

no federalism implications warranting preparation of a federalism assessment.

#### *Paperwork Reduction Act*

SBA has determined that this final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, including small businesses. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an analysis to determine whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA requires analysis of a rule only where notice and comment rulemaking are required. Rules are exempt from Administrative Procedure Act (APA) notice and comment requirements and therefore from the RFA requirements when the agency for good cause finds (and incorporates the finding and brief statement of reasons in the rules issued) that notice and public procedure thereon is impracticable, unnecessary, or contrary to the public interest. In this case it would be impracticable given the emergency nature of the recent legislation authorizing the new requirements.

#### **List of Subjects in 13 CFR Part 123**

Disaster assistance, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Small Business Administration amends 13 CFR part 123 as follows:

#### **PART 123—DISASTER LOAN PROGRAM**

■ 1. The authority citation for part 123 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), 636(b), 636(c); 657i, Pub. L. 102–395, 106 Stat. 1828; Pub. L. 103–75, 107 Stat. 739; Pub. L. 106–50, 113 Stat. 245; Pub. L. 110–246, 112 Stat. 1651.

■ 2. Amend Subpart B by adding at the end new § 123.108 to read as follows:

#### **§ 123.108 How do the SBA disaster loan program and the FEMA grant programs interact?**

After a Presidential disaster declaration is made, you may be eligible for disaster assistance, including grant assistance, from the Federal Emergency Management Agency's (FEMA) Federal Assistance to Individuals and

Households Program (IHP). After you register with FEMA for disaster assistance, FEMA will consider you for IHP assistance, which includes housing assistance grants to repair or replace your damaged primary residence and temporary housing assistance (including rental assistance) to assist you temporarily with a place to live, and assistance with personal property, medical, dental and funeral expenses. FEMA may also refer you to SBA to apply for loan assistance to help repair or rebuild your home and/or to replace personal property destroyed during the disaster. If SBA is unable to approve your loan application, or if you have damage in excess of the SBA loan amount, SBA may refer you, on a timely basis, to FEMA for IHP grant consideration to assist with your unmet personal property and transportation needs. If you are approved for the SBA disaster loan and you have received grant assistance that duplicates the damage covered by the SBA loan, such grant assistance must be deducted from your loan eligibility as described in section 123.101(c) of the regulations. All grant decisions are made by FEMA. Additionally, if additional disaster assistance is available from state, local or other agencies, SBA may refer you to the appropriate agency for consideration.

Dated: February 16, 2010.

**Karen G. Mills,**

*Administrator.*

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## **DEPARTMENT OF COMMERCE**

### **Census Bureau**

#### **15 CFR Part 30**

[Docket Number: 090422707–91445–02]

**RIN 0607–AA48**

#### **Foreign Trade Regulations (FTR): Eliminate the Social Security Number (SSN) as an Identification Number in the Automated Export System (AES)**

**AGENCY:** Bureau of the Census, Commerce Department.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Census Bureau (Census Bureau) issues this final rule amending the Foreign Trade Regulations (FTR) to eliminate the requirement to report a Social Security Number (SSN) as an identification number when registering to file and filing electronic export information in the Automated

Export System (AES) or *AESDirect*. If the U.S. Principal Party in Interest (USPPI) or the U.S. authorized agent residing in or having an office in the United States does not have an Employer Identification Number (EIN), the USPPI or the U.S. authorized agent must obtain an EIN through the Web site of the Internal Revenue Service (IRS). Former SSN filers who want to use a Dun & Bradstreet Number (DUNS) rather than an EIN for identification purposes, must first obtain an EIN from the IRS, and apply to Dun & Bradstreet for a DUNS. This final rule is being implemented to ensure that a USPPI's or authorized agent's SSN is protected in accordance with the Privacy Act of 1974 (Privacy Act), title 5, United States Code (U.S.C.), section 552a. On August 5, 2009, this final rule was published as an interim final rule; the Census Bureau is finalizing this rule without change.

**DATES:** *Effective Date:* This rule is effective March 24, 2010.

**FOR FURTHER INFORMATION CONTACT:** William G. Bostic, Jr., Assistant Director for Economic Programs, United States Census Bureau, 4600 Silver Hill Road, Room 8K108, Washington, DC 20233–6700; by phone at (301) 763–8842; by fax at (301) 763–6638; or by e-mail: [william.g.bostic.jr@census.gov](mailto:william.g.bostic.jr@census.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Census Bureau is responsible for collecting, compiling, and publishing export and import trade statistics for the United States under the provisions of title 13, U.S.C. Chapter 9, section 301(a). On June 2, 2008, the Census Bureau issued a final rule to amend the FTR to implement provisions in the Foreign Relations Authorization Act (Pub. L. 107–228, § 1404(a)–(c), 116 Stat. 1454 (2002)). Specifically, the amended FTR required mandatory filing of export information through the AES or *AESDirect* for all shipments where a Shipper's Export Declaration (SED) is required. The USPPI or U.S. authorized agent residing or having an office in the United States was required to enter an EIN, SSN or DUNS when reporting export transactions in the AES or *AESDirect*. Though the effective date of this final rule was July 2, 2008, the Census Bureau announced that it would delay implementation until September 30, 2008, to allow all affected entities sufficient time to come into compliance with the final rule.

Pursuant to the requirements of the Privacy Act and guidance from the Office of Management and Budget (OMB), on August 5, 2009, the Census Bureau published in the **Federal**

**Register** an interim final rule with request for comments. The interim final rule amended the FTR to eliminate the requirement to report an SSN as an identification number when registering to file and when filing electronic export information in the AES or *AESDirect*.

Upon implementation of this final rule, the AES will no longer provide the option for using the SSN as an identification number. All USPPI and U.S. authorized agents who currently report an SSN when filing in the AES, because they do not have or use an EIN or DUNS, must provide an EIN or DUNS for identification purposes. EINs are available to both businesses and individuals free of charge, and can be obtained by registering with the IRS at <http://www.irs.gov> or by calling (800) 829-4933 and following the instructions. A DUNS is available only to business entities with EINs and is available for a fee at Dun and Bradstreet's Web site at <http://www.dnb.com/us/>.

#### Summary of Comments and Responses

The Census Bureau received 50 comments on the interim final rule published in the **Federal Register** on August 5, 2009. 74 FR 38914. A summary of the comments and the Census Bureau's responses are provided below.

The major concerns were as follows:

1. *Clarify the procedure for obtaining an EIN.* Several commenters requested clarification on the procedure of how to obtain an EIN for the purpose of filing the EEI. To obtain an EIN, a business or individual must submit an application to the IRS, at the contact information listed above, via the Internet, phone, fax, or mail. There are no fees associated with obtaining an EIN, and the procedure to obtain an EIN takes approximately 15 minutes when applying online or by phone.

2. *Clarify the procedure for obtaining an EIN on behalf of another individual.* One commenter requested clarification on the proper use of the SS-4 form when obtaining an EIN. Individuals may prepare the SS-4 form when applying for an EIN via mail, fax, or authorize a third party to prepare the form on their behalf. If a third party is completing the SS-4 form by mail or fax, the individual for whom the EIN is being obtained will complete the section "Third Party Designee." If a third party is completing the SS-4 form online, the individual will need to print the SS-4 form, complete the "Third Party Designee" section and retain for future reference. Completion of the "Third Party Designee" section is not required for

individuals who are applying for an EIN on their own behalf.

3. *Clarify whether an individual can obtain an EIN if they are not opening a business.* Several commenters questioned whether they would be providing the IRS with false information when applying for an EIN under the Sole Proprietor category if they are not starting a business. In addition, one of these commenters requested clarification on the tax ramifications of applying for an EIN. For purposes of registering or filing in the AES, a resident of the United States must use its EIN. While it is not specifically stated on the IRS Web site, an EIN can be obtained for government reporting purposes when a person does not own a business. A U.S. company must use its EIN when registering in the AES, and must use either its EIN or DUNS when filing. Use of the EIN in the AES is strictly for identification purposes, and information entered into the AES is not disclosed to the IRS.

4. *Clarify the filing requirement for an individual who rarely exports.* Several commenters questioned whether the frequency of their shipments warranted the effort required to obtain an EIN. Regardless of shipping frequency, any person (natural or legal) shipping goods to a foreign country that requires filing of the EEI via the AES will need to obtain an EIN from the IRS.

5. *Clarify whether a passport, driver's license, or customs assigned number can be used in place of the SSN.* Several commenters questioned why a passport, driver's license, or customs assigned number cannot be used in lieu of the EIN for U.S. residents. In addition, several of these commenters suggested that the Census Bureau amend the interim final rule to make SSNs or passport numbers optional when filing the EEI.

Passports have expiration dates and the numbers are subject to change if the passports are not renewed timely. Allowing the use of a passport number in the AES makes it difficult for the U.S. Customs and Border Protection (CBP) to enforce control laws by introducing a variable that is subject to change, thereby making it more difficult to track and analyze historical shipping patterns. In addition, obtaining a U.S. passport requires the payment of fees, and generally takes two to six weeks. Moreover, passports are used for the specific purpose of exiting and returning to the United States as a U.S. citizen. The Census Bureau elected to replace the SSN with an EIN because the EIN can be obtained at the IRS Web site free of charge within 15 minutes. The EIN does not have an expiration

date, so it can be used indefinitely. In addition, a person can serve as a third party designee and apply for an EIN on behalf of an individual.

A driver's license number, like the SSN, is considered highly sensitive Personally Identifiable Information (PII) that can directly be used to identify an individual. The EIN is not as sensitive a form of PII as either a driver's license or SSN. Moreover, because of varying license formats among the states and the need to accommodate changes when persons move to different states, the use of drivers' licenses would introduce more operational complexity than EINs.

The USPPIs shall report an EIN or the DUNS in the USPPI identification field. The DUNS may only be reported for businesses. If a foreign entity is the USPPI for filing purposes, it shall report a DUNS, border crossing number, passport number, or any number assigned by the CBP. Thus, for the reasons stated above, the Census Bureau does not adopt this suggestion.

6. *Amend the Interim Final Rule to postpone the implementation date.* Several commenters requested a further delay in the implementation date of the interim final rule because of concerns that there would be delays in the export process by having to obtain an EIN. In addition, several of these commenters requested that the Census Bureau conduct an impact analysis on exporters. Based on information available from IRS's Web site, the approximately four months between the publication of this interim final rule on August 5, 2009, and the implementation date of December 3, 2009, was more than enough time to obtain an EIN; thus, no AES filer should experience any delays in exporting as a result of the implementation of this final rule. In addition, the Census Bureau has not received any information since December 3, 2009, suggesting that exporters are experiencing (or have experienced) delays in the export process due to the interim rule. Findings from an impact analysis show that on a monthly basis, an average of 3.8 percent of filers using the SSN are affected. For the foregoing reasons, the Census Bureau does not adopt the suggestion that it delay implementation of this final rule.

7. *Clarify the procedure for updating AES account information if a filer was originally registered with an SSN.* Several commenters raised the concern that reregistering in the AES after obtaining an EIN would result in the loss of current AES account information. However, if they are currently registered under an SSN, *AESDirect* filers can complete the

Automated Transition Form to migrate their account information, currently stored under the SSN account, to a new EIN account. As of October 20, 2009, the Automated Transition Form has been available on the AESDirect Web site. Those who file directly into the AES must contact their CBP representative to have their account manually transitioned.

8. *Clarify whether a company or individual can use its EIN as the USPPPI identification number when filing on behalf of the USPPPI.* Several commenters wanted to know if a company or individual could use its EIN as the USPPPI identification number when filing on behalf of the USPPPI. A company that is filing in the AES on behalf of an individual cannot use its EIN. When filing the EEI on behalf of a USPPPI, the EIN of that USPPPI must be used as the identification number. The filer's EIN cannot be used as the USPPPI identification number. The use of another company or individual's EIN is prohibited.

9. *Clarify the use of an EIN for shipments to the U.S. Armed Services.* Several commenters wanted to know if an EIN would be required for shipments to the U.S. Armed Services. Filing an AES record is not required for shipments to the U.S. Armed Services for their exclusive use, whether the shipments are made commercially or through government channels, including shipments to armed services exchange systems per title 15, CFR, Part 30, FTR, section 30.39. This exemption does not apply to articles on the United States Munitions List that are controlled by the International Traffic in Arms Regulations, or to shipments that are not consigned to the U.S. Armed Services, regardless of whether they may be for its ultimate and exclusive use. If an export falls under this exemption, you are not required to obtain an EIN because filing an AES record is not required.

10. *Clarify the use of an EIN for shipments to employees of government agencies.* Several commenters wanted to know if government agencies or employees of these agencies were required to obtain an EIN for shipping purposes. Filing an AES record is not required for the following shipments: office furniture, office equipment, and office supplies shipped to and for the exclusive use of U.S. government offices, or household goods and personal property shipped to and for the exclusive and personal use of U.S. government employees. These shipments are exempt from filing the EEI per title 15, CFR, Part 30, FTR, section 30.40. If an export falls under this exemption, you are not required to

obtain an EIN because filing an AES record is not required.

### Regulatory Changes

To ensure the confidentiality of the USPPPI's and the U.S. authorized agent's personal information, and to comply with the Privacy Act and OMB guidance, the Census Bureau is amending relevant sections of the FTR to specify the requirements for the reporting of an EIN, or DUNS in place of a SSN for identification purposes in the AES.

The Census Bureau is amending the following sections of the FTR:

- Section 30.1(c) definition for Party ID type is revised to eliminate the SSN.
- Sections 30.3(a) and 30.3(e) are revised to eliminate the requirement of reporting the SSN in the AES.
- Sections 30.6(a) and 30.6(b) are revised to eliminate the SSN as an option for the USPPPI and U.S. authorized agent identification number.

The U.S. Department of State and U.S. Department of Homeland Security concur with the provisions contained in this Final Rule.

### Rulemaking Requirements

#### Administrative Procedure Act

The Census Bureau finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment, as public comment is impracticable and contrary to the public interest of maintaining the security of personal information. To ensure the confidentiality of the USPPPI and the U.S. authorized agent's personal information, and to comply with the Privacy Act, the Census Bureau is amending appropriate sections of the FTR to eliminate the reporting of the SSN by USPPPIs and U.S. authorized agents. If this rule were delayed to allow for notice and opportunity for public comment, USPPPIs and U.S. authorized agents would continue to be required to submit their SSN to the Census Bureau if they do not have an EIN or DUNS. Therefore, in order to maintain the security of personal information, and to comply with the Privacy Act, the Census Bureau has determined that it will make this rule effective on March 24, 2010.

#### Regulatory Flexibility Act

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act are inapplicable. Therefore, a final regulatory flexibility analysis is not required and one has not been prepared.

### Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. It has been determined that this rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

### Paperwork Reduction Act

The collection of information required in this final rule has been approved by the OMB under the Paperwork Reduction Act (PRA), title 44, U.S.C. Chapter 35. This rule amends a collection of information subject to the requirements of the PRA, which has been approved under OMB control number 0607-0152. The reporting and recordkeeping burden for this requirement is estimated at three total burden minutes per AES filing. Notwithstanding any other provision of law, no person is required to respond to, nor shall a 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 current, valid OMB control number.

### List of Subjects in 15 CFR Part 30

Economic statistics, Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, as discussed above, the interim final rule amending Title 15 Code of Federal Regulations Part 30, which published at 74 FR 38914 on August 5, 2009, is adopted as a final rule without change.

Dated: February 16, 2010.

**Robert M. Groves,**

*Director, Bureau of the Census.*

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Part 774

[Docket No. 0907241163-91434-01]

**RIN 0694-AE67**

#### **Amendments to the Select Agents Controls in Export Control Classification Number (ECCN) 1C360 on the Commerce Control List (CCL); Correction to ECCN 1E998**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) is publishing this final