



3510-07-P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket Number: 140626542-4999-02]

RIN 0607-AA52

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

AGENCY: Bureau of the Census, Commerce Department.

ACTION: Final rule.

SUMMARY: The Bureau of the Census (Census Bureau) issues this final rule amending the Foreign Trade Regulations (FTR) to reflect changes related to the implementation of the International Trade Data System (ITDS) and subsequent changes to access 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. The Automated Export System (AES), which is a part of the Automated Commercial Environment (ACE), 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. On August 22, 2014, the Census Bureau published this rule on an interim final basis. The Census Bureau is finalizing this rule without change.

DATES: Effective date: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The interim rule published on August 22, 2014 (79 FR 49659), became effective August 22, 2014.

FOR FURTHER INFORMATION CONTACT: Dale C. Kelly, Chief, International Trade Management Division, U.S. Census Bureau, 4600 Silver Hill Road, Room 6K032, Washington, DC 20233-6700, 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. Other agencies use the EEI for the purpose of enforcing U.S. export laws and regulations. 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, Pub. L. 109-347) established the International Trade Data System (ITDS). Pursuant to 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. 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.

In accordance with the interim final rule published on August 22, 2014, this rule clarifies the confidentiality provisions of the EEI by amending §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." This rule will facilitate the legitimate sharing of export data consistent with the goals for the ITDS.

Summary of Comments and Responses

The Census Bureau received two comments on the interim final rule published in the Federal Register on August 22, 2014 (79 FR 49659). A summary of the comments and the Census Bureau's responses are provided below.

The major concerns were as follows:

1. *Clarify if exporters are prohibited from sending Electronic Export Information (EEI) to a document management company outside of the United States for scanning/record retention purposes.* One commenter requested clarification on the use of foreign document management companies to retain EEI. The EEI may not be supplied by the USPPI, the authorized agent, or representative of the USPPI to foreign entities or foreign governments for any purpose. As a result, the EEI may not be supplied to a foreign document management company. However, it is permissible for a U.S. party to maintain its own IT system and application software on a server located outside of the U.S. In this situation, the U.S. party is responsible for maintaining the confidentiality of the EEI, must implement proper safeguards to ensure the EEI is protected from unauthorized use, and is liable for any violations of the Foreign Trade Regulations.
2. *Request to add “foreign persons” to Section 30.60(c)(4).* One commenter requested that the Census Bureau add “foreign persons” to the list of parties prohibited from receiving the EEI. Section 30.60(c)(4) prohibits “foreign entities,” a term which includes both foreign persons and companies. As a result, the previous regulations remain appropriate.

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 §30.60 of the Foreign Trade Regulations to help ensure that federal agencies with appropriate authority can access export data in the AES, which will 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 the 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 public interest.

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. We received no comments on the certification in the proposed rule; accordingly, 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 Orders 12866 and 13563, and has been drafted according to the requirements of those Executive Orders. It has also been determined that this rule does not contain policies with federalism implications as that term is defined under Executive Order 13132.

Paperwork Reduction Act

This rule does not contain any information collection subject to the Paperwork Reduction Act (PRA). However, 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 Office of Management and Budget (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 was published at 79 FR 49659 on August 22, 2014, is adopted as a final rule without change.

Dated: January 30, 2015.

John H. Thompson,
Director,
Bureau of the Census.

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