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**DEPARTMENT OF STATE**

**22 CFR Part 51**

**[Public Notice: 10921]**

**RIN 1400-AE90**

**Passports; Clarification of Previous Rule Relating to Treatment of Serious Tax Debt**

**AGENCY:** State Department.

**ACTION:** Final rule.

**SUMMARY:** This final rule provides a clarification regarding situations in which a passport applicant is certified by the Secretary of the Treasury as having a seriously delinquent tax debt. In this rule, the Department clarifies that in such situations, the Department may issue a limited validity passport for direct return to the United States or when emergency circumstances or humanitarian reasons exist.

**DATES:** The effective date of this regulation is [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*.]

**FOR FURTHER INFORMATION CONTACT:** Stephanie Traub, Office of Legal Affairs, Passport Services, (202) 485-6500. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** On September 2, 2016, the Department published a final rule that implemented the Fixing America's Surface Transportation Act (FAST Act), codified at 22 U.S.C. 2714a (the 2016 Final Rule). See 81 FR 60608.<sup>1</sup>

The rulemaking incorporated statutory passport denial and revocation requirements for certain individuals who have been certified by the Secretary of the Treasury as having seriously delinquent tax debt or who submit passport applications without correct and valid Social Security numbers.

*Why is this rule necessary?*

The 2016 Final Rule, as codified at 22 CFR 51.60(a)(3), led to an unintended result. That rule provided that applicants for a passport who are certified by the Secretary of the Treasury as having a seriously delinquent tax debt as described in 26 U.S.C. 7345 may not be issued a passport, except a passport for direct return to the United States. This is a too-narrow implementation of the law, since 22 U.S.C 2714a(e)(1)(B) provides that not only may the Department issue a certified individual a passport valid for direct return to the United States, but the Department also has the discretion to issue passports without geographical limitation to such applicants if the Department finds that emergency circumstances or humanitarian reasons exist.

With respect to the current text of § 51.60, the modification in the rulemaking will remove the text of paragraph (a)(3) of § 51.60, and add it to a new paragraph (h)(2) of §51.60, since paragraph (h) applies to situations where the Department must generally deny passport applications except for passports valid for direct return to the United States, but can exercise discretion to issue passports where it determines that emergency circumstances or humanitarian reasons exist. Paragraph (a)(3) is reserved. The chapeau

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<sup>1</sup> See also a correction rule published on September 27, 2016, at 81 FR 66184.

of § 51.60(h), regarding notification by the Attorney General of violations of 18 U.S.C. 2423, is moved to a new paragraph (h)(1).

**Regulatory Findings:**

*Administrative Procedure Act*

The Administrative Procedure Act (APA) provides that an agency is not required to conduct notice and comment rulemaking when the agency, for good cause, finds that the requirement is impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). There is good cause here because this amendment simply aligns 22 CFR 51.60 with current law. It does not establish any substantive policy. Since this change is implementing current law, public comment on this change is unnecessary and contrary to the public interest. The APA also generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). Again, because this final rule aligns the Department's rules with federal law, there is good cause to make it effective on the day it is published.

*Regulatory Flexibility Act*

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

*Unfunded Mandates Act of 1995*

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will

not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign based companies in domestic and import markets.

*Executive Orders 12866 and 13563*

The Department of State does not consider this rule to be an economically significant regulatory action under Executive Order 12866, Regulatory Planning and Review. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in both Executive Order 12866 and Executive Order 13563, and certifies that the benefits of this regulation outweigh any cost to the public, which the Department assesses to be *de minimis*.

*Executive Order 13132*

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

*Executive Order 13175*

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

*Executive Order 13771*

This rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866.

*Paperwork Reduction Act*

This rule does not impose any new reporting or record keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

**List of Subjects in 22 CFR Part 51**

Passports.

Accordingly, for the reasons set forth in the preamble, the Department amends 22 CFR part 51 as follows:

**PART 51 -- PASSPORTS**

1. The authority citation for part 51 is revised to read as follows:

Authority: 8 U.S.C. 1504; 18 U.S.C. 1621; 22 U.S.C. 211a, 212, 212b, 213, 213n (Pub. L. 106-113 Div. B, Sec. 1000(a)(7) [Div. A, Title II, Sec. 236], 113 Stat. 1536, 1501A-430); 214, 214a, 217a, 218, 2651a, 2671(d)(3), 2705, 2714, 2714a, 2721, & 3926; 26 U.S.C. 6039E; 31 U.S.C. 9701; 42 U.S.C. 652(k) [Div. B, Title V of Pub. L. 103-317, 108 Stat. 1760]; E.O. 11295, Aug. 6, 1966, FR 10603, 3 CFR, 1966-1970 Comp., p. 570; Pub. L. 114-119, 130 Stat. 15; Sec. 1 of Pub. L. 109-210, 120 Stat. 319;

Sec. 2 of Pub. L. 109-167, 119 Stat. 3578; Sec. 5 of Pub. L. 109-472, 120 Stat. 3554; Pub. L. 108-447, Div. B, Title IV, Dec. 8, 2004, 118 Stat. 2809; Pub. L. 108-458, 118 Stat. 3638, 3823 (Dec. 17, 2004).

2. Amend § 51.60 by removing and reserving paragraph (a)(3) and revising paragraph (h).

The revision reads as follows:

**§ 51.60 Denial and restriction of passports.**

\* \* \* \* \*

(h) The Department may not issue a passport, except a limited validity passport for direct return to the United States or in instances where the Department finds that emergency circumstances or humanitarian reasons exist, in any case in which:

(1) The Department is notified by the Attorney General that, during the covered period as defined by 22 U.S.C. 212a:

(i) The applicant was convicted of a violation of 18 U.S.C. 2423, and

(ii) The individual used a passport or passport card or otherwise crossed an international border in committing the underlying offense.

(2) The applicant is certified by the Secretary of the Treasury as having a seriously delinquent tax debt as described in 26 U.S.C. 7345.

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