

DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Part 748**

[Docket No. 100826397-0346-02]

RIN 0694-AE98

Simplified Network Application Processing System, On-Line Registration and Account Maintenance**AGENCY:** Bureau of Industry and Security, Commerce.**ACTION:** Proposed rule.

SUMMARY: The Bureau of Industry and Security (BIS) is proposing to implement an on-line registration process for obtaining an account to submit license applications and similar documents electronically. The current registration process requires paper and facsimile submissions. This proposed rule sets forth the information that parties registering on-line would be required to provide to BIS and sets forth the duties that registered parties would have with respect to keeping information in their accounts current.

DATES: Comments must be received by BIS no later than January 24, 2011.

ADDRESSES: Comments may be submitted via to any of the following.

- The Federal e-rulemaking portal, *regulations.gov*. The *regulations.gov* docket number for this rule is: BIS-2010-0037.
- Via e-mail at publiccomments@bis.doc.gov—refer to RIN 0694-AE98 in the subject line.
- Mail or delivery to Regulatory Policy Division, Room 2705, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230—refer to RIN 0694-AE98 in the comment.

FOR FURTHER INFORMATION CONTACT: Thomas W. Andrukonis, Director, Export Management and Compliance Division, Office of Exporter Services, telephone 202.482.6393, e-mail tandruko@bis.doc.gov.

SUPPLEMENTARY INFORMATION:**Background**

BIS administers an export licensing program pursuant to the Export Administration Regulations. In connection with this program, BIS requires most parties to submit license applications, classification requests, encryption registrations, License Exception AGR notifications and foreign national review requests in connection with the License Exceptions APP and CIV (herein “work items”) electronically via BIS’s Simplified Network

Application Processing (SNAP-R) system. Currently, parties must register to use that system via a paper- or facsimile-based process. BIS plans to replace that registration process with one that is exclusively on-line.

Organizations or individuals who submit work items would be referred to as “filing entities.” Individuals who act on behalf of filing entities would be known as “individual users.” For each filing entity, at least one individual user would act as an “account administrator.” An account administrator would be able to submit work items on behalf of his or her filing entity and would have additional responsibilities within the on-line registration system.

An account administrator would have the ability to add and remove individual users to or from the account of his or her filing entity. The account administrator would also be able to designate other individual users who are authorized to act on behalf of the same filing entity as account administrators or to terminate an individual user’s account administrator status. The account administrator would be able to deactivate the account of an individual user and reactivate the account of a previously deactivated individual user. The account administrator would be able to update the filing entity’s identifying information such as name and address and any individual user’s identifying information such as name and telephone number. The account administrator would also be able to reset an individual user’s password.

BIS anticipates that once this system is in place, the current processes in which BIS employees create on-line accounts for filing entities and add or remove new individual users to or from a filing entity’s account in response to written or facsimile communications would cease. Account administrators for filing entities would handle routine changes to the filing entities’ accounts and BIS personnel would become involved only if necessary to protect a government interest such as preventing misuse of the SNAP-R system or if necessary to assist someone attempting to register on-line or administer an account.

BIS intends to begin operating the on-line registration system on the date of publication of the final rule, but proposes to phase in mandatory use of on-line registration and account management according to the following schedule.

New Filing Entities

On the effective date of the final rule and for 30 days thereafter, an individual registering a filing entity that does not

currently have a SNAP-R account would be able to use either the existing paper- and facsimile-based process or the new on-line registration process described in the following paragraph. Beginning 31 days after the effective date of the final rule, the on-line registration process would be mandatory for all new registrants.

Requirement To Designate an Account Administrator at the Time of Electronic Registration

A person registering on-line for a filing entity that does not have a SNAP-R account, will be required to enter all of the identifying information for the filing entity including a certification that the person is authorized to register the filing entity and to act as account administrator for the filing entity as well as his or her own identifying information. That person will become the initial account administrator for that filing entity.

Deadlines for Designating an Account Administrator If the Filing Entity Was Not Registered Electronically

Filing entities that are registered to use SNAP-R on the effective date of the final rule and filing entities that elect to use the paper and facsimile based process during the first 30 days following the effective date of the final rule would be required to designate an account administrator as described below.

On the effective date of the final rule and for 90 days thereafter, any individual user who is authorized to submit work items on behalf of a filing entity would be able to continue to access SNAP-R, submit new work items and perform any necessary tasks in connection with pending work items. In addition, the first such individual user who designates himself or herself as the account administrator would be required to certify that he or she is authorized to act as account administrator and would become the initial account administrator. BIS would inform via e-mail all other individual users who are authorized to act for that filing entity of the identity of the newly designated account administrator.

During the period beginning 91 days after the effective date of the final rule and ending 180 days after the effective date of the final rule, no individual user from a filing entity that does not have at least one account administrator would be able to access the SNAP-R system for any purpose other than to designate himself or herself as account administrator for that filing entity and certify that he or she is authorized to act as account administrator. As soon as

one individual user is designated as the account administrator, that individual user as well as all of the other individual users from that filing entity will regain full SNAP-R access.

Beginning 181 days after the effective date of the final rule, all filing entity accounts for which no account administrator has been designated would become inactive. To use the account for any purpose, an individual would have to log on to the SNAP-R Web site and furnish all of the information that would be required to register a new filing entity.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation contains a collection previously approved by OMB under control number 0694-0096. BIS believes that this rule will not materially affect the burden imposed by that collection. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to jseehra@omb.eop.gov, or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, Room 2705, 14th Street, and Pennsylvania Ave., NW., Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. 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 that this rule will reduce the burden on small entities. This rule will eliminate the current and archaic practice of using a paper and facsimile based process for obtaining authorization to submit work items electronically. It will also reduce the

time between initial submission of registration information and receipt of authorization to use the electronic filing system. Finally, the system will allow registered filing entities to add or remove individual users without waiting for approval from BIS.

BIS implemented a revised version of its Simplified Network Applications Processing System (SNAP-R) in October 2006. The SNAP-R system provides a Web based mechanism for parties to submit license applications, classification requests, encryption registrations, License Exception AGR notifications and foreign national review requests in connection with License Exceptions APP and CIV electronically and for BIS to respond electronically to each matter. In October 2008, BIS made use of the SNAP-R system mandatory except in five specified circumstances. SNAP-R is the vehicle through which BIS receives most of the submissions for which SNAP-R is available. In calendar year 2009, BIS received 27,245 submissions via SNAP-R and 55 submissions via paper. On-line processing provides advantages to the government and to the parties submitting work items through reduced processing times.

Despite these advantages, BIS still requires parties registering to use the SNAP-R on-line system and those who need to make changes to their accounts to use paper or facsimile transmissions to do so. A party wishing to register now obtains a description of the identifying information that the party must submit and the text of a certification that the party must make from the BIS Web site. The party copies the information onto its letterhead and sends or faxes the paper document to BIS. BIS personnel then assign a company identification number to the filing entity and a personal identification number to each individual user identified on the submission and communicate those numbers to the appropriate representative of the filing entity and to each individual user. A separate letter must be sent or faxed to BIS each time a new individual user needs to be authorized to file on behalf of the filing entity and BIS personnel issue a new personal identification number to that person via telephone or e-mail. Finally, a letter must be sent to BIS when an individual user no longer is authorized to submit work items on behalf of the filing entity. BIS personnel then deactivate that individual user's account.

Under the procedure envisioned by this proposed rule, a potential individual user, representing a filing entity would access a Web page where

he or she would enter the necessary identifying information about himself or herself and about the filing entity which that person represents. That individual would also certify on-line that he or she is authorized to register the filing entity and to act as account administrator for the filing entity. That individual would receive both the company identification number and his or her personal identification number via e-mail. Upon receipt of those numbers, that individual user could submit work items on behalf of the filing entity. He or she could also register new individual users for the filing entity. Once registered, each such new individual user could log on and begin submitting work items.

The process will be entirely Web based and will not require users to purchase hardware or software. Parties who do not have access to the Internet would not be affected by this rule because they are exempt from the requirement to submit work items electronically and thus would not need to register to use SNAP-R.

Number of Small Entities

BIS does not collect information about the size of the entities that submit license applications, classification requests, and related submissions via the SNAP-R system. In 2007, BIS made an attempt to estimate the number of small entities that would be affected by the rule requiring electronic submissions by the following method.

BIS determined that 1,592 entities sent in two or more submissions in 2006 (entities that make no more than one submission per year are exempt from the electronic filing requirement). By reviewing public information BIS determined that 252 of these entities could not possibly be small entities because they had more than \$100 million in annual sales, had more than 5,000 employees or because they were United States government agencies. BIS did not have a basis for determining whether the remaining 1340 entities were small entities.

Because many industries may be involved in exporting, BIS could not directly relate its data to the "Small Business Size Standards Matched to North American Industry Classification System" (the Standards Table) published by the Small Business Administration (SBA). However, BIS notes that the November 5, 2010, Standards Table designates business as small based on either sales or number of employees, depending on the industry. The maximum annual sales and maximum number of employees listed in that document are \$35.5 million and

1,500, respectively. Both numbers are far below the threshold selected by BIS for screening entries as to size. A few entries in the Standards Table are based on having no more than million in assets, but these entries are financial institutions that are unlikely to be exporting the kinds of items that require a specific authorization from BIS.

Moreover, most of the categories in the Standards Table for which the sales limit is relatively high are unlikely to be affected by this rule because they are unlikely to engage in export or reexport transactions that require specific authorization from BIS. Examples of small entities at the higher end of the sales range of the Standards Table include: Family Clothing Stores, Food Service Contractors and Home Centers—\$35.5 million each, Forest Fire Suppression—\$17.5 million, New Single-Family Housing Construction Contractors—\$33.5 million and Gasoline Stations with Convenience Stores—\$27.0 million.

Conclusion

Based on the information that it does know, BIS believes that most categories of small entities identified by the Small Business Administration are unlikely to be engaged in the kinds of transactions that require specific authorization from BIS and thus would be unlikely to use BIS's SNAP-R system. The exemption from the electronic filing requirement that BIS's rules provide for parties making no more than one submission per year and parties that lack access to the Internet tend to further exclude small entities from the impact of this rule.

Significantly, the effect of this rule on all affected entities is likely to be a reduction in burden because this rule allows implementation of an electronic registration procedure for an existing electronic document filing system. In doing so, it replaces an existing paper based registration system, allowing parties who need to submit documents to BIS to register to do so in less time. Existing provisions of the Export Administration Regulations require most parties to submit work items electronically. This rule would not change that requirement nor would it change any exceptions to that requirement. Parties who qualify and who wish to submit work items on paper would not be subject to the registration requirement of this rule. However, those who either are required or choose to submit their work items electronically would no longer be subjected to a paper based registration process before they can begin electronic submissions. In addition, once

registered with an account administration in place, filing entities would no longer have to submit information to BIS via paper or facsimile and wait for a response from BIS in order to add or remove individual users or to update identifying information.

List of Subjects in 15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 730–774) are proposed to be amended as follows:

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

Authority: 50 U.S.C. app. 2401 *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 12, 2010, 75 FR 50681 (August 16, 2010).

2. Section 748.7 is revised to read as follows:

§ 748.7 Registering for electronic submission of license applications and related documents.

(a) *Scope.* This section describes the procedures for registering to submit electronic documents to BIS. The procedures in this section apply to submission of export and reexport license applications (other than Special Comprehensive Licenses and Special Iraq Reconstruction Licenses), classification requests, encryption registrations, License Exception AGR notifications and foreign national review requests under License Exceptions APP or CIV.

(b) *Registration and Use of BIS's Simplified Network Applications System—Redesign (SNAP-R).* Parties wishing to submit electronically must log on to [URL to be determined] to register. Upon initial registration, the party (the filing entity) will have to supply the name of the entity that will be submitting documents electronically and its address and the name, telephone number, facsimile number and e-mail address of the person who will act as account administrator. The person will be required to certify that the information so supplied is correct and complete, that the person has authority to register the entity that will be making electronic submissions and that the person has authority to act as an account administrator for that entity.

(c) *Role of account administrator.* The account administrator is able to add and remove individual users to and from the account of the filing entity for which it is the account administrator. The

account administrator can also make individual users account administrators and can terminate an individual user's administrator status. The account administrator can deactivate the account of an individual user and reactivate the account of a previously deactivated individual user. The account administrator can update the filing entity's identifying information such as name and address and any individual user's identifying information such as name, telephone number, facsimile number and e-mail address. The account administrator can reset individual users' passwords.

(d) *Role of individual users.* An individual user may submit to BIS export and reexport license applications (other than Special Comprehensive Licenses and Special Iraq Reconstruction Licenses), classification requests, encryption registrations, License Exception AGR notifications and foreign national review requests under License Exceptions APP or CIV.

(e) *Effect of submission to BIS.* BIS may refuse to accept an electronic submission if it has reason to believe that the individual user making the submission lacks authority to do so. However, BIS is not obligated to conduct any checks to determine whether an individual user has the necessary authority and will generally treat users as acting within their authority. Acting through their account administrators, parties have the ability to remove an individual user when that individual user is no longer authorized to make submissions on behalf of that party to BIS and should do so promptly.

(f) *Requirement to keep identifying information accurate and current—(1) Filing entities.* Filing entities must, through their account administrators, update their identifying information such as name, address and telephone number in their SNAP-R account as necessary to keep that information accurate and current.

(2) *Individual users.* Individual users must, through their account administrators, update their identifying information such as name, telephone number, facsimile number and e-mail address in their SNAP-R accounts as necessary to keep that information accurate and current.

Dated: November 15, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

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