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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 575

Iraqi Sanctions Regulations; Executory 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 general license authorizing U.S. persons to enter into executory contracts with the Government of Iraq for the purchase of Iraqi-origin petroleum and petroleum products, the sale of essential parts and equipment for the Kirkuk-Yumurtalik pipeline system, and the sale of humanitarian goods, with performance conditioned upon approval by the Office of Foreign Assets Control within the framework of United Nations Security Council Resolution 986 (1995).

EFFECTIVE DATE: July 10, 1996.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

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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 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 United Nations (the "UN"). The Memorandum of Understanding contains agreements preparatory to implementation of 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 will establish 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.

This final rule amends the Iraqi Sanctions Regulations, 31 CFR part 575 (the "Regulations"), to provide a general license in new § 575.522, authorizing U.S. persons to enter into executory contracts with the Government of Iraq for the purchases of Iraqi-origin petroleum and petroleum products, and the sales of humanitarian goods and pipeline parts and equipment permitted pursuant to UNSC Resolution 986, provided that no contract with the Government of Iraq can be performed except as further authorized by OFAC. New §§ 575.323, 575.324, 575.325, and 575.326, provide definitions for the terms "661 Committee," "UNSC Resolution 986," "986 Escrow Account," and "executory contract."

All executory contracts must contain terms requiring that all proceeds of oil purchases from the Government of Iraq, including SOMO, must be placed in the UN escrow account at Banque Nationale de Paris, New York (the "986 Escrow Account"), and all Iraqi payment for sales of authorized pipeline parts and equipment, humanitarian goods, and incidental transaction costs borne by Iraq will, upon 661 Committee approval, be paid or payable out of the 986 Escrow Account.

The Office of Foreign Assets Control will provide further guidance on licensing policy for purchases of Iraqi-origin petroleum and petroleum products, and sales to Iraq of pipeline parts and equipment essential to the safe operation of the Kirkuk-Yumurtalik pipeline and of humanitarian goods, once the 661 Committee has provided guidance on its requirements for contract approval.

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.

There is no collection of information contained herein.

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 continues 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); 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.

Subpart C—General Definitions

2. Section 575.323 is added to subpart C to read as follows:

§ 575.323 661 Committee.

The term *661 Committee* means the Security Council Committee established by UNSC Resolution 661, and persons acting for or on behalf of the Committee under its specific delegation of authority for the relevant matter or category of activity, including the overseers appointed by the UN Secretary-General to examine and approve agreements for purchases of petroleum and petroleum products from the Government of Iraq pursuant to UNSC Resolution 986 (1995).

3. Section 575.324 is added to subpart C to read as follows:

§ 575.324 UNSC Resolution 986.

The term *UNSC Resolution 986* means United Nations Security Council Resolution 986, adopted April 14, 1995.

4. Section 575.325 is added to subpart C to read as follows:

§ 575.325 986 Escrow Account.

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

5. Section 575.326 is added to subpart C to read as follows:

§ 575.326 Executory contract.

The term *executory contract* means a contract which cannot be performed according to its terms until a stated condition has been fulfilled, such as a contract which requires the approval of a regulatory body before the contracting parties may begin performance.

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

6. Section 575.522 is added to subpart E 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.

(a) United States persons are authorized to enter into executory contracts with the Government of Iraq for the following transactions, the performance of which (including any preparatory activities, payments or deposits related to such executory contracts) is contingent upon the prior authorization of the Office of Foreign Assets Control in or pursuant to this part:

(1) The purchase and exportation from Iraq of Iraqi-origin petroleum and petroleum products;

(2) The trading, importation, exportation, or other dealings in or related to Iraqi-origin petroleum and petroleum products outside Iraq;

(3) The sale and exportation to Iraq of parts and equipment that are essential for the safe operation of the Kirkuk–Yumurtalik pipeline system in Iraq; and

(4) The sale and exportation to Iraq of medicines, health supplies, foodstuffs,

and materials and supplies for essential civilian needs.

(b) The authorization contained in paragraph (a) of this section applies only to executory contracts meeting both of the following conditions:

(1) The executory contracts, including all related financing, insurance, transportation, delivery, and other incidental contracts, are consistent with all requirements of UNSC Resolution 986, other applicable Security Council resolutions, the May 20, 1996 Memorandum of Understanding Between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council Resolution 986 (1995), and applicable guidance issued by the 661 Committee; and

(2) The executory contracts make any performance involving the exportation, reexportation, transfer or supply of any goods, technology or services that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. See § 575.101(b).

(c) Nothing in this section authorizes any transaction related to a United States person's travel to Iraq or activity within Iraq, or any debit to an account blocked pursuant to this part.

(d) Note: U.S. passports must be validated by the U.S. Department of State for travel to Iraq.

(e) Attention is drawn to the recordkeeping and retention requirements of § 575.601.

Dated: July 9, 1996.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 9, 1996.

James E. Johnson,

Assistant Secretary (Enforcement).

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