



## DEPARTMENT OF COMMERCE

### Census Bureau

### 15 CFR Part 30

[DOCKET NO. 230802-0181]

RIN NO. 0607-AA61

### Foreign Trade Regulations (FTR): State Department Directorate of Defense Trade

### Controls Filing Requirement and Clarifications to Current Requirements

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

**ACTION:** Final rule

**SUMMARY:** The Census Bureau issues this final rule amending its regulations to reflect new export reporting requirements related to the State Department, Directorate of Defense Trade Controls (DDTC) Category XXI Determination Number. Specifically, the Census Bureau is adding a conditional data element, DDTC Category XXI Determination Number, when “21” is selected in the DDTC USML Category Code field in the Automated Export System (AES) to represent United States Munitions List (USML) Category XXI. In addition, this rule makes remedial changes to the Foreign Trade Regulations (FTR) to update International Traffic in Arms Regulations (ITAR) references in existing data elements: DDTC Significant Military Equipment Indicator and DDTC Eligible Party Certification Indicator. This rule also makes other remedial changes to the FTR.

**DATES:** This final rule is effective [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Omari S. Wooden, Assistant Division Chief, Data User and Respondent Outreach, Economic Management Division, Census Bureau by phone (301) 763-3829 or by e-mail [omari.s.wooden@census.gov](mailto:omari.s.wooden@census.gov).

**SUPPLEMENTARY INFORMATION:**

## **Background**

The Census Bureau is amending the Foreign Trade Regulations (FTR) to add a conditional data element, Directorate of Defense Trade Controls (DDTC) Category XXI Determination Number, when “21” (see Appendix L of the Automated Export System Trade Interface Requirements (AESTIR)) is selected in the DDTC United States Munitions List (USML) Category Code field in the Electronic Export Information (EEI). The FTR defines the DDTC USML Category Code as the USML category of the article being exported (22 CFR) part 121).

Public Law 106–113 amended 13 U.S.C. 301, to add subsection “(h)” directing the Secretary of Commerce to require, by regulation, the mandatory electronic filing of export information through the Automated Export System (AES) for items identified in the Commerce Control List (CCL) and the USML. Under the authorities in chapter 9 of title 13, U.S.C., the Secretary of Commerce will collect additional data on the export of items under DDTC USML Category Code “21” to identify and validate commodities for which DDTC USML Category Code “21” is cited.

The DDTC Category XXI Determination Number is a unique number issued by DDTC in conjunction with a notification that a specific commodity is described in USML Category XXI. Information on valid USML Category XXI determinations and the prospective AES error code may be found in the Frequently Asked Questions section of DDTC’s website ([www.pmdrtc.state.gov](http://www.pmdrtc.state.gov)).

The Census Bureau published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on May 3, 2023 (88 FR 27815) to add the conditional data element, DDTC Category XXI Determination Number, when “21” is selected in the DDTC USML Category Code field in the Automated Export System (AES) as well as to make the remedial changes originally proposed in the NPRM published December 15, 2021 in the Federal Register (86 FR 71187). Comments to these remedial changes were favorable.

Finally, the U.S. Department of Homeland Security and the U.S. Department of State concur with the revisions to the FTR as required by 13 U.S.C. 302 and Public Law 107–228, division B, title XIV, section 1404.

### **Response to Comments**

The Census Bureau received three comments on the NPRMs published in the Federal Register on December 15, 2021 (86 FR 71187) and May 3, 2023 (88 FR 27815). A summary of the comments and the Census Bureau’s response are provided below.

*Comment.* The commenter stated that it is unclear if the Census Bureau proposed to update the published penalty amount in § 30.71 as it still states \$10,000 and has not been \$10,000 for years. The commentor suggested to update the correct current amount, in conjunction with the footnote update proposed.

*Response.* The Census Bureau has reviewed this comment and disagrees that the amount shown in § 30.71 should reflect the current amount with the footnote to address the adjustment for inflation. The \$10,000 referenced in § 30.71 is consistent with 13 U.S.C. 305. The current penalty amounts are published in 15 CFR 6.3(d).

*Comment.* The commenter recommends that the Census Bureau eliminate the Dun and Bradstreet Number (DUNS) for reporting the U.S. Principal Party in Interest Identification Number (USPPI ID) because reporting the DUNS requires the company to also report their Employer Identification Number (EIN) and adds to reporting burden and filing mistakes thus increasing risks of incurring a fine and/or penalty. The commenter also recommended that the Census Bureau review and publish the percentage of shipments where the DUNS is used as the filer ID. The commenter also stated that if the Census Bureau decides to keep the DUNS as a USPPI ID, then § 30.3(e)(1)(ii) needs to reflect that when the USPPI uses the DUNS as their filer ID, they must also provide the FPPI’s authorized agent their EIN. As currently proposed in the NPRM, the USPPI either provides the EIN or DUNS.

*Response.* The Census Bureau has reviewed this comment and disagrees with removing

the DUNS as an option for reporting the USPPI ID. USPPIs who have postdeparture filing privileges support the use of the DUNS as the USPPI ID because USPPIs prefer to have the less sensitive DUNS rather than the EIN shown on the front page of bills of lading/air waybills and other commercial documents as part of the postdeparture filing citation. However, as a result of this comment, FTR Appendix B to Part 30—AES Filing Citation, Exemption and Exclusion Legends (II and III) will be changed from USPPI EIN to USPPI Identification Number to allow either the EIN or DUNS. In regard to the comment of the USPPI using the DUNS as the filer ID, the Census Bureau agrees and has changed § 30.3(e)(1)(ii) to reflect the requirement to provide the USPPI Identification Number as defined under § 30.6(a)(1)(iii).

*Comment.* The commenter expressed appreciation for the clarification of § 30.6(a)(1)(iii); specifically, clarifying that, when the DUNS is reported as the USPPI ID type, the EIN is also required. The commenter stated that the use of the DUNS and EIN as the USPPI ID has been a mystery to most EEI filers and many EEI transmission software systems are not programmed to accommodate this requirement. According to the commenter, the users of many transmission software systems select USPPI ID type as either DUNS or EIN and then enter a number. Selecting the DUNS option alone fails. As a result, users typically select the “EIN” option and then enter a DUNS number. Alternatively, filers will obtain an EIN and only report that number. Therefore, the commenter stated that the practice is that many, if not most, filers do not report both the DUNS and EIN. The commenter believes that it is unlikely, even with this clarification, that EEI filers will begin to transmit both DUNS and EIN or that software providers will change their systems. The commenter stated that it would be helpful if Census could provide further information on the reason and value of receiving the DUNS number.

*Response.* The Census Bureau historically has given USPPIs the option of providing the DUNS or EIN as the USPPI ID. The option of reporting the less sensitive DUNS instead of the EIN became more favorable to USPPIs who were approved for the postdeparture filing program because the postdeparture filing exemption contains the USPPI ID which is visible on the front

of commercial documents. However, when the DUNS is reported as the USPPPI ID in the AES, the Census Bureau also requires an EIN. The Census Bureau must have the EIN to link to the Business Register to collect information for the Profile of U.S. Exporting Companies statistical release.

### **Changes to the Proposed Rule Made by This Final Rule**

As discussed above, after consideration of the comments received on the proposed rule, the Census Bureau includes in this final rule an additional change to § 30.3(e)(1)(ii) to reference the USPPPI Identification Number instead of USPPPI EIN or DUNS. This change will provide consistency with § 30.6(a)(1)(iii), which states that, if the USPPPI Identification Number is reported as a DUNS, the submission of the EIN of the USPPPI also is required. Additionally, FTR Appendix B to Part 30—AES Filing Citation, Exemption and Exclusion Legends (II and III) will be changed from USPPPI EIN to USPPPI Identification Number to allow further consistency with § 30.6(a)(1)(iii).

### **Program Requirements**

Pursuant to the Foreign Relations Act, Public Law 107-228 and 13 U.S.C. 302, the Census Bureau is amending relevant sections of the FTR to revise or clarify export reporting requirements. Therefore, the Census Bureau is amending 15 CFR part 30 by making the following revisions:

- Revise § 30.2(d)(3) to remove the language, “(See subpart B of this part for export control requirements for these types of transactions.)” as the exclusion overrides the export control requirements.
- Revise § 30.3(e)(1)(ii) to remove USPPPI EIN or DUNS and replace with USPPPI Identification Number.
- Revise § 30.6(a)(1)(iii) to clarify that, when the Dun and Bradstreet Number (DUNS) is reported as the U.S. Principal Party in Interest (USPPPI) Identification Number, the

Employer Identification Number (EIN) of the USPPI also is required to be reported in the Automated Export System.

- Revise § 30.6(b)(3) to amend the Foreign Trade Zone (FTZ) identifier to allow for nine digits. The increased number of digits is required because of the increase in the number of subzones.
- Revise § 30.6(b)(16)(ii) to amend the DDTC Significant Military Equipment (SME) indicator by updating the ITAR references as a result of DDTC relocating certain ITAR provisions to improve the overall structure of the ITAR.
- Revise § 30.6(b)(16)(iii) to amend the DDTC eligible party certification indicator by updating the ITAR references as a result of DDTC relocating certain ITAR provisions to improve the overall structure of the ITAR.
- Revise § 30.6(b)(16)(ix) to add the conditional data element “DDTC Category XXI Determination Number.” The “DDTC Category XXI Determination Number” will be the unique number issued by DDTC to a member of the regulated community (usually the original equipment manufacturer) in conjunction with a notification that a specific commodity is described in USML Category XXI. This number is required only when citing Category XXI as an export classification and is used to confirm that an authoritative DDTC USML Category XXI determination is being referenced to do so.
- Revise § 30.37(u) to remove and reserve the exemption for technical data. This exemption is covered under § 30.2(d)(3), making the exemption redundant.
- Revise § 30.55 to remove the citation “19 CFR 103.5” and add in its place “19 CFR part 103.”
- Revise § 30.71 to amend the Note to paragraph (b) to address the yearly adjustments for civil penalties as a result of inflation.

- Revise § 30.74 to amend paragraph (c)(5) to remove information that may become outdated and referencing the Census Bureau website to obtain the most current method for submitting a Voluntary Self-Disclosure.
- Revise FTR Appendix B to Part 30—AES Filing Citation, Exemption and Exclusion Legends (II and III) to remove USPPPI EIN and add in its place USPPPI Identification Number.

## **Rulemaking Requirements**

### *Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. There were no comments on this certification in the proposed rule.

In the current Foreign Trade Regulations, the Electronic Export Information (EEI) shall be filed through the Automated Export System (AES) for all exports of physical goods. The AES is the electronic system for collecting Shipper's Export Declaration (SED) (or any successor document) information from persons exporting goods from the United States, Puerto Rico, Foreign Trade Zones located in the United States and Puerto Rico, the U.S. Virgin Islands, between the U.S. and Puerto Rico, and to the U.S. Virgin Islands from the United States or Puerto Rico. Under this final rule, export shipments with "21" in the DDTC USML Category Code field will be required to report the DDTC Category XXI Determination Number.

In calendar year 2022, authorized agents and U.S. Principal Parties in Interest reported the DDTC USML Category Code of "21" on 0.6% of EEI records. A large majority of the EEI records involved export shipments of defense articles from branches of the Department of Defense. Based on these statistics, the Census Bureau believes this rule will not create any economic impact on companies including a substantial number of small entities. As a result, a final regulatory flexibility analysis is not required, and none has been prepared.

### *Executive Orders*

This rule has been determined to not be significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

### *Paperwork Reduction Act*

Notwithstanding any other provisions 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 valid Office of Management and Budget (OMB) control number.

The information collection requirements included in this rule will be submitted to OMB for review under OMB Control Number 0607–0152. The information collection associated with that control number was approved after 60-day and 30-day public comment periods (87 FR 70777; 88 FR 7680). This rule changes existing requirements for the information collection but will not impact the current reporting-hour burden approved under that control number. Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this collection under OMB Control Number 0607-0152 – AES Program.

Robert L. Santos, Director, Census Bureau, approved the publication of this notification in the *Federal Register*.

### **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, the Census Bureau is amending 15 CFR part 30 as follows:

**PART 30 – FOREIGN TRADE REGULATIONS**

1. The authority citation for 15 CFR part 30 continues to read as follows:

**Authority:** 5 U.S.C. 301; 13 U.S.C. 301-307; Reorganization plan No. 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; Public Law 107-228, 116 Stat. 1350.

2. Amend § 30.2 by revising paragraph (d)(3) to read as follows:

**§ 30.2 General requirements for filing Electronic Export Information (EEI).**

\* \* \* \* \*

(d) \* \* \*

(3) Electronic transmissions and intangible transfers.

\* \* \* \* \*

3. Amend § 30.3 by revising paragraphs (e)(1)(ii) to read as follows:

**§30.3 Electronic Export Information filer requirements, parties to export transactions, and responsibilities of parties to export transactions.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(ii) USPPPI Identification Number.

\* \* \* \* \*

4. Amend § 30.6 by revising paragraphs (a)(1)(iii), (b)(3), (b)(16)(ii) and (iii), and adding paragraph (b)(16)(ix) to read as follows:

**§30.6 Electronic Export Information data elements.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(iii) *USPPI identification number*. Report the Employer Identification Number (EIN) of the USPPI. If the USPPI has only one EIN, report that EIN. If the USPPI has more than one EIN, report the EIN that the USPPI uses to report employee wages and withholdings, and not the EIN used to report only company earnings or receipts. Use of another company's EIN is prohibited. If a USPPI reports a DUNS, the EIN is also required to be reported. If a foreign entity is in the United States at the time goods are purchased or obtained for export, the foreign entity is the USPPI. In such situations, when the foreign entity does not have an EIN, the authorized agent shall report a border crossing number, passport number, or any number assigned by CBP on behalf of the foreign entity.

\* \* \* \* \*

(b) \* \* \*

(3) *FTZ identifier*. If goods are removed from a FTZ and not entered for consumption, report the FTZ identifier. This is the unique 9-digit alphanumeric identifier assigned by the Foreign Trade Zone Board that identifies the FTZ, subzone or site from which goods are withdrawn for export.

\* \* \* \* \*

(16) \* \* \*

(ii) *DDTC Significant Military Equipment (SME) indicator*. A term used to designate articles on the USML (22 CFR part 121) for which special export controls are warranted because of their capacity for substantial military utility or capability. See sections 120.36 and 120.10(c) of the ITAR (22 CFR parts 120 through 130) for a definition of SME and for items designated as SME articles, respectively.

(iii) *DDTC eligible party certification indicator*. Certification by the U.S. exporter that the exporter is an eligible party to participate in defense trade. See 22 CFR 120.16(c). This certification is required only when an exemption is claimed.

\* \* \* \* \*

(ix) *DDTC Category XXI Determination Number*. The unique number issued by DDTC to a member of the regulated community (usually the original equipment manufacturer) in conjunction with a notification that a specific commodity is described in USML Category XXI. This number is required only when citing USML Category XXI as an export classification and is used to confirm that an authoritative USML Category XXI determination is being referenced to do so.

\* \* \* \* \*

**§ 30.37 [Amended]**

5. Amend § 30.37 by removing and reserving paragraph (u).
6. Amend § 30.55 by revising the introductory text to read as follows:

**§ 30.55 Confidential information, import entries, and withdrawals.**

The contents of the statistical copies of import entries and withdrawals on file with the Census Bureau are treated as confidential and will not be released without authorization by CBP, in accordance with 19 CFR part 103 relating to the copies on file in CBP offices. The importer or import broker must provide the Census Bureau with information or documentation necessary to verify the accuracy or resolve problems regarding the reported import transaction.

\* \* \* \* \*

7. Amend § 30.71 by revising the note to paragraph (b) to read as follows:

**§ 30.71 False or fraudulent reporting on or misuse of the Automated Export System.**

\* \* \* \* \*

**Note 1 to paragraph (b):** The civil monetary penalties are adjusted for inflation annually based on The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410; 28

U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114-74). In accordance with this Act, as amended, the penalties in title 13, chapter 9, sections 304 and 305(b), United States Code are adjusted and published each year in the Federal Register no later than January 15th.

8. Amend § 30.74 by revising paragraph (c)(5) to read as follows:

**§ 30.74 Voluntary self-disclosure.**

\* \* \* \* \*

(c) \* \* \*

(5) *Where to make voluntary self-disclosures.* The information constituting a Voluntary Self-Disclosure or any other correspondence pertaining to a Voluntary Self-Disclosure may be submitted to the U.S. Census Bureau, Branch Chief, Trade Regulations Branch by methods permitted by the Census Bureau. See [www.census.gov/trade](http://www.census.gov/trade) for more details.

\* \* \* \* \*

9. Amend appendix B by revising the entries for “II. Postdeparture Citation- USPPI” and “III. Postdeparture Citation–Agent” to read as follows

**Appendix B to Part 30—AES Filing Citation, Exemption and Exclusion Legend**

\* \* \* \* \*

<p>II. Postdeparture Citation- USPPI USPPI is filing the EEI</p>	<p>AESPOST USPPI Identification Number Date of Export (mm/dd/yyyy) Example: AESPOST 12345678912 01/01/2017</p>
<p>III. Postdeparture Citation–Agent Agent is filing the EEI</p>	<p>AESPOST USPPI Identification Number - Filer ID Date of Export (mm/dd/yyyy) Example: AESPOST 12345678912 – 987654321 01/01/2017</p>

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**Dated:** August 3, 2023.

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