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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 747, 748 and 762

[Docket No. 160303182-6182-01]

RIN 0694-AG89

Amendment to the Export Administration Regulations: Removal of Special Iraq

Reconstruction License

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) proposes to amend the Export Administration Regulations (EAR) to remove the Special Iraq Reconstruction License (SIRL) from the EAR. The action, if published in final form, would further the objectives of the Retrospective Regulatory Review Initiative that directs BIS and other federal agencies to streamline regulations and reduce unnecessary regulatory burdens on the public. Specifically, the SIRL is outdated and seldom used by exporters, who now have more efficient options for exports and reexports to Iraq and transfers (in-country) in Iraq. This rule also makes conforming changes.

DATES: Comments must be received by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The identification number for this rulemaking is BIS-2016-0017.

- By email directly to: *publiccomments@bis.doc.gov*. Include RIN 0694–AG89 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230. Refer to RIN 0694–AG89.

FOR FURTHER INFORMATION CONTACT:

Thomas Andrukonis, Director, Export Management and Compliance Division, Office of Exporter Services, Bureau of Industry and Security, by telephone at (202) 482-8016 or by email at *Thomas.Andrukonis@bis.doc.gov* .

SUPPLEMENTAL INFORMATION

Background

In this rule, the Bureau of Industry and Security (BIS) proposes to continue to advance the President’s directives in the Retrospective Regulatory Review Initiative to streamline regulations, reduce unnecessary regulatory burdens on the public and modernize export controls. (See “Improving Regulatory Review” (Executive Order 13563 of January 18, 2011). Consistent with these directives and objectives, in this rule, BIS proposes to remove the Special Iraq Reconstruction License (SIRL) from the Export Administration Regulations (EAR).

BIS established the SIRL in 2004 (69 FR 46070, July 30, 2004) to supplement options to facilitate exports and reexports to Iraq and transfers within Iraq of items in furtherance of civil reconstruction and other projects in Iraq funded by specified entities, including the United States government. At the time of its establishment, SIRL was intended to benefit the public by allowing for faster processing times as compared to individual license applications, and longer license validity periods, which would extend to the completion or discontinuation of the

associated reconstruction project (in contrast, individual license applications generally only had a two-year validity period). However, exporters supplying items used in support of the civil reconstruction efforts in Iraq have not relied on the SIRL to advance those efforts, apparently because of its complexity and narrowness.

Since 2004, BIS has processed only three applications for the SIRL, and granted only one approval, as compared to over 400 approved individual license applications for items to Iraq between 2012 and 2015. A SIRL applicant must provide details regarding the items to be exported or reexported to or transferred within Iraq, a narrative statement to identify all parties to the transaction, and a description of the reconstruction project that formed the basis of the transaction. In addition, the applicant must provide separate written statements from all agencies providing funding, and certification that all parties to the transaction will obtain licenses prior to transferring the items on the license application within Iraq or reexporting the items to end users not authorized under the SIRL. SIRL holders must submit reports when the Iraq project is discontinued or is completed and must get approval from BIS to make specified changes to the respective SIRL. These requirements are numerous compared to the individual license application process or the use of other authorizations such as eligible license exceptions, resulting in exporters choosing to apply for or use individual licenses and other authorizations under the EAR to ship items to Iraq instead of the SIRL.

In addition, with the implementation of updates to the EAR, the relative advantages of the SIRL have been offset by changes to individual licenses and other types of authorizations offered by BIS that provide less complex alternatives to the SIRL. For example, in addition to streamlined procedures for submitting license applications and improved processing times, BIS now issues individual licenses with a four-year validity period, with agency consideration of

requests to extend the validity period. Similarly, most individual licenses now do not include a requirement for reports on the authorized items exported or reexported. Additionally, license exceptions such as License Exception Temporary imports, exports, and reexports, and transfers (in-country) (TMP) (Section 740.9 of the EAR) have been expanded. (TMP now includes authorizations for temporary exports to a U.S. person's foreign subsidiary, affiliates, or facility abroad outside of Country Group B. Additionally, BIS will, upon request, authorize the retention of items abroad that were exported under License Exception TMP beyond one year and up to a total of four years.)

Thus, the SIRL has proven not to be useful. Its removal from the EAR is consistent with and would advance regulatory initiatives priorities. As part of the removal, this rule also would make conforming changes in the EAR.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule amends collections previously approved by the Office of Management and Budget (OMB) under Control Numbers 0694-0088, “Simplified Network Application Processing + System (SNAP+) and the Multi-Purpose Application,” which carries a burden hour estimate of 43.8 minutes to prepare and submit form BIS-748; and 0694-0137, “License Exemptions and Exclusions.”

The total burden hours associated with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and the aforementioned OMB Control Numbers would be expected to decrease as a result of this proposed removal of part 747 of the EAR and related provisions if the rule is eventually issued in final form, thereby reducing burden hours associated with approved collections related to the EAR.

Public comment is sought regarding: whether the collection of information, for the provisions BIS proposes to remove, is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce at the

ADDRESSES above, and e-mail to OMB at OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.
4. **Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.).** The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

Economic Impact. BIS believes this rule would have no economic impact, because, although this rule would eliminate the availability of the SIRL, entities are not using the SIRL. Moreover, they could still obtain individual validated licenses from BIS to export their product(s). The individual validated licenses that BIS issues are generally less burdensome and require fewer compliance/reporting measures than the measures required for a SIRL. For example, a SIRL applicant must provide a narrative statement to identify all parties to the transaction, and a description of the reconstruction project. In addition, the applicant must provide separate written statements for all participating agencies and certification that all parties to the transaction will obtain licenses prior to transferring items within Iraq or reexporting items outside of Iraq for end users not authorized under the SIRL. SIRL holders must submit reports when the Iraq project is discontinued or is completed and

must get prior approval for any changes to their SIRL. Although these requirements may be included as conditions on an individual validated license, BIS's license applications review process for individual validated licenses includes other methods, less burdensome on the exporter, to vet the bona fides of parties to the proposed transaction and to verify compliance. Also, impacted entities would have the convenience of applying for a license via the Simplified Network Application Process-Redesign (SNAP-R) System, an updated system for electronically filing export and reexport license applications, which is not available for the submission of SIRL applications. Finally, the historical lack of usage of the SIRL does not warrant maintaining such a complex option.

Number of Small Entities. Since the SIRL's introduction in 2004, there have been only three applications for it, with only one application approved. Due to the nature of the SIRL and the complexity of its requirements, BIS expects that past applicants would be considered large entities under the Small Business Administration's size standards. However, BIS does not collect data on the size or annual revenue of these entities, and thus some of these entities may be considered small under the SBA size standards. Also, although small entities likely would not be the direct or the primary users of the SIRL, BIS acknowledges that small entities may have been parties to SIRL transactions. To assist in the evaluation of a significant economic impact of this rule on a substantial number of small entities, BIS welcomes comments to explain how and to what extent your business or organization could be affected, if your business or organization is a small entity and if adoption of any of the amendments discussed in this proposed rulemaking could have a significant financial impact on your operations.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials

15 CFR Part 747

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements

15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements

Accordingly, parts 730, 747, 748 and 762 of the Export Administration Regulations (15 CFR parts 730 – 774) are amended as follows:

PART 730 – [AMENDED]

1. The authority citation for part 730 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR

36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of May 6, 2015, 80 FR 26815 (May 8, 2015); Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016).

Supplement No. 1 to Part 730 – [Amended]

2. Supplement No. 1 to Part 730 is amended by revising the entry for Collection number “0694-0129”. The revision reads as follows:

SUPPLEMENT NO. 1 TO PART 730 – INFORMATION COLLECTION

REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

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Collection No.	Title	Reference in the EAR
*	*	*
0694-0129	Export and Reexport Controls For Iraq	§§ 732.3, 738, 744.18, 746.3(b)(1), 750, 758, 762, 772, 774.
*	*	*

PART 747 – [REMOVED AND RESERVED]

3. Remove and reserve part 747.

PART 748 – [AMENDED]

4. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

§748.1 – [Amended]

5. Section 748.1 is amended by removing the parenthetical phrase “(other than Special Iraq Reconstruction License applications)” from the first sentence of paragraph (d).

§ 748.7 – [Amended]

6. Section 748.7 is amended by removing the parenthetical phrase “(other than Special Iraq Reconstruction Licenses)” from paragraphs (a) and (d).

PART 762 – [AMENDED]

7. The authority citation for part 762 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

§ 762.2 – [Amended]

8. Section 762.2 is amended by removing and reserving paragraph (b)(17).

DATED: June 1, 2016

Kevin J. Wolf

Assistant Secretary for Export Administration

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