



3510-07-P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

Docket Number: 140626542-4542-01

RIN Number: 0607-AA52

Foreign Trade Regulations (FTR): Clarification on Uses of Electronic Export Information

AGENCY: Bureau of the Census, Commerce Department.

ACTION: Interim Final Rule.

SUMMARY: The U.S. Census Bureau issues this interim final rule to amend its regulations to reflect changes related to the implementation of the International Trade Data System (ITDS) and subsequent changes to the access to the electronic export information (EEI). The ITDS was established to eliminate redundant information requirements, efficiently regulate the flow of commerce and to effectively enforce laws and regulations relating to international trade by establishing a single portal system for the collection and distribution of standard electronic import and export data required by all participating federal agencies. Therefore, the Automated Export System (AES) will include export information collected under other federal agencies' authority, which is subject to those agencies' disclosure mandates. This rule clarifies the confidentiality provisions of the EEI and facilitates the legitimate sharing of export data consistent with the goals for the ITDS.

DATES: Effective Date: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment Due Date: Comments on the interim rule should be submitted in writing to the addresses shown below on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to be considered in the formation of the final rule.

ADDRESSES: Please direct all written comments on this interim final rule to the Chief, Foreign Trade Division, U.S. Census Bureau, Room 6K032, Washington, DC 20233-6010. You may also submit comments, identified by RIN number 0607-AA52 or by the eRulemaking docket number USBC-2014-0002, to the Federal e-Rulemaking Portal:

http://www.regulations.gov. All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personal Identifying Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. The Census Bureau will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Dale C. Kelly, Chief, Foreign Trade Division, U.S. Census Bureau, Room 6K032, Washington, DC 20233-6010, by phone (301) 763-6937, by fax (301) 763-8835, or by e-mail <dale.c.kelly@census.gov>.

SUPPLEMENTARY INFORMATION:

Background

The Census Bureau is responsible for collecting, compiling, and publishing export trade statistics for the United States under the provisions of Title 13, United States Code (U.S.C.), Chapter 9, Section 301. The Automated Export System (AES) is the primary instrument used for collecting export trade data, which are used by the Census Bureau for statistical purposes. Through the AES, the Census Bureau collects the Electronic Export Information (EEI), the electronic equivalent of the export data formerly collected on the Shipper's Export Declaration, reported pursuant to Title 15, Code of Federal Regulations (CFR), Part 30. The EEI consists of data elements set forth in 15 CFR 30.6 for an export shipment, and includes information such as the exporter's name, address and identification number, and detailed information concerning the exported product. Traditionally, other federal agencies have used the EEI for export control purposes to detect and prevent the export of certain items by unauthorized parties or to unauthorized destinations or end users. The EEI is exempt from public disclosure unless the Secretary of Commerce determines under the provisions of Title 13, U.S.C., Chapter 9, Section 301(g) that such exemption would be contrary to the national interest.

The Security and Accountability For Every Port Act of 2006 (SAFE Port Act, P.L. 109-347) established the International Trade Data System (ITDS). Pursuant to the Section 405(d) of that Act, the purpose of the ITDS is to eliminate redundant information requirements, efficiently regulate the flow of commerce and to effectively enforce laws and regulations relating to international trade by establishing a single portal system for the collection and distribution of standard electronic import and export data required by all participating federal agencies. Therefore, the AES will include export information collected under other federal agencies'

authority, which is subject to those agencies' disclosure mandates. Access and use of EEI by other federal agencies will also increase under the ITDS.

This rule clarifies the confidentiality provisions of the EEI by amending section 30.60 of the Foreign Trade Regulations. This revision will allow federal agencies with appropriate authority to access export data in the AES, and ensure consistency with the Executive Order of February 19, 2014, titled Streamlining the Export/Import Process for America's Businesses. The ultimate goal of this rule is to facilitate the legitimate sharing of export data consistent with the goals for the International Trade Data System (ITDS).

Program Requirements

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

- Revise §30.60 to reflect changes related to the implementation of the International Trade Data System (ITDS) and subsequent changes to the access to Electronic Export Information (EEI).

Rulemaking Requirements

Administrative Procedure Act

The Census Bureau finds good cause pursuant to Title 5, United States Code (U.S.C), 553 (b)(3)(B) to waive prior notice and opportunity for public comment, as contrary to the public interest. With the implementation of the International Trade Data System (ITDS), the Automated Export System (AES) will capture export information collected and used by other federal agencies under their authorities. The Census Bureau is undertaking this amendment in order to accurately reflect the authorized uses of electronic export information (EEI) by other

federal agencies resulting from the ITDS. In particular, this rule amends section 30.60 of the Foreign Trade Regulations to help ensure that federal agencies with appropriate authority can access export data in the AES, which access will help ensure the efficient and timely flow of exports as well as protect U.S. interests in export controls and enforcement. Additionally, the rule complies with the directives and timelines established by Executive Order of February 19, 2014, titled Streamlining the Export/Import Process for America's Businesses. Allowing for a period of notice and comment may delay exports and make export control more difficult, both of which are contrary to the public interest.

Additionally, and for similar reasons, the Census Bureau finds good cause pursuant to 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness for this rule. This rule imposes no additional requirements or obligations on any member of the public, and so delaying its effectiveness is unnecessary. Moreover, if this rule were delayed, federal agencies would not have direct access to export data in a timely manner, which could delay or impede the flow of exports, as well as hamper critical export control and enforcement activities. Therefore, the Census Bureau has determined that it will make this rule effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule will not have a significant impact on a substantial number of small entities.

The purpose and goal of this rule are explained in the preamble, and are not repeated here. This rule does not mandate any new filing requirements and does not directly impact any

small or large entities. Rather, this rule's impact is largely on federal entities. Indeed, to the extent they will be indirectly impacted by this rule, small entities will see reduced burdens for exports because this rule creates a "single window" through which exporters can comply with export laws and regulations. Therefore, no Regulatory Flexibility analysis is required and none has 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

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 Paperwork Reduction Act (PRA), unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. This rule, however, does not contain any information collection subject to the PRA.

List of Subjects in 15 CFR Part 30

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

For the reasons set out in the preamble, 15 CFR part 30 is amended as follows:

PART 30 – FOREIGN TRADE REGULATIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan 5 of 1990 (3 CFR 1949–1953 Comp., p.1004); Department of Commerce Organization Order No. 35–2A, July 22, 1987, as amended, and No. 35–2B, December 20, 1996, as amended; and Public Law 107-228, 116 Stat.1350.

2. Revise § 30.60 to read as follows:

§30.60 Confidentiality of Electronic Export Information.

(a) The Electronic Export Information (EEI) collected and accessed by the Census Bureau under 15 CFR Part 30 is confidential, to be used solely for official purposes as authorized by the Secretary of Commerce. The collection of EEI by the Department of Commerce has been approved by the Office of Management and Budget (OMB). The information collected is used by the Census Bureau for statistical purposes. In addition, EEI is used by federal government agencies, such as the Department of State, Immigration and Customs Enforcement, and Customs and Border Protection (CBP) for export control; by other federal government agencies such as the Bureau of Economic Analysis, Bureau of Labor Statistics, and Bureau of Transportation Statistics for statistical purposes; and by other federal agencies as authorized by the Secretary of Commerce or the Census Bureau Director consistent with the agencies' statutory or legal authorities as provided for in paragraph (e) of this section. Absent such authorization, information collected pursuant to this Part shall not be disclosed to anyone by any officer, employee, contractor, agent of the federal government or other parties with access to the EEI other than to the USPPPI or the authorized agent of the USPPPI.

Such disclosure shall be limited to that information provided by each party pursuant to this Part.

(b) Viewing and using EEI for official purposes. (1) The EEI may be viewed and used by federal agencies authorized to use export data for official purposes as defined to include, but not limited to:

- (i) Improving compliance with U.S. export laws and regulations;
- (ii) Detecting and preventing violations of export, census, customs, homeland security, national resource and other laws, regulations and treaties;
- (iii) Analysis to assess threats to U.S. and international security such as money laundering, and other potential violations of U.S. and foreign criminal laws;
- (iv) Enforcement of U.S. export-related laws and regulations;
- (v) Investigation and prosecution of possible violations of U.S. export-related laws and regulations;
- (vi) Proof of export for enforcement of laws relating to exemption from or refund, drawback or other return of taxes, duties, fees or other charges;
- (vii) Analyzing the impact of proposed and implemented trade agreements and fulfilling U.S. obligations under such agreements; and
- (viii) Preparation of statistics.

(2) The Census Bureau may provide the EEI to the USPPPI or authorized agent, for compliance and audit purposes. Such disclosure shall be limited to that information provided to the AES by the USPPPI or the authorized agent.

(c) Supplying EEI for nonofficial purposes. The official report of the EEI submitted to the U.S. government shall not be disclosed by the USPPI, the authorized agent, or representative of the USPPI for “nonofficial purposes,” either in whole or in part, or in any form including but not limited to electronic transmission, paper printout, or certified reproduction.

“Nonofficial purposes” are defined to include but not limited to providing the official EEI:

- (1) In support of claims for exemption from Federal or state taxation, except as related to paragraph (b)(1)(vi) of this section;
- (2) To the U.S. Internal Revenue Service for purposes not related to export control or compliance;
- (3) To state and local government agencies, and nongovernmental entities or individuals for any purpose; and
- (4) To foreign entities or foreign governments for any purpose.

(d) Ocean manifest data can be made public under provision of CBP regulations. For information appearing on the outward manifest, 19 CFR 103.31 allows a shipper (or their authorized employee or official) to submit a certification for confidential treatment of the shipper's name and address.

(e) Determination by the Secretary of Commerce. Under 13 U.S.C. 301(g), the EEI collected and accessed by the Census Bureau is exempt from public disclosure unless the Secretary or delegate determines that such exemption would be contrary to the national interest. The Secretary or delegate may make such information available, if he or she determines it is in the national interest, taking such safeguards and precautions to limit dissemination as deemed appropriate under the circumstances. In determining whether it is contrary to the national interest to apply the exemption, the maintenance of confidentiality and national security shall

be considered as important elements of national interest. The unauthorized disclosure of confidential EEI granted under a National Interest Determination renders such persons subject to the civil penalties provided for in Subpart H of this part.

(f) Penalties. Disclosure of confidential EEI by any officer, employee, contractor, or agent of the federal government, except as provided for in paragraphs (b) and (e) of this section renders such persons subject to the civil penalties.

John H. Thompson
Director
Bureau of the Census

August 15, 2014
Date

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