

container will be exposed, including sterilization processing.

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Dated: March 18, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

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## DEPARTMENT OF STATE

### 22 CFR Part 51

[Public Notice 4619]

RIN 1400-ZA05

### Passport Procedures—Amendment to Passport Regulations

**AGENCY:** State Department.

**ACTION:** Interim final rule.

**SUMMARY:** The interim final rule clarifies that passports that are revoked, or reported lost or stolen, are invalid. The interim final rule also requires the personal appearance of all passport applicants who are not eligible to apply by mail. It also requires that minors under 14 years of age appear in person unless such appearance has been specifically waived. Finally, the interim final rule requires that applicants for United States passports provide photographs in accordance with the instructions printed on the passport application.

**DATES:** This interim final rule is effective on the date of publication. Written comments must be received no later than April 26, 2004.

**ADDRESSES:** Written comments should be addressed to: Chief, Legal Division, Office of Passport Policy, Planning and Advisory Services, 2100 Pennsylvania Ave., NW., 3rd Floor, Washington, DC 20037. E-mail for comments: [PassportRules@state.gov](mailto:PassportRules@state.gov) or submit your comments through the Web site at <http://www.regulations.gov/>.

**FOR FURTHER INFORMATION CONTACT:**

Sharon Palmer-Royston, Office of Passport Policy, Planning and Advisory Services, Bureau of Consular Affairs, Department of State (202) 663-2662; Fax (202) 663-2654.

**SUPPLEMENTARY INFORMATION:** Section 1101(a)(30) of Title 8, United States Code (U.S.C.), defines a passport as any travel document issued by a competent authority showing the bearer's origin, identity and nationality, which is valid for the admission of the bearer into a foreign country. Section 1185(b) of Title 8, U.S.C., requires U.S. citizens to bear a valid U.S. passport to enter or depart

the United States unless specifically exempted—exemptions are provided in 22 CFR 53.2. The Secretary of State has sole authority to grant and issue passports, pursuant to 22 U.S.C. 211a. Before a passport is issued to any person by or under authority of the United States, such person shall subscribe to and submit a written application, as required by 22 U.S.C. 213. During its period of validity, a passport (when issued for the maximum period authorized by law) is a document establishing proof of United States citizenship, pursuant to 22 U.S.C. 2705; and, 22 CFR 51.2(b) provides that unless authorized by the Department no person shall bear more than one valid or potentially valid U.S. passport at any one time; and, 8 U.S.C. 1504 authorizes the Secretary of State to cancel a passport if it was obtained illegally, fraudulently or erroneously.

### Reporting Lost or Stolen Passports

Section 51.4 of Title 22, Code of Federal Regulations (CFR), governs the validity of passports. The interim final rule amends § 51.4 by adding a new paragraph (h) providing that a passport is invalid if formally revoked by the Department; or registered by the Department as lost or stolen when reported in writing or by telephone to the Department of State, or in writing as part of the passport application process at a passport agency, or a diplomatic or consular post abroad.

The effect of this change is to forestall the use of passports that have been revoked or reported as lost or stolen for illegal entry into the United States or at international ports of entry in other countries. This means that whenever a person has reported to the Department that his or her passport is lost or stolen, and the Department has registered the passport as invalid, the passport will not be usable for travel purposes if it is later recovered. The Department considers the promulgation of this regulatory provision as a matter of urgency to bolster border security by preventing the misuse of a lost or stolen United States passport.

### Photographs

Section 51.25(a) of Title 22, Code of Federal Regulations (CFR), requires the applicant for a United States passport to submit with his or her application duplicate photographs of the size specified in the application. Section 51.25(a) further requires that the photographs should be sufficiently recent to be a good likeness of and satisfactorily identify the applicant. The interim final rule provides flexibility to determine what specifications of the

photographs may be defined in the future, if determined to be necessary for proper facial identification and technological compatibility. The interim final rule amends the first sentence in § 51.25(a) simply to require submission of photographs as specified in the passport application.

Since 1914, passport applicants have been required to provide photographs to be included in their passports. As an identity document, a passport is intended to provide proof that the person named therein is the very same as the bearer alleges himself or herself to be. A passport without a photograph cannot adequately prove the bearer's identity. Any future changes in the photograph requirement would conform to agreed international practice to improve the accuracy of automated face recognition.

### Personal Appearance of Minors

Section 51.21 of Title 22, Code of Federal Regulations (CFR), governs the execution of passport applications in general, and § 51.27 governs the execution of passport applications for minors. The interim final rule amends §§ 51.21 and 51.27 to require the personal appearance when applying for a passport of all persons, including minors under 14 years of age, ineligible to apply for a passport by mail under 51.21(c) and (d), except as waived under 51.27(b)(2)(i). Section 51.27(b)(2) is amended by inserting a new paragraph (i) that requires all minors under 14 years of age applying for passports to appear in person, with limited provisions for waiver. This new requirement will enhance accurate identification of all applicants and is an important step to prevent the possible misuse of a passport in facilitating international child abduction.

The Department considers the enactment of this rule as a matter of urgency to strengthen fraud prevention with respect to individuals, especially minors whose personal appearance during the passport application process has been generally waived in the past. In this regard, this new requirement reflects the findings and recommendation of the Department's Office of the Inspector General: Review of the Domestic Passport Operations, Phase II Fraud Prevention Programs Report number ISP-CA-03-25, December 2002, recommendation 4.

Further, members of Congress had expressed strong interest in providing a statutory and regulatory provision for this purpose, and the Department informed Congress that this rule would be established to protect minors under 14 years of age on an urgent basis.

In compelling cases, personal appearance may be waived by a senior passport specialist at the issuing passport agency in the United States, or by a senior consular officer at the issuing overseas consular office; a non-Department of State acceptance agent would not have the authority to waive personal appearance. When a minor's personal appearance is waived, the person executing the passport application on behalf of the minor must appear in person and verify the application by oath or affirmation unless, in the case of applications received overseas, these requirements are also waived by a senior consular officer.

The Department of State will issue guidance regarding the use of such waivers.

### Regulatory Findings

#### *Administrative Procedure Act*

The Department is publishing this rule as an interim final rule, with a 30-day provision for post-promulgation public comments, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). It is dictated by the necessity of additional controls over the documentation of U.S. citizens who are ages 14 and under, to help prevent the possible misuse of a passport in facilitating international child abduction.

#### *Regulatory Flexibility Act/Executive Order 13272: Small Business*

These changes to the regulations are hereby certified as not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

#### *The Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121. 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 adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

#### *The Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Pub. L. 104-4; 109 Stat. 48; 2 U.S.C.

1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule does not result in any such expenditure nor will it significantly or uniquely affect small governments.

#### *Executive Order 13132: Federalism*

The Department finds that this regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor does the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

#### *Executive Order 12866: Regulatory Review*

The Department of State considers this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Therefore, the Department has submitted the rule to the Office of Management and Budget for its review.

#### *Executive Order 12988: Civil Justice Reform*

The Department has reviewed the regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

#### *The Paperwork Reduction Act of 1995*

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

#### *The Treasury and General Government Appropriations Act of 1999—Assessment of Federal Regulations and Policies on Families*

In light of the nature of these regulations and section 654 of the Treasury and General Government Appropriations Act of 1999, Pub. L. 105-277, 112 Stat. 2681 (1998), the Department has assessed the impact of these regulations on family well being in accordance with section 654(c) of that Act. This rule is intended to promote child and family safety by helping prevent child abduction and trafficking.

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

Administrative practice and procedure, Drug traffic control, Passports and visas.

Accordingly, the Department amends 22 CFR Chapter I as follows:

### PART 51—[AMENDED]

■ 1. The authority citation for Part 51 continues to read as follows:

**Authority:** 22 U.S.C. 211a, 213, 2651a, 2671(d)(3), 2714 and 3926; 31 U.S.C. 9701; E.O. 11295, 3 CFR, 1966-1970 Comp., p 570; sec. 236, Pub. L. 106-113, 113 Stat. 1501A-430; 18 U.S.C. 1621(a)(2).

■ 2. Section 51.4 is amended to add a new paragraph (h) before the section authority citation that reads as follows:

#### § 51.4 Validity of passports.

\* \* \* \* \*

(h) Invalidity. A United States passport is invalid whenever:

(1) The passport has been formally revoked by the Department; or

(2) The Department has registered a passport reported either in writing or by telephone to the Department of State, or in writing to a U.S. passport agency or to a diplomatic or consular post abroad as lost or stolen.

■ 3. Section 51.21 is amended as follows:

■ a. Paragraph (a) is revised to read as set forth below.

■ b. Paragraphs (c) introductory text and (d) introductory text are amended by removing the word "photographs" and adding "photographs as specified in the application" in its place each time it appears.

■ c. Paragraph (d) is further amended by replacing the period at the end of paragraph (d)(1) with a semicolon; adding "and" directly following the end of paragraph (d)(2); and removing paragraph (d)(4).

#### § 51.21 Execution of passport application.

(a) First time applicants, or persons who have not been issued a passport within the past fifteen years, and persons who are not eligible to apply for a passport under paragraphs (c) and (d) of this section. Except as provided in § 51.27(b)(2)(i), a person who has never been issued a passport in his or her own name, or who has not been issued a passport for the full validity period of 10 years in his or her own name within 15 years of the date of a new application, or who is otherwise not eligible to apply for a passport under paragraphs (c) and (d) of this section, shall apply for a passport by appearing in person before a person authorized by the Secretary to give oaths, verify the application by oath or affirmation before that authorized person, provide two recent photographs as specified in the application, and pay the established fees.

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■ 4. Section 51.25 is amended by removing the phrase “photographs of the size” and adding in its place “photographs as” in paragraph (a).

■ 5. Section 51.27 is amended by redesignating paragraphs (b)(2)(i), (ii), (iii), (iv), (v), (vi), and (vii), as paragraphs (b)(2)(ii), (iii), (iv), (v), (vi), (vii), and (viii), and adding a new paragraph (b)(2)(i) to read as follows:

**§ 51.27 Minors.**

\* \* \* \* \*

(b) \* \* \*

(2) *Minors under the age of 14.* (i) Minors under 14 years of age applying for a passport shall appear in person, unless the personal appearance of the minor is specifically waived by a senior passport specialist at the issuing passport agency in the United States, or by a senior consular officer at the issuing overseas consular office, pursuant to guidance issued by the Department of State. In cases where such a waiver is granted, the person executing the passport application on behalf of the minor shall appear in person and verify the application by oath or affirmation before a person authorized by the Secretary to give oaths unless, in the case of applications received overseas, these requirements are also waived by a senior consular officer, pursuant to guidance issued by the Department of State.

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Dated: March 16, 2004.

**Maura Harty,**

*Assistant Secretary for Consular Affairs,  
Department of State.*

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**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**24 CFR Part 5**

[Docket No. FR-4876-I-01]

RIN 2501-AD01

**Implementation of Requirement in HUD  
Programs for Use of Data Universal  
Numbering System (DUNS) Identifier**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule implements an Office of Management and Budget (OMB) policy directive that requires grant applicants, other than individuals, to provide a Data Universal Numbering System (DUNS) number when applying for federal grants or other assistance agreements on or after October 1, 2003.

HUD is applying this policy widely to its assistance programs in order to have a single identifier for applicants and facilitate the transition to electronic application submission.

**DATES:** *Comment Due Date:* May 25, 2004.

*Effective Date:* April 26, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-5000.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Facsimile (FAX) comments are not acceptable.

**FOR FURTHER INFORMATION CONTACT:**

Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Room 3156, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-3000, telephone (202) 708-0667 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In a notice published on October 30, 2002 (67 FR 66177), OMB proposed to establish the Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number as the universal identifier for federal grant and cooperative agreement applicants. The OMB notice solicited public comments and included a proposal to establish this policy as a governmentwide requirement.

On June 27, 2003 (68 FR 38402), OMB published a final policy directive that implemented a governmentwide requirement for applicants to provide a DUNS number when applying for federal grants or cooperative agreements on or after October 1, 2003.

OMB has determined that there is a governmentwide need for improved statistical reporting of federal grants and cooperative agreements.

Governmentwide use of the DUNS number will provide a means to identify entities receiving those awards, as well as their business relationships. The identifier will be used for tracking purposes and to validate address and point-of-contact information. The DUNS number already is in use by the federal

government generally to identify entities receiving federal contracts and by some federal agencies in their grant and cooperative agreement processes. Among existing numbering systems, DUNS is the only one that provides the federal government the ability to determine hierarchical and family-tree data for related organizations.

Based on the OMB directive, HUD is extending this policy to all assistance awards unless the recipient is specifically exempted under this policy or the program is granted an exemption by OMB. For purposes of the DUNS requirement, assistance awards subject to this policy include, but are not limited to, such financial assistance awards as Section 8 contract administration and Section 108 loan guarantees. At this time, the DUNS requirement does not extend to FHA insurance or loan guarantee transactions that are not associated with a grant program or grant award.

The objective of this DUNS policy is to help ensure that HUD is able to identify funding received by the various entities that receive HUD program awards. Recipients affected include but are not limited to: state, local, and tribal governments, public housing agencies (PHAs), tribally designated housing entities (TDHEs), universities and colleges, nonprofit organizations, for-profit organizations, owners of assisted housing and resident management organizations, and resident councils. It is HUD's intent to make all funding opportunities and applications for assistance available online at <http://www.grants.gov> and this requirement is consistent with the intent and direction of the OMB Policy Directive issued on June 27, 2003. Use of the DUNS number will be required for all submissions through <http://www.grants.gov>.

**II. This Interim Rule**

HUD is implementing OMB's DUNS policy and making it widely applicable to HUD funding programs by amending 24 CFR part 5 to add a new subpart K that requires organizations that apply for HUD grants or financial assistance to provide a DUNS number with the application. This policy covers funds awarded as a grant, cooperative agreement, capital fund or operating fund subsidy, capital advance, or other assistance. Every application for a new grant or assistance award or renewal of an award or plan (including PHA plans) under all discretionary and formula grant programs, must include a DUNS number for the applicant.

The DUNS requirement will also apply to groups of organizations applying for HUD grants or financial