



Advancing Peace and the Iranian-American Community

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April 19, 2018

Re: Request for Exception Pursuant to 15 C.F.R. § 30.62

Dear Mr. Kelly, Ms. Downs, Ms. Kipel, and Mr. Singer:

We are writing on behalf of the National Iranian American Council (“NIAC”), the largest grassroots organization in the United States representing the interests of Iranian Americans, to request that the United States Census Bureau (“Census Bureau”) and the United States Custom and Border Protection (“CBP”) grant an exception to the regulatory requirement mandating that all shipments destined for Iran, regardless of value, include an Electronic Export Information (“EEI”) filing. The strict and continued enforcement of this requirement is creating unnecessary hardship for the Iranian-American community, frustrating broader U.S. policy objectives vis-à-vis Iran, and nullifying the effect of license authorizations issued by other U.S. federal agencies. In order to cure these defects and to provide time for the relevant agencies to revisit the regulatory requirement, we are herein requesting that the Census Bureau and CBP grant an exception to this requirement, as the agencies are permitted to do by law.

The Census Bureau and CBP are granted the authority to issue exceptions to the requirements of the Foreign Trade Regulations (“FTR”), 15 C.F.R. Part 30. Specifically, 15 C.F.R. § 30.62 permits the Census Bureau and the CBP to “jointly authorize the...exception to the requirements of the [FTR] as warranted by the circumstances in individual cases of emergency where strict enforcement of the regulations would create a hardship.” Section 30.62 of the FTR further states that, “[i]n cases where export control requirements...are involved, the concurrence of the regulatory agency and CBP [must] be obtained.”

We are herein requesting an exception to the filing requirement for shipments to Iran. Pursuant to 15 C.F.R. § 30.16(d), a shipment destined for certain countries identified in Country Group E:1 or E:2, as set forth in Supplement No. 1 to 15 C.F.R. Part 740, shall require EEI filings, regardless of value, unless such shipment is eligible for an exemption pursuant to 15 C.F.R. § 30.37(y) and does not require a license by the United States Department of the Commerce's Bureau of Industry and Security ("BIS") or any other U.S. federal agency. Because most shipments to Iran require a license from the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC"), all shipments destined for Iran must include an EEI filing regardless of value.

This regulatory requirement has frustrated efforts by Iranian Americans to send gifts and other items to Iran that are authorized by OFAC pursuant to general or specific licenses and has complicated U.S. policy objectives vis-à-vis Iran insofar as OFAC's license authorizations are intended to facilitate certain specified trade between the two countries. For instance, OFAC's regulations authorize certain otherwise prohibited transactions, including, as an example, the exportation from the United States to Iran of goods sent as gifts to persons provided that the value of each gift is not more than \$100 and the goods are of a type and in quantities normally given as gifts between individuals. *See* 31 C.F.R. § 560.506.¹ Tasked with administering U.S. sanctions targeting Iran, OFAC has determined that the sending of such gifts to Iran is consistent with U.S. foreign policy interests and should thus be encouraged. To this end, OFAC has issued a general license authorizing U.S. persons to engage in such transactions without requiring prior written approval from the agency. By requiring U.S. persons, however, to submit an EEI filing prior to shipping permissible items as gifts to persons in Iran, the FTR frustrates not only the U.S. persons attempting to ship such gifts to Iran but also the broader U.S. policy objective of facilitating such specified trade with Iran.

Our concern is further underlined by the fact that – despite the apparent prohibition against shipments destined to Iran absent an EEI filing – the United States Postal Service ("USPS"), in a letter to NIAC dated April 3, 2018, acknowledged USPS had only begun to enforce the relevant prohibition and to return packages destined for Iran that did not include evidence of an EEI filing beginning in August 2017. It is unclear (and left unexplained) as to what prompted this change in USPS's enforcement posture vis-à-vis the relevant regulatory provision, but Iranian Americans have long taken advantage of the license authorizations located in the ITSR to send gifts and other permissible items to family and other loved ones in Iran. Iranian Americans' continued ability to do so in the future is uncertain at best, in light of USPS's new enforcement posture regarding shipments destined for Iran.

For these reasons, while NIAC is preparing further submissions to the relevant agencies seeking amendments to the underlying regulatory provisions barring shipments destined for Iran absent an EEI filing, we are respectfully requesting that the Census Bureau and CBP authorize an exception to this regulatory requirement as its continued enforcement is creating a significant hardship for Iranian Americans and is frustrating broader U.S. policy objectives vis-à-vis Iran, as evident in the underlying OFAC regulations. Moreover, we are also requesting that OFAC consent to such exception, as doing so will help better realize its own policy objectives as identified in the license authorizations granted for certain specified trade with Iran. We believe that this stop-gap measure will send an important signal to

¹ By issuing a general license authorizing the export of such items to Iran, OFAC "authorizes a particular type of transaction for a class of persons *without the need to apply for a license.*" *See* OFAC FAQ # 74 (June 16, 2006).

the Iranian-American community that the relevant U.S. federal agencies are seeking to remediate hardship caused by enforcement of the FTR regulations and will help ensure a unified approach between U.S. federal agencies regarding trade with Iran.

Thank you for your consideration, and we look forward to your response.

Sincerely,

Jamal Abdi
Executive Director, NIAC Action

cc: John Smith
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