchases and sales. Within the United States, the Treasury Department's Office of Foreign Assets Control ("OFAC"), in consultation with the Department of State, will implement UNSC Resolution 986. No direct financial transactions with the Government of Iraq are permitted.

New §§ 575.327 and 575.328 define the terms "Memorandum of

Understanding" and "Guidelines," and a technical amendment is made to § 575.325 (61 FR 36628, July 12, 1996).

New § 575.523 provides a statement of licensing policy for U.S. persons seeking to purchase petroleum and petroleum products from the Government of Iraq or Iraq's State Oil Marketing Organization ("SOMO") pursuant to UNSC Resolution 986, other relevant Security Council resolutions, the Memorandum of Understanding, and other guidance issued by the 661 Committee. Issuance of a specific license authorizes the licensee to deal directly with the 661 Committee or its designee (the "overseers") appointed by the UN Secretary-General pursuant to UNSC Resolution 986, other relevant Security Council resolutions, the Memorandum of Understanding, and other guidance issued by the 661 Committee. The list of "national oil purchasers" will be supplied to the 661 Committee. Licensees whose contracts are approved by the overseers are authorized to perform those contracts in accordance with their terms.

New §§ 575.524 and 575.525 provide statements of licensing policy for the exportation to Iraq of pipeline parts and equipment necessary for the safe operation of the Iraqi portion of the Kirkuk-Yumurtalik pipeline system, and the sale of humanitarian aid to Iraq.

New § 575.526 adds a general license for dealing in, and importation into the United States of, Iraqi-origin petroleum and petroleum products, the purchase and exportation of which have been authorized in accordance with UNSC Resolution 986, other relevant Security Council resolutions, the Memorandum of Understanding, and other guidance issued by the 661 Committee.

Finally, § 575.522 (61 FR 36628, July 12, 1996) is amended to clarify that the authorization for executory contracts by U.S. persons includes contracts with third parties incidental to permissible executory contracts with the Government of Iraq.

Because the Regulations involve a foreign affairs function, Executive Order 12886 and the provisions of 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 Regulations are being issued without prior notice and public procedure pursuant to the

Administrative Procedure Act (5 U.S.C. 553). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the collections of information contained in the Regulations have been submitted to and approved by the Office of Management and Budget ("OMB"), pending public comment, and have been assigned control number 1505-0130. 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.

The collections of information in this final rule are contained in §§ 575.523, 575.524, and 575.525. This information is required by the Office of Foreign Assets Control for licensing and administrative purposes and for ensuring compliance with the Regulations. The likely respondents and recordkeepers are business organizations.

No assurances of confidentiality are given to persons who furnish information to OFAC unless specifically indicated in advance. It is the policy of OFAC to protect the confidentiality of information in appropriate cases pursuant to the exemptions from disclosure provided under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a).

Estimated total annual reporting and/or recordkeeping burden: 100 hours.

The estimated annual burden per respondent/recordkeeper varies from 30 minutes to 1 1/2 hours, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of respondents and/or recordkeepers: 100.

Estimated annual frequency of responses: 1.

Comments are invited on: (a) whether these collections of information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments concerning the above information, the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project, control number 1505-0130, Washington, DC 20503, with a copy to the Office of Foreign Assets Control,

U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220. Any such comments should be submitted not later than 60 days from publication. Comments on aspects of the Regulations other than those involving collections of information should not be sent to OMB.

List of Subjects in 31 CFR Part 575:

Administrative practice and procedure, Banks, banking, Blocking of assets, Exports, Foreign trade, Humanitarian aid, Imports, Iraq, Oil imports, Penalties, Petroleum, Petroleum products, Reporting and recordkeeping requirements, Specially designated nationals, Travel restrictions.

For the reasons set forth in the preamble, 31 CFR part 575 is amended as follows:

PART 575—Iraqi Sanctions Regulations

1. The authority citation for part 575 is revised to read as follows:

Authority: 50 U.S.C. 1701-1706; 50 U.S.C. 1601-1651; 22 U.S.C. 287c; Pub. L. 101-513, 104 Stat. 2047-55 (50 U.S.C. 1701 note); Pub. L. 104-132, 110 Stat. 1214, 1254 (18 U.S.C. 2332d); Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); 3 U.S.C. 301; E.O. 12722, 55 FR 31803, 3 CFR, 1990 Comp., p. 294; E.O. 12724, 55 FR 33089, 3 CFR, 1992 Comp., p. 317; E.O. 12817, 57 FR 48433, 3 CFR, 1992 Comp., p. 317.

Subpart C—General Definitions

2. Section 575.325 is revised to read as follows:

§ 575.325 986 Escrow Account; United Nations Iraq Account.

The term *986 Escrow Account* or *United Nations Iraq Account* means the escrow account established by the Secretary-General of the United Nations pursuant to paragraph 7 of UNSC Resolution 986.

3. Section 575.327 is added to subpart C to read as follows:

§ 575.327 Memorandum of Understanding.

The term *Memorandum of Understanding* means the Memorandum of Understanding Between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council Resolution 986 (1995).

4. Section 575.328 is added to subpart C to read as follows:

§ 575.328 Guidelines.

The term *Guidelines* means the Procedures to be Employed by the Security Council Committee Established by Resolution 661 (1990) Concerning the Situation Between Iraq and Kuwait

in the Discharge of its Responsibility as Required by Paragraph 12 of Security Council Resolution 986 (1995).

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

5. Section 575.522 is amended by removing paragraph (a)(2), redesignating paragraphs (a)(3) and (a)(4) as (a)(2) and (a)(3) respectively; redesignating paragraphs (b), (c), (d) and (e) as (c), (d), (e), and (f) respectively amending new paragraph (c) by revising "paragraph (a)" to read "paragraphs (a) and (b)"; ; and adding a new paragraph (b) to read as follows:

§ 575.522 Executory contracts with the Government of Iraq for trade in petroleum, pipeline parts and equipment, and humanitarian goods authorized.

(b) United States persons are authorized to enter into executory contracts for the trading, importation, exportation, or other dealings in or related to Iraqi-origin petroleum and petroleum products outside Iraq, the performance of which is contingent upon the prior authorization of the Office of Foreign Assets Control in or pursuant to this part.

6. Section 575.523 is added to subpart E to read as follows:

§ 575.523 Certain transactions in Iraqi petroleum and petroleum products.

(a) Specific licenses may be issued on a case-by-case basis to permit United States persons to purchase Iraqi-origin petroleum or petroleum products from the Government of Iraq in accordance with the provisions of UNSC Resolution 986, other relevant Security Council resolutions, the Memorandum of Understanding, and other guidance issued by the 661 Committee. Licensees will be included on the U.S. oil purchaser list to be provided to the 661 Committee, authorizing such U.S. persons to seek approval from the 661 Committee or its designee for the purchase of Iraqi-origin petroleum or petroleum products. Licensees are authorized to perform a contract approved by the 661 Committee or its designee in accordance with its terms.

(b) Applications for specific licenses pursuant to this section shall provide the following information:

(1) The applicant's full legal name;

(2) The applicant's mailing and street addresses;

(3) The name of the individual(s) responsible for the license application and related commercial transactions and the individual's telephone and facsimile numbers;

(4) If the applicant is a business entity, the state or jurisdiction of incorporation and principal place of business;

(5) Written certification that the applicant has entered into an executory contract for the purchase of Iraqi-origin petroleum or petroleum products with the Government of Iraq, that the contract accords with normal arms-length commercial practice, and that the applicant is familiar with this part, particularly §§ 575.601 and 575.602, and will make the executory contract and other documents related to the purchase of Iraqi-origin petroleum or petroleum products available to the Office of Foreign Assets Control in accordance with the requirements of this part; and

(6) Written certification that the applicant understands that issuance of a license pursuant to this section does not authorize a licensee to provide goods, services, or compensation of any kind to the Government of Iraq other than that specifically provided in contracts entered into by the applicant and the Government of Iraq and submitted to and approved by the 661 Committee or its designee.

(c) Applications for specific licenses pursuant to this section shall be submitted to the Licensing Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220.

(d) Contracts may be performed only as specifically authorized pursuant to this section unless additional authorization is granted or obtained pursuant to this part for any amendment or modification.

(e) This section does not authorize any transfer of funds or other financial or economic resources to or for the benefit of the Government of Iraq or a person in Iraq except transfers to the 986 Escrow Account.

(f) Attention is drawn to § 575.418 regarding authorization for transactions ordinarily incident to a licensed transaction.

7. Section 575.524 is added to subpart E to read as follows:

§ 575.524 Exportation of pipeline parts and equipment.

(a) Specific licenses may be issued to U.S. persons on a case-by-case basis to permit the sale and exportation to Iraq of pipeline parts and equipment essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq, in accordance with the provisions of UNSC Resolution 986, other applicable Security Council resolutions, the Memorandum of Understanding,

and applicable guidance issued by the 661 Committee.

(b) Applications for specific licenses pursuant to this section shall be made in advance of the proposed sale and exportation, and provide the following information:

(1) Identification of the applicant, including:

- (i) Applicant's full legal name;
- (ii) Applicant's mailing and street addresses;
- (iii) The name of the individual(s) responsible for the application and related commercial transactions and the individual's telephone and facsimile numbers; and

(iv) If the applicant is a business entity, the state or jurisdiction of incorporation and principal place of business;

(2) The name and address of all parties involved in the transactions and their role, including financial institutions and any Iraqi broker, purchasing agent, or other participant in the purchase of the pipeline parts or equipment;

(3) The nature, quantity, value and intended use of the pipeline parts and equipment;

(4) The intended point(s) of entry into Iraq, proposed dates of entry and delivery, and the final destination in Iraq of the pipeline parts and equipment;

(5) A copy of the concluded contract with the Government of Iraq and other relevant documentation, all of which must comply with the provisions of UNSC Resolution 986, other applicable Security Council resolutions, the Memorandum of Understanding, and applicable guidance issued by the 661 Committee; and

(6) A statement that the applicant is familiar with the requirements of the above-referenced documents, particularly Memorandum of Understanding paragraph 24 and Guidelines paragraphs 35 and 45, and will conform the letter of credit and related financing documents to their terms.

(c) Applications for specific licenses pursuant to this section shall be submitted to the Licensing Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220.

(d) Attention is drawn to § 575.418 regarding authorization for transactions ordinarily incident to a transaction licensed by OFAC. Transactions of a U.S. person that are incidental to a third-country national's activities pursuant to UNSC Resolution 986 require specific OFAC licensing.

Licensing requirements for the reexportation of goods subject to U.S. jurisdiction are addressed in § 575.205.

(e) Contracts may be performed only pursuant to the terms submitted to OFAC when specifically authorized pursuant to this section unless additional authorization is granted or obtained pursuant to this part for any amendment or modification of such contracts.

(f) Payment for goods exported pursuant to this section may be obtained only from the 986 Escrow Account, and must conform to the requirements of UNSC Resolution 986, other applicable Security Council resolutions, the Memorandum of Understanding, and applicable guidance issued by the 661 Committee.

(g) Attention is drawn to § 575.101 regarding compliance with other applicable laws and regulations. No license or authorization contained in or issued pursuant to this part shall be deemed to authorize the exportation, reexportation or retransfer of goods, technology, or services that are subject to unmet export license application requirements of another agency of the United States Government.

8. Section 575.525 is added to subpart E to read as follows:

§ 575.525 Exportation of humanitarian aid.

(a) Specific licenses may be issued to U.S. persons on a case-by-case basis to permit the sale and exportation to Iraq of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs of the Iraqi population ("Humanitarian Aid"), in accordance with the provisions of UNSC Resolution 986, other applicable Security Council resolutions, the Memorandum of Understanding, and applicable guidance issued by the 661 Committee.

(b) Applications for specific licenses pursuant to this section shall be made in advance of the proposed sale and exportation, and provide the following information:

(1) Identification of the applicant, including:

- (i) Applicant's full legal name;
- (ii) Applicant's mailing and street addresses;
- (iii) The name of the individual(s) responsible for the application and related commercial transactions and the individual's telephone and facsimile numbers; and

(iv) If the applicant is a business entity, the state or jurisdiction of incorporation and principal place of business.

(2) The name and address of all parties involved in the transactions and their role, including financial

institutions and any Iraqi broker, purchasing agent, or other participant in the purchase of the Humanitarian Aid;

(3) The nature, quantity, value and the intended use of the Humanitarian Aid;

(4) The intended point(s) of entry into Iraq, proposed dates of entry and delivery, and the final destination in Iraq of the Humanitarian Aid;

(5) A copy of the concluded contract with the Government of Iraq or the United Nations Inter-Agency Humanitarian Programme and other relevant documentation, all of which must comply with the provisions of UNSC Resolution 986, other applicable Security Council resolutions, the Memorandum of Understanding, and applicable guidance issued by the 661 Committee; and

(6) A statement that the applicant is familiar with the requirements of UNSC Resolution 986, other applicable Security Council resolutions, the Memorandum of Understanding, and applicable guidance issued by the 661 Committee, particularly Memorandum of Understanding paragraph 24 and Guidelines paragraphs 35 and 45, and will conform the letter of credit and related financing documents to their terms.

(c) Applications for specific licenses pursuant to this section shall be submitted to the Licensing Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220.

(d) Attention is drawn to § 575.418 regarding authorization for transactions ordinarily incident to a transaction licensed by OFAC. Transactions of a

U.S. person that are incidental to a third-country national's activities pursuant to UNSC Resolution 986 require specific OFAC licensing. Licensing requirements for the reexportation of goods subject to U.S. jurisdiction are addressed in § 575.205.

(e) Contracts may be performed only pursuant to the terms submitted to OFAC when specifically authorized pursuant to this section unless additional authorization is granted or obtained pursuant to this part for any amendment or modification of such contracts.

(f) Payment for goods exported pursuant to this section may be obtained only from the 986 Escrow Account and must conform to the requirements of UNSC Resolution 986, other applicable Security Council resolutions, the Memorandum of Understanding, and applicable guidance issued by the 661 Committee.

(g) Attention is drawn to § 575.101 regarding compliance with other applicable laws and regulations. No license or authorization contained in or issued pursuant to this part shall be deemed to authorize the exportation, reexportation or retransfer of goods, technology, or services that are subject to unmet export license application requirements of another agency of the United States Government.

9. Section 575.526 is added to subpart E to read as follows:

§ 575.526 Dealings in and importation of certain Iraqi-origin petroleum and petroleum products authorized.

(a) United States persons are authorized to deal in, and to import into

the United States, Iraqi-origin petroleum and petroleum products, the purchase and exportation from Iraq of which have been authorized by the 661 Committee or its designee and, if otherwise required pursuant to this part, by the Office of Foreign Assets Control.

(b) This section does not authorize any transfer of funds or other financial or economic resources to or for the benefit of the Government of Iraq or a person in Iraq except transfers to the 986 Escrow Account.

(c) Attention is drawn to § 575.418 regarding authorization for transactions ordinarily incident to a licensed transaction.

10. Section 575.901 is amended by adding a sentence to the end thereof to read as follows:

§ 575.901 Paperwork Reduction Act Notice.

* * * The information collection requirements in §§ 575.523, 575.524, and 575.525 have been approved by the Office of Management and Budget and assigned control number 1505-0130.

Dated: December 9, 1996.

R. Richard Newcomb,
Director, Office of Foreign Assets Control.

Approved: December 9, 1996.
Elisabeth A. Bresee,
Deputy Assistant Secretary (Law Enforcement).

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