



**AES Compliance Webinar  
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Peter Quinter, Partner in Charge  
Customs and International Trade Law Department  
(954) 270-1864  
[pquinter@becker-poliakoff.com](mailto:pquinter@becker-poliakoff.com)  
Miami, Florida

# CBP/Census AES Chronology

- U.S. Customs and Border Protection (CBP) published the Trade Act regulations in the Federal Register on December 5, 2003. The rule requires advance transmission of electronic cargo information to CBP for both arriving and departing cargo. In the Federal Register notice, CBP identified the Automated Export System (AES) as the system for transmission of advance electronic export data for all modes of transportation.



# Automated Export System

- The AES is the system, including AESDirect, for collecting electronic export information (EEI) from persons exporting goods from the U.S., Puerto Rico (PR), or the U.S. Virgin Islands, between the U.S. and PR, and to the U.S. Virgin Islands from the U.S. or PR.

# U.S. Census Bureau

- On June 2, 2008, the U.S. Census Bureau published amendments to 15 CFR Part 30 (FTR) mandating the filing of export information through the AES or *AESDirect* for all shipments where a Shipper's Export Declaration (SED) was previously required.



# FTR Chronology

- Until February 1, 2009, Census and CBP used informed compliance with exporters that continued to submit SEDs.
- Effective date of the new FTR was July 2, 2008.
- Implementation date was September 30, 2008.
- Enforcement date was February 1, 2009.

# What is the purpose of Electronic Export Information (EEI)?

- The EEI is used for compiling the official U.S. export statistics for the United States and for export control enforcement purposes.
- The regulatory provisions for preparing and filing the EEI are contained in the Foreign Trade Regulations, Title 15 Code of Federal Regulations (CFR) Part 30.

# Enforcement of the FTR

- CBP Officers are verifying the AES records and related export documentation to determine that the Electronic Export Information (EEI) is properly filed. The CBP Port Directors, through the FP&F Offices, will determine the appropriate enforcement procedures.
- CBP Officers will verify that the Internal Transaction Number (ITN), exemption citation or in-bond number is clearly stated on export documents and provided to the carriers within the prescribed timeframes.

# Enforcement of the FTR

- **Vessel Cargo** - If the manifest is required, the filing citation(s) must be reported by the carrier on the manifest (CBP Form 1302A).
- **Air Cargo (Including Express Couriers)** – The filing citation(s) along with the associated air waybill number and shipper/consignee information must be clearly “marked” (and visible) on the air cargo manifest, which must be filed with the general declaration.

# U.S. Principal Party In Interest

- The person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. Generally that person can be the:
  - U.S. Seller (wholesaler/distributor) of the merchandise for export.
  - U.S. Manufacturer if selling the merchandise for export.
  - U.S. Order Party – The person in the United States that conducts the direct negotiations or correspondence with the foreign purchaser or ultimate consignee and who, as the result of these negotiations, receives the order for the foreign entity.
  - Foreign Entity if in the U.S. when items are purchased or obtained for export. The foreign entity must be listed as the USPPI if located in the U.S. when the items are purchased or obtained for export.

# Time Frame For Providing The Internal Transaction Number (ITN) To The Exporting Carrier

- For non-U.S. Munitions List (USML) vessel cargo, the USPPI, or its authorized agent, must provide the filing citation or exemption number to the exporting carrier 24 hours prior to the loading of the cargo aboard the vessel.
- If the goods are USML articles, they are subject to the International Traffic and Arms Regulations (ITAR) at 22 CFR 123.22.

# Required EEI Data Elements

- **Question:** What are the data elements required for shipments transmitted to the AES?
- **Answer:** Refer to 15 CFR 30.6
  - (a) for the mandatory data elements;
  - (b) conditional elements; and
  - (c) optional data elements.

# What data elements are to be reported in the AES Pursuant to Section 30.6?

## Mandatory data elements:

- USPPI and USPPI identification
- Date of export
- Ultimate consignee
- U.S. state of origin
- Country of ultimate destination
- Method of transportation
- Conveyance name/carrier name
- Carrier identification
- Port of export
- Related party indicator
- Domestic or foreign indicator
- Commodity classification number
- Commodity description
- Primary unit of measure
- Primary quantity
- Shipping weight
- Value
- Export information code
- Shipment reference number
- Line number
- Hazardous material indicator
- In bond code
- License code/license exemption code
- Routed export transaction indicator
- Shipment filing action request indicator
- Line item filing action request indicator
- Filing option indicator

## Conditional data elements:

1. Authorized agent and authorized agent identification
2. Intermediate consignee
3. FTZ identifier
4. Foreign port of unloading
5. Export license number/CFR citation/KPC number
6. Export Control Classification Number (ECCN)
7. Secondary unit of measure
8. Secondary quantity
9. Vehicle Identification Number (VIN)/Product ID
10. Vehicle ID qualifier
11. Vehicle title number
12. Vehicle title state code
13. Entry number
14. Transportation reference number (TRN)
15. Department of State requirements
16. Kimberley Process Certificate (KPC) number

# Over \$2,500 Requirement for AES

- The FTR requires that items of domestic or foreign origin under the same commodity classification number (Schedule B or HTSUSA) be reported separately in AES if either is valued over \$2,500.
- In instances where a shipment contains a mixture of individual Schedule B or HTSUSA commodity classification codes valued over \$2,500, only those commodity classification codes valued over \$2,500 need to be reported.
- The following citation should be used:
  - “No EEI 30.37(a)”

## 30.4 EEI filing Procedures

- (a) EEI transmitted pre-departure. The EEI shall always be transmitted prior to departure for the following types of shipments:
  - (1) Used self-propelled vehicles as defined in 19 CFR 192.1 of U.S. Customs and Border Protection regulations.
  - (2) Essential and precursor chemicals requiring a permit from the DEA;
  - (3) Shipments defined as ``sensitive'' by Executive Order;
  - (4) Shipments where a U.S. government agency requires pre-departure filing;
  - (5) Shipments defined as ``routed export transactions''

## 30.4 EEI filing Procedures Con't.

- (a) EEI transmitted pre-departure. The EEI shall always be transmitted prior to departure for the following types of shipments:
  - (6) Shipments to countries where complete outbound manifests are required prior to clearing vessels or aircraft for export (see U.S. Customs and Border Protection regulations 19 CFR 4.75(c) and 122.74(b)(2) for a listing of these countries);
  - (7) Items identified on the USML of the ITAR (22 CFR 121);
  - (8) Exports that require a license from the BIS, unless the BIS has approved post-departure filing privileges for the USPPI;
  - (9) Shipments of rough diamonds classified under HS subheadings 7102.10, 7102.21, and 7102.31 and exported (re-exported) in accordance with the Kimberley Process; and
  - (10) Shipments for which the USPPI has not been approved for post-departure filing.

# Carrier Penalties

- Includes failure to adhere to 15 CFR 30.45
  - Failure to report filing citations or exemption legends on the manifest
  - Failure to provide the USPPI or agent with changes to the date or place of export, etc.
- Depending on the number of prior offenses and aggravating and mitigating factors, penalties can range from \$500 to \$10,000 (late filing of manifest is \$1,100 per day late, up to a maximum of \$10,000 per violation)

# Discrepancies

- Unless acting as the filer or freight forwarder, the carrier is not responsible for verifying the information transmitted by the USPPI in the AES. Therefore, the carrier may reasonably rely upon the information on the bill of lading, unless it has knowledge that the bill of lading information, or a part thereof, is incorrect.

# Retention of Export Information

- All parties to the export transaction (owners and operators of export carriers, USPPIs, FPPIs and/or authorized agents) shall retain documents pertaining to the export shipment for 5 years from the date of export.

## 30.6 Confidentiality of Electronic Export Information

- Solely for official purposes by U.S. Commerce Department (Census Bureau for statistical purposes and BIS for export enforcement) and for other Federal Government agencies.
- Not subject to a FOIA request

# Penalties

- 30.71 False or fraudulent reporting on or misuse of the Automated Export System.
  - (a) Criminal penalties—
    - (1) Failure to file; submission of false or misleading information. Any person, including USPPs, authorized agents or carriers, who knowingly fails to file or knowingly submits, directly or indirectly, to the U.S. Government, false or misleading export information through the AES, shall be subject to a fine not to exceed \$10,000 or imprisonment for not more than five years, or both, for each violation.
    - (2) Furtherance of illegal activities. Any person, including USPPs, authorized agents or carriers, who knowingly reports, directly or indirectly, to the U.S. Government any information through or otherwise uses the AES to further any illegal activity shall be subject to a fine not to exceed \$10,000 or imprisonment for not more than five years, or both, for each violation.

# Penalties

- 30.71 False or fraudulent reporting on or misuse of the Automated Export System.
  - (b) Civil penalties—
    - (1) Failure to file or delayed filing violations. A civil penalty not to exceed \$1,100 for each day of delinquency, but not more than \$10,000 per violation, may be imposed for failure to file information or reports in connection with the exportation or transportation of cargo.
    - (2) Filing false/misleading information, furtherance of illegal activities and penalties for other violations. A civil penalty not to exceed \$10,000 per violation may be imposed for each violation of provisions of this part other than any violation encompassed by paragraph (b)(1) of this section. Such penalty may be in addition to any other penalty imposed by law.
    - (3) Forfeiture penalties. In addition to any other civil penalties specified in this section, any property involved in a violation may be subject to forfeiture under applicable law.

# Penalties

- 30.72 Civil penalty procedures.
  - (d) Remission and mitigation. Any penalties imposed under 15 CFR Sec. 30.71(b)(1) and (b)(2) may be remitted or mitigated, if:
    - (1) The penalties were incurred without willful negligence or fraud; or
    - (2) Other circumstances exist that justify a remission or mitigation.

# Sample Power Of Attorney For USPPI/ Authorized Agent

- "...The USPPI certifies that all statements and information contained in the documentation provided to the authorized agent and relating to exportation will be true and correct. Furthermore, the USPPI understands that civil and criminal penalties may be imposed for making false or fraudulent statements or for the violation of any United States laws or regulations on exportation.

[company]

[signature]

# Revisions to Title 15, Part 30

- Separate mitigation schemes for:
  1. Failure to file EEI in AES
  2. Late filing of EEI in AES
  3. Failure to file all information in AES or filing incorrect information in AES
  4. Failure of the exporting carrier to provide certain documents or information to CBP

# Failure to File EEI in AES

- No record in AES for an export transaction by the required date and the government discovers it before the violation is corrected; or any record filed later than 10 days after the due date
- Depending on the number of prior offenses and aggravating and mitigating factors, penalties can range from \$750 to \$10,000

# Late Filing of EEI in AES

- Occurs when the AES record is filed beyond the due date for such filing
- Depending on the number of prior offenses and aggravating and mitigating factors, penalties can range from \$250 per day to \$1,100 per day up to a maximum of \$10,000

# Other FTR Violations

- Includes filing of incorrect or incomplete information, failure to correct AES information after it is known, failure to provide carrier with proof of filing citation or exemption within time limits, etc.
- Depending on the number of prior offenses and aggravating and mitigating factors, penalties can range from \$500 to \$10,000

# Aggravating Factors Include:

- Several violations in the same export transaction
- Circumstances suggest an intentional violation
- High number of violations in past three years
- Evidence of criminal conviction for a related violation
- Party exhibits disregard for its responsibilities under U.S. law and regulations
- Party is a regular exporter but lacks a systematic export compliance effort

# Mitigating Factors Include:

- First time USPPI, authorized agent, FPPI carrier
- Voluntary self-disclosure of the violation
- Clearly documented evidence of remedial measures to prevent future violations
- Exceptional cooperation with government
- Violation was an isolated occurrence
- Party has assisted in another investigation
- Party has a systematic export compliance effort

# CBP Notice of Penalty Language

- Demand is hereby made for payment of \$10,000 representing penalties assessed against you for violation of law or regulation, or breach of bond, as set forth below:
  - On [date], [MAWB#, HAWB# or B/L#] generated by [filer], noted the AES indicator as "NO EEI 30.37(A)". Commercial invoice obtained by CBP declared the value of the shipment at [\$ amount]. Penalty assessed for no electronic export information filed prior to documents being presented for export.
  - Failure to file electronic export information in the AES.
  - LAW OR REGULATION VIOLATED
    - 15 CFR 30.2, 19 U.S.C. 1595a(d), and 22 U.S.C. 401

# Voluntary Disclosure (§30.74)

- A voluntary disclosure reflects due diligence in detecting, and correcting potential violations when required information was not reported or when incorrect information was provided that violates the regulations (whether deliberate or unintentional).
- A disclosure can lead to mitigating factors with regards to civil and criminal penalties, as long as the violation(s) are discovered and identified before the Census Bureau or another Federal government agency identifies the problem. The Census Bureau recommends that full disclosures be made for violations going back at least five (5) years.

# Voluntary Disclosure (§30.74)

- A disclosure should be addressed to the Chief, Foreign Trade Division, U.S. Census Bureau, Washington, D.C.
- . The company letter must include the following information:
  - The kind of violation involved.
  - Description of all data to be reported under the FTR that was either not reported or reported incorrectly.
  - An explanation of when and how the violation occurred.
  - The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities pertaining to the violations.
  - A description of any mitigating circumstances.

# Voluntary Self Disclosure

- Mitigating factor
- Referral to BIS for administrative sanctions or referred to DOJ for criminal prosecution
- Discretion of Census Bureau and BIS



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