

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 980929251-9148-03]

RIN 0607-AA19

Amendment to Foreign Trade Statistics Regulations: Provisions for Filing Shipper's Export Data Electronically Using the Automated Export System (AES)

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: The U.S. Census Bureau (Census Bureau) is amending the Foreign Trade Statistics Regulations (FTSR) to add provisions for filing shipper's export data electronically using the Automated Export System (AES). The AES is an export information gathering and processing system developed through cooperative efforts between the U.S. Customs Service (Customs), the Census Bureau, other federal agencies, and the export community. The AES is a completely voluntary system that provides an alternative to filing the paper Shipper's Export Declaration (SED) and manifest data, and will greatly streamline and improve the exporting process. Export information is collected electronically and edited immediately, and errors are detected and corrected at the time of filing. AES is a nationwide system operational at all ports and for all methods of transportation. Customs also is revising appropriate sections of its Customs Regulations in a final rule published elsewhere in this issue of the **Federal Register**. The Customs regulations will conform to the electronic filing provisions and requirements contained in this final rule.

EFFECTIVE DATE: This rule will become effective July 28, 1999.

FOR FURTHER INFORMATION CONTACT: C. Harvey Monk, Jr., Chief, Foreign Trade Division, U.S. Census Bureau, Room 2104, Federal Building 3, Washington, DC 20233-6700, by telephone on (301) 457-2255, by fax on (301) 457-2645, or by E-mail at: c.h.monk.jr@ccmail.census.gov.

SUPPLEMENTARY INFORMATION:**Background**

On October 9, 1998, Customs and the Census Bureau published a joint notice in the **Federal Register** (63 FR 54438) that informed the public of the current status of the Automated Export System

(AES). The AES is an electronic reporting system jointly developed by the Census Bureau and Customs that allows exporters or their authorized agents to transmit commodity Shipper's Export Declaration (SED) information, and carriers to transmit transportation (outbound manifest) information. That notice also informed the public of other developments affecting the implementation of the AES and announced that the Census Bureau and Customs would be developing regulations to implement provisions and requirements for filing export information electronically through the AES. Since the background information contained in that notice fully recounts the development of the AES to date, it is incorporated here by reference.

The Census Bureau published a Notice of Proposed Rulemaking in the **Federal Register** (64 FR 7412) on Friday, February 12, 1999, proposing to add regulations to 15 CFR Part 30 for filing Shipper's export data electronically using the AES. Customs also published a Notice of Proposed Rulemaking in the **Federal Register** (64 FR 7422) on Friday, February 12, 1999, proposing to revise appropriate sections of its Customs Regulations, 19 CFR, Chapter 1, to reference Census Bureau regulations that will provide for electronic filing requirements using the AES to provide for certain procedural safeguards regarding applicant's and participant's rights vis-a-vis Customs actions and to provide for a Sea Carriers Manifest Module for the submission of manifest information in the ocean environment.

The AES is a joint venture between Customs, the Census Bureau, and other federal agencies that will provide a seamless Government export information processing system to allow the trade community to report export data electronically. The AES also is the cornerstone of Customs' and the Census Bureau's reinvestment strategy to support and facilitate the movement of exports. Automation will help remove the time consuming paper processing barriers that now hinder the flow of trade. The AES will greatly improve the accuracy of the export data provided to the Census Bureau and will allow the Census Bureau, in turn, to provide more accurate export data and a wider range of export data needed by businesses to stay competitive in the global trade market today. The AES is in alignment with the global shift to the electronic movement of all business information.

The AES will result in the elimination of redundant reporting of export data to multiple agencies. It brings savings in both human resources and paper

handling. It greatly increases the accuracy of trade statistics, which will allow for improvement in public and private sector decision making. Under AES, increased accuracy of trade information, the prohibition of illegal exports, and effective enforcement of license requirements can all be achieved while the flow of trade is facilitated. Although paper filing of the SED and manifest documents will still be permitted, it is anticipated that electronic filing through the AES will be the preferred method of export reporting by the trade community in the near future.

General Description of the AES Process

The export process begins when the exporter decides to export merchandise as specified in § 30.1. Once the exporter makes this decision, the exporter or their authorized forwarding agent makes shipping arrangements with the carrier. The exporter or an authorized filing agent transmits the shipper's export information using the AES. This information can come directly from the exporter or his authorized filing agent or indirectly from the aforementioned through a service center or port authority. The shipper's export data are transmitted in a timely manner in accordance with the provisions contained in electronic filing Options 2, 3, and 4 (see § 30.61, *Electronic Filing options*). The AES validates the data against editing tables and U.S. Government agency requirement files and generates either a confirmation message or a fatal error message. The carrier or an authorized filing agent transmits the export manifest data using the AES. The AES validates the transportation data then generates either a confirmation message or an error message. The exporter, carrier, or an authorized filing agent must attend to any errors generated by the AES. The AES allows the exporter, carrier, or an authorized filing agent to transmit corrections.

Response to Comments

The Census Bureau received three comments on the proposed rule. The comments and our responses are as follows:

1. *Comment:* This comment questioned: (a) the difference in reporting full export information within 5 business days from the date of exportation for Option 3 filers, and within 10 business days from the date of exportation for Option 4 filers; (b) the requirement that licensed shipments be filed using filing Option 2 or 3; and (c) concern over the operational integrity of the AES in light of the questions raised

in a previous General Accounting Office report and the recent hardware problems with the Automated Commercial Environment (ACE) computer system.

Response: The Census Bureau responded to these comments as follows: (a) the reporting provisions for Option 3 and Option 4 filers were based on the certification requirements and related filing privileges associated with the two filing options; (b) Option 4 was developed for qualified exporters to file certain export data post departure. The AES regulations allow for the filing of licensed shipments using Option 4, if the exporter has approval of the specific licensing agency to do so; and (c) the AES is fully capable of processing all export data submitted electronically for the modules developed so far for using the AES, and the Census Bureau and Customs will support all AES filers to the greatest extent possible. The AES operates on separate hardware from the ACE system, and although the AES currently uses the same communication lines, we do not anticipate hardware problems with the AES computer and communication system. No revision will be made to the proposed rule as a result of this comment.

2. **Comment:** This comment generally questioned the operational integrity of the AES and its functional compatibility with the International Trade Data System (ITDS) and suggested that the Automated Export Reporting Program (AERP) remain operational as filing Option 5 until the AES is fully operational.

Response: The AES is currently operational and processing data electronically for a substantial number of exporters. The AES is compatible with the functional requirements of the ITDS and could be incorporated into that system for the collection and tabulation of export data. The Census Bureau does not anticipate expensive or unwanted conversion problems if and when that transition occurs. The Census Bureau and Customs have been informing the trade community since 1995 that the AERP would expire on December 31, 1999. Currently, over 50 percent of AERP companies have submitted Letters of Intent to participate in the AES, and the Census Bureau has offered full assistance in making this transition. The AERP will not be extended past the December 31, 1999, deadline. No revision will be made to the proposed rule as a result of this comment.

3. **Comment:** This comment concerned the restriction that the export of used self-propelled vehicles be reported predeparture using filing

Options 2 and 3 only, in lieu of also allowing this information to be filed post departure using filing Option 4.

Response: The provision that export data for used self-propelled vehicles as defined in 19 CFR 192.1, be transmitted predeparture using filing Options 2 or 3, is based on Customs requirements and conditions on the exportation and validation of such vehicles. As such, this comment was referred to Customs for review and evaluation. Based on the Customs response, no revision will be made to the proposed rule as a result of this comment.

Changes to the Proposed Rule

As a result of new record format requirements and administrative/functional adjustments, minor revisions were made to the proposed rule. These revisions are not substantial and reflect changes required to enhance the electronic reporting process. The changes to the proposed rule are as follows:

(1) In § 30.60(a), we added the term "consolidators" to the list of AES participants to be more inclusive and to ensure that air consolidators were included in the participant list.

(2) In § 30.61(a), Option 2 filing requirements, we included an exception from Option 2 filing restrictions for used self-propelled vehicles exported between the United States and Puerto Rico. Because shipments of used self-propelled vehicles between the United States and Puerto Rico do not require the normal Customs validation, that data can be filed using AES filing options 3 or 4. Appropriate language indicating this filing provision also is included in §§ 30.61(b), Option 3 filing requirements, and 30.61(c), Option 4 filing requirements.

(3) In § 30.63(a)(1)(i), Exporter/exporter identification, the text is revised to refer the user to the appropriate sections in the FTSR for a detailed description of exporter responsibilities.

(4) In § 30.63(a)(18), we added the term "Shipment" to the term "reference number" to provide a more accurate description of that record field.

(5) In § 30.63(a)(22), we added "License code" as a separate field in the mandatory data elements. This item was previously listed in § 30.63(b)(5) as part of the conditional data element for "License number/CFR citation/license code".

(6) In § 30.63(b)(5), we removed the reference to license code and included it as part of the mandatory data elements in § 30.63(a)(22).

(7) In § 30.63(b)(11), the term "Booking number" is retitled to read

"Transportation reference number" as a more generic description of the field and to be consistent with the record format field.

(8) In § 30.63(b)(12), we included "Equipment number" as a conditional data element. This was previously listed as an optional data element.

(9) In § 30.63(b)(13), we added the field "Filing option indicator" as a new record format field under the conditional data elements.

(10) In Appendix A, Format for Letter of Intent, we added "e-mail address" to items 2 and 3 of the contents and added "(Monthly SED volume)" as a unit of measure to items 8 and 9 of the contents.

(11) In Appendix C, Part I, Method of Transportation Codes, we added codes 21, 31, and 41 for rail containerized, truck containerized, and air containerized shipments as a result of record format changes.

(12) In Appendix C, Part II, Export Information Codes, we added code RP for AERP, and AE for AES, to the record format fields.

Program Requirements

In order to include provisions for the electronic filing of shipper's export information, the Census Bureau is: (a) amending existing sections of the FTSR, 15 CFR Part 30, and (b) adding a new Subpart E to the FTSR to include provisions for the electronic filing of shipper's export data.

The Census Bureau is amending appropriate sections of the FTSR to include provisions for the electronic reporting of export data using the AES.

The Census Bureau is amending § 30.1, "General statement of requirements for Shipper's Export Declarations," to add a reference that requirements for filing shipper's export data electronically can be found in the new subpart on electronic filing requirements.

The Census Bureau is amending the introductory text of § 30.7, "Information required on Shipper's Export Declarations," to specify that the information in this section only applies to the paper SED and referring users to the new subpart for information required for electronic filing of shipper's export data.

The Census Bureau is amending § 30.39, "Authorization for reporting statistical information other than by means of individual Shipper's Export Declarations filed for each shipment," to replace existing electronic filing programs with the AES and to reflect current Census Bureau authority to authorize alternative methods of filing shipper's export data.

The Census Bureau is amending § 30.91, "Confidential information, Shipper's Export Declarations," item (a) "Confidential status" to clarify that confidentiality provisions apply to all export information supplied to the Census Bureau whether filed electronically or in any other approved format.

To include new provisions and requirements for the electronic filing of shipper's export information using the AES, the Census Bureau is adding a new subpart (Subpart E) in the current FTSR on electronic filing requirements for submitting shipper's export information. To accomplish this, the current Subpart E—General Requirements-Importers—is redesignated to read Subpart F, and Subpart E is renamed and reserved for "Electronic Filing Requirements-Shippers Export Information." The current Subpart F is redesignated Subpart G—Special Provisions for Particular Types of Import Transactions. The current Subpart G is redesignated Subpart H—General Administrative Provisions.

The new Subpart E—Electronic Filing Requirements-Shipper's Export Information—will consist of §§ 30.60 through 30.66 to include:

- § 30.60 General requirements for filing export and manifest data electronically using the Automated Export System (AES)
- § 30.61 Electronic filing options
- § 30.62 AES Certification, qualifications and standards
- § 30.63 Information required to be reported electronically through AES (data elements)
- § 30.64 Transmitting and correcting AES information
- § 30.65 Annotating the proper exemption legends for shipments transmitted electronically
- § 30.66 Recordkeeping and documentation requirements

The revisions contained in this rule are consistent with the provisions of the Customs Regulations. The U.S. Customs Service, Department of the Treasury, concurs with the provisions contained in this final rule.

Rulemaking Requirements

This rule is exempt from all requirements of Section 553 of the Administrative Procedures Act because it deals with a foreign affairs function (5 U.S.C. 553(a)(1)).

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required by 5 U.S.C. 553 or any other law, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603(a)).

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications sufficient to warrant preparation of the federalism assessment under Executive Order 12612.

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 currently valid Office of Management and Budget (OMB) Control Number.

This rule covers collections of information subject to the provisions of the PRA, which were cleared by OMB under OMB Control Number 0607-0152.

This rule will have no impact on the current reporting-hour burden requirements as approved under OMB Control Number 0607-0152 under provisions of the PRA of 1995, Public Law 104-13.

List of Subjects in 15 CFR Part 30

Economic statistics, Exports, Foreign trade, Reporting and recordkeeping requirements.

Amendments to 15 CFR Part 30

For the reasons set out in the preamble, the Census Bureau is amending 15 CFR chapter I, part 30, as follows:

PART 30—FOREIGN TRADE STATISTICS

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 1950 (3 CFR 1949-1953 Comp., 1004); Department of Commerce Organization Order No. 35-2A. August 4, 1975, 40 FR 42765.

Subpart A—General Requirements—Exporters

2. Section 30.1 is amended by adding paragraph (c) to read as follows:

§ 30.1 General statement of requirements for Shipper's Export Declarations.

* * * * *

(c) In lieu of filing paper Shipper's Export Declarations as provided elsewhere in this section, exporters or their authorized agents have the option to file shipper's export information electronically, as provided in subpart E of this part. The Electronic filing requirements for filing shipper's export

declaration information are contained in subpart E of this part, Electronic Filing Requirements-Shipper's Export Information.

3. Section 30.7 is amended by revising the introductory text to read as follows:

§ 30.7 Information required on Shipper's Export Declarations.

The following information shall be furnished in the appropriate spaces provided on the paper copy of the Shipper's Export Declaration and shall conform to the requirements set forth in this section. (See § 30.92 for information as to the statistical classification Schedules C and D referred to in this section. Also, see § 30.8 for information required on Form 7513 in addition to these requirements.) For information required to be filed electronically see § 30.63.

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Subpart C—Special Provisions Applicable Under Particular Circumstances

4. Section 30.39 is revised to read as follows:

§ 30.39 Authorization for reporting statistical information other than by means of individual Shipper's Export Declarations filed for each shipment.

(a) The Census Bureau, with the concurrence of appropriate government agencies, may authorize exemptions from the requirement of § 30.6 that a separate Shipper's Export Declaration be filed for each shipment.

(b) Application for certification and approval to file shipper's export data electronically using the Automated Export System (AES) can be made directly to the Census Bureau in accordance with the provisions specified in § 30.60. Certification and approval procedures and qualification standards for filing shipper's export data electronically are contained in § 30.62.

(c) Authorization for other alternative methods of filing shipper's export information will be issued only when, in the judgment of the Census Bureau, complete and accurate information will be available on a prescribed basis from the records of the applicant and where the alternate filing method for shipments represents a reduction of reporting cost or burden. Where export control is a consideration, such authorizations will be granted only when, in the judgment of the appropriate controlling government agency, the applicant has demonstrated that it has established adequate internal operating procedures and has taken other satisfactory safeguards to assure compliance with export control

regulations of the appropriate government agency or agencies.

Subparts E through G [Redesignated as Subparts F Through H]

5. Subparts E through G are redesignated as subparts F through H, respectively.

6. A new Subpart E, consisting of §§ 30.60 through 30.66, is added to read as follows:

Subpart E—Electronic Filing Requirements—Shipper's Export Information

Sec.

30.60 General requirements for filing export and manifest data electronically using the Automated Export System (AES).

30.61 Electronic filing options.

30.62 AES Certification, qualifications, and standards.

30.63 Information required to be reported electronically through AES (data elements).

30.64 Transmitting and correcting AES information.

30.65 Annotating the proper exemption legends for shipments transmitted electronically.

30.66 Recordkeeping and documentation requirements.

Subpart E—Electronic Filing Requirements—Shipper's Export Information

§ 30.60 General requirements for filing export and manifest data electronically using the Automated Export System (AES).

The Automated Export System (AES) transmissions by exporters or their authorized filing agents that meet the requirements of this subpart constitute the Shipper's Export Declaration (SED) for purposes of this part. This section outlines the general requirements for participating in the AES. Several filing options are available for transmitting shipper's export data. The first option is the standard paper filing of the SED.

The AES also provides AES participants with three electronic filing options for submission of shipper's export data.

(a) *Participation.* Participation in the AES is voluntary and is designed to use technology available to both large and small businesses. Companies that are not automated can submit data through a service center or port authority that provides the capability to communicate with the Customs Data Center in the same way as automated companies. Companies may also buy a software package designed by an AES certified software vendor. Certified trade participants (filing agents) can transmit to and receive data from the AES pertaining to merchandise being exported from the United States. Participants in the AES process, who

may apply for AES certification, include exporters or their authorized forwarding agents, carriers, non-vessel operating common carriers (NVOCC), consolidators, port authorities, software vendors, or service centers. Once becoming certified, an AES filer (filing agent) must agree to stay in complete compliance with all export rules and regulations.

(b) *Letter of Intent.* The first requirement for all participation in AES, including approval for Option 4 filing privileges, is to submit a complete and accurate Letter of Intent to the Census Bureau. The Letter of Intent is a written statement of a company's desire to participate in AES. It must set forth a commitment to develop, maintain, and adhere to Customs and Census Bureau performance requirements and operations standards. Once the Letter of Intent is received, a U.S. Customs Client Representative and a Census Bureau Client Representative will be assigned to work with the company. The Census Bureau will forward additional information to prepare the company for filing export data using the AES. The format and content for preparing the Letter of Intent is provided in Appendix A of this part.

(c) *General filing and transmission requirements.* The data elements required for filing shipper's export data electronically are contained in § 30.63. For AES, the difference is that the certified filer must transmit the shipper's export information electronically using the AES, rather than delivering the paper SED to the carrier. When transmitting export information electronically, the AES filers must comply with the data transmission procedures determined by Customs and the Census Bureau (See § 30.62 for AES certification, qualifications, and standards).

(d) *General responsibilities of exporters, filing agents, and sea carriers.—(1) Exporter and authorized filing agent responsibilities.* The exporter and/or their authorized agents, certified for AES filing, are responsible for:

(i) Transmitting complete and accurate information to the AES (see § 30.4 (a) and § 30.7 (d)(1), (2), and (e) for a delineation of responsibilities of exporters and authorized forwarding agents);

(ii) Transmitting information to the AES in a timely manner in accordance with the provisions and requirements contained in this subpart;

(iii) Responding to messages identified as fatal error, warning, verify, or reminder generated by AES in

accordance with the provisions contained in this subpart;

(iv) Providing the exporting carrier with the required exemption statements or citations when an item or shipment is exempt from SED filing requirements in accordance with provisions contained in this subpart;

(v) Transmitting corrections or cancellations to information transmitted to the AES as soon as the need for such changes is determined in accordance with provisions contained in this subpart; and

(vi) Maintaining all necessary and proper documentation related to the AES export transaction in accordance with provisions contained in this subpart.

(2) *Sea carrier responsibilities.* The exporting sea carrier also is responsible for transmitting timely, accurate, and complete manifests and bills of lading information to AES for all cargo being shipped. The exporting sea carrier is also responsible for transmitting booking, receipt of booking, departure, and manifest messages to AES. Customs and Census Bureau officials, with written agreement of the exporting sea carrier, can provide for alternative methods of filing manifest and SED information to that found in this Subpart. For exporting carrier responsibilities, see Subpart B, of this part, General Requirements—Exporting Carriers. For electronic filing of manifest information using the AES, see 19 CFR 4.76, *Procedures and responsibilities for electronic filing of sea manifests through AES.*

§ 30.61 Electronic filing options.

As an alternative to filing paper Shipper's Export Declaration forms (Option 1), three electronic filing options for transmitting shipper's export information are available to exporters or their authorized filing agents. Two of the electronic filing options (Options 3 and 4) take into account that complete information concerning export shipments is not always available at the time of shipment. The available AES electronic filing options are as follows:

(a) *AES with full information transmitted prior to exportation (Option 2).* Option 2 provides for the electronic filing of *all* information required for exports to AES prior to exportation (see § 30.63 for information required to be reported electronically). Full predeparture information is always required to be transmitted to AES for the following specific types of shipments:

(1) Used self-propelled vehicles (except those shipped between the United States and Puerto Rico) as defined in 19 CFR 192.1

(2) Essential and precursor chemicals requiring a permit from the Drug Enforcement Administration;

(3) Shipments defined as "sensitive" by Executive Order; and

(4) Shipments where full export information is required prior to exportation by a federal government agency.

(b) *AES with partial information transmitted prior to exportation (Option 3).* Option 3 provides for the electronic filing of *specified* data elements to the AES prior to exportation (see Appendix B of this part for a list of specified data elements). Filing Option 3 is available for all methods of transportation. Used self-propelled vehicles shipped between the United States and Puerto Rico may be shipped using filing Option 3. Option 3 is designed for those shipments for which full data are not available prior to exportation. No prior approval from the Census Bureau or Customs is required for certified AES filers to use Option 3. However, full predeparture information must be transmitted to the AES for certain specified transactions (as specified in Option 2). For shipments that require an export license, the exporter must file using Option 2 or 3, unless the licensing agency specifically approves the exporter for Option 4 filing for the licensed shipment under its jurisdiction. Where partial information is provided under Option 3, complete export information must be transmitted as soon as it is known, but no later than five (5) working days from the date of exportation. The exporter or their authorized filing agent must provide the exporting carrier with a unique shipment reference number prior to exportation.

(c) *AES with no information transmitted prior to exportation (Option 4).* Option 4 is only available for approved exporters and requires *no* export information to be transmitted electronically using AES prior to exportation. For approved Option 4 filers, all shipments (other than those requiring an export license, unless specifically approved by the licensing agency for Option 4 filing, and those specifically required under electronic filing Options 2 or 3) by all methods of transportation may be exported with no information transmitted prior to exportation. Used self-propelled vehicles, shipped between the United States and Puerto Rico, by an Option 4 approved exporter, may be shipped using filing Option 4. Certified AES authorized filing agents or service centers may transmit information post departure on behalf of approved Option 4 exporters. All exporters filing a Letter

of Intent for Option 4 filing privileges will be cleared through a formal review process by Customs, the Census Bureau, and other federal government agencies participating in the AES (partnership agencies) in accordance with provisions contained in § 30.62. Where exportation is made with no prior AES filing, complete export information should be transmitted as soon as it is known, but no later than ten (10) working days from the date of exportation. The exporter or their authorized agent must provide the exporting carrier with the exporter's Option 4 AES identification number prior to exportation.

§ 30.62 AES Certification, qualifications, and standards.

(a) *AES certification process.* Certification for AES filing will apply to any exporter, authorized forwarding agent, carrier, non-vessel operating common carriers (NVOCC), consolidator, port authority, software vendor, or service center transmitting export information electronically using the AES. Applicants interested in AES filing must submit a Letter of Intent to the Census Bureau in accordance with the provisions contained in § 30.60. Customs and the Census Bureau will assign client representatives to work with the applicant to prepare them for AES certification. The AES applicant must perform an initial two-part communication test to ascertain whether the applicant's system is capable of both transmitting data to and receiving data from the AES. The applicant must demonstrate specific system application capabilities. The capability to correctly handle these system applications is the prerequisite to certification for participation in the AES. The applicant must successfully transmit the AES certification test. Assistance is provided by the Customs' and Census Bureau's client representatives during certification testing. These representatives make the sole determination as to whether or not the applicant qualifies for certification. Upon successful completion of certification testing, the applicant's status is moved from testing mode to operational mode. Upon certification, the filer will be required to maintain an acceptable level of performance in AES filings. The certified AES filer may be required to repeat the certification testing process at any time to ensure that operational standards for quality and volume of data are maintained.

(1) *Filing agent certification.* Once an authorized filing agent has successfully completed the certification process, the exporter(s) using that agent need no further AES certification of their own.

The certified filing agent must have a properly executed power of attorney, a written authorization from the exporter, or a SED signed by the exporter to transmit the exporter's data electronically using the AES. The exporter or authorized agent that utilizes a service center or port authority must complete certification testing, unless the service center or port authority has a formal power of attorney or written authorization from the exporter to submit the export information on behalf of the exporter.

(2) *AES certification letter.* The Census Bureau will provide the certified AES filer with a certification letter after the applicant has been approved for operational status. The certification letter will include:

(i) The date that filers may begin transmitting "live" data electronically using AES;

(ii) Reporting instructions; and

(iii) Examples of the required AES exemption legends.

(3) *AES filing standards.* The certified AES filer's data will be monitored and reviewed for quality, timeliness, and coverage. The Census Bureau will notify the AES filer in writing if they fail to maintain an acceptable level of quality, timeliness, and coverage in the transmission of export data or fail to maintain compliance with Census Bureau regulations contained in this chapter. The Census Bureau will direct that appropriate action to correct the specific situation(s) be taken.

(b) *Criteria for denial of applications requesting Option 4 filing status; appeal procedure.* Approval for Option 4 filing privileges will apply only to exporters. However, forwarding agents may apply for Option 4 filing privileges on behalf of an individual exporter. Option 4 applicants must submit a Letter of Intent to the Census Bureau in accordance with the provisions contained in § 30.60.

(1) *Option 4 approval process.* The Census Bureau will distribute the Letters of Intent for Option 4 filing privileges to Customs and the other partnership agencies participating in the AES Option 4 approval process. Failure to meet the standards of the Census Bureau, Customs, or one of the partnership agencies is reason for nonselection or denial of the application for Option 4 filing privileges. Each partnership agency will develop its own internal Option 4 acceptance standards, and each agency will notify the Census Bureau of the applicant's failure to meet that agency's acceptance standards. If the Census Bureau does not receive either notification of denial, or a request for extension from the partnership

agency within thirty (30) calendar days after the date of referral of the Letter of Intent to the partnership agency, the applicant is deemed to be approved by that agency. The Census Bureau will provide the Option 4 applicant with an approval or denial letter. If a denial letter is issued, the Census Bureau will indicate the partnership agency that denied the application. The applicant must contact the denying partnership agency for the specific reason(s) for denial.

(2) *Grounds for denial of Option 4 filing status.* The Census Bureau may deny an exporter's application for Option 4 filing privileges for any of the following reasons:

(i) Applicant is not an established exporter, as defined in this chapter, with regular operations;

(ii) Applicant has failed to submit SEDs to the Census Bureau for processing in a timely and accurate manner;

(iii) Applicant has a history of noncompliance with Census Bureau export laws and regulations contained in this chapter;

(iv) Applicant has been indicted, convicted, or is currently under investigation for a felony involving a violation of federal export laws or regulations and the Census Bureau has evidence of probable cause supporting such violation, or the applicant is in violation of Census Bureau laws or regulations contained in this chapter; and

(v) Applicant has made or caused to be made in the Letter of Intent a false or misleading statement or omission with respect to any material fact.

(3) *Notice of nonselection and appeal procedures for Option 4 filing.* The Census Bureau will notify applicants in writing of the decision to either deny or approve the applicant for Option 4 filing privileges within thirty (30) days of receipt of the Letter of Intent by the Census Bureau, or if a decision cannot be reached at that time, the applicant will be notified of an expected date for a final decision as soon as possible after the thirty (30) calendar days. Applicants for Option 4 filing privileges denied Option 4 status by other partnership agencies must contact those agencies regarding the specific reason(s) for nonselection and for their appeal procedures. Applicants denied Option 4 status by the Census Bureau will be provided with a specific reason for nonselection and a Census Bureau point of contact in the notification letter. Option 4 applicants may appeal the Census Bureau's nonselection decision by following the appeal procedure and

reapplication restriction provided in paragraph (b) (5) of this section.

(4) *Revocation of Option 4 filing privileges.* The Census Bureau may revoke Option 4 filing privileges of approved Option 4 exporters for the following reasons:

(i) The exporter has made or caused to be made in the Letter of Intent a false or misleading statement or omission with respect to material fact;

(ii) The exporter submitting the Letter of Intent is indicted, convicted, or is currently under investigation for a felony involving a violation of federal export laws or regulations and the Census Bureau has evidence of probable cause supporting such violation, or the applicant is in violation of Census Bureau laws or regulations contained in this chapter;

(iii) The exporter has failed to substantially comply with existing Census Bureau or other agency export regulations; or

(iv) The Census Bureau determines that continued participation in Option 4 by an exporter would pose a significant threat to national security interests such that their continued participation in Option 4 should be terminated.

(5) *Notice of revocation; appeal procedure.* Approved Option 4 filers whose Option 4 filing privileges have been revoked by other agencies must contact those agencies for their specific revocation and appeal procedures. When the Census Bureau makes a determination to revoke an approved Option 4 filer's AES Option 4 filing privileges, the exporter will be notified in writing of the reason(s) for the decision. The exporter may challenge the Census Bureau's decision by filing an appeal within thirty (30) calendar days of receipt of the notice of decision. In most cases, the revocation shall become effective when the exporter has either exhausted all appeal proceedings, or thirty (30) calendar days after receipt of the notice of revocation, if no appeal is filed. However, in cases when required by national security interests, revocations will become effective immediately upon notification. Appeals should be addressed to the Chief, Foreign Trade Division, Bureau of the Census, Washington, DC 20233. The Census Bureau will issue a written decision to the exporter within thirty (30) calendar days from the date of receipt of the appeal by the Census Bureau. If a written decision is not issued within thirty (30) calendar days, a notice of extension will be forwarded within that time period. The exporter will be provided with the reasons for the extension of this time period and an expected date of decision. Approved

Option 4 exporters who have had their Option 4 filing status revoked may not reapply for this status for one year following written notification of the revocation. Such applications will not be considered before the one-year time period.

§ 30.63 Information required to be reported electronically through AES (data elements).

The information (data elements) listed in this section is required for shipments transmitted electronically through AES. The data elements as they pertain to electronic reporting are defined as paragraphs (a), (b), and (c) of this section. Those data elements that are defined in more detail in other sections of the FTSR are so noted. The data elements identified as "mandatory" must be reported for each transmission. The data elements identified as "conditional" must be reported if they are required for or apply to the specific shipment. The data elements identified as "optional" may be reported at the discretion of the exporter.

(a) Mandatory data elements are as follows:

(1) *Exporter/exporter identification.*

(i) *Name and address of the exporter.* For details on the reporting responsibilities of exporters, see § 30.4 and § 30.7 (d)(1), (2), and (e).

(ii) *Exporter's profile.* The exporter's Employer Identification Number (EIN) or Social Security Number (SSN) and exporter name, address, contact, and telephone number must be reported with the initial shipment. Subsequent shipments may be identified by either EIN, SSN, or DUNS (Dunn and Bradstreet) number. If no EIN, SSN, or DUNS number is available for the exporter, as in the case of a foreign entity being shown as exporter as defined in § 30.7(d), the border crossing number, passport number, or any other number assigned by Customs is required to be reported. (See § 30.7(d)(2) for a detailed description of the EIN.)

(2) *Date of exportation/date of arrival.*

The exporter or the authorized forwarding or other agent in the export transaction must report the date the merchandise is scheduled to leave the United States for all modes of transportation. If the actual date is not known, report the best estimate of departure. The estimated date of arrival must be reported for shipments to Puerto Rico. (See § 30.7(r) for additional information.)

(3) *Ultimate consignee.* The ultimate consignee is the person, party, or designee on the export license who is located abroad and actually receives the export shipment. The ultimate consignee known at the time of export

must be reported. For goods sold en route, report "SOLD EN ROUTE" and report corrected information as soon as it is known. (See § 30.7(f) for more information.)

(4) *U.S. state of origin.* Report the 2-character postal abbreviation for the state in which the merchandise begins its journey to the port of export. (See § 30.7(t)(1) and (2) for more information.)

(5) *Country of ultimate destination.* Report the 2-character International Standards Organization (ISO) code for the country of ultimate destination. The country of ultimate destination, as shown on the export license, or the country as known to the exporter or principal party in interest in the export transaction at the time of export is the country in which the merchandise is to be consumed or further processed or manufactured. For goods sold en route, report the country of the first port of call and then report corrected information as soon as it is known. (See § 30.7(i) for more information.)

(6) *Method of transportation.* The method of transportation is defined as that by which the goods are exported or shipped. Report one of the codes listed in Part I of Appendix C of this part. (See § 30.7(b) for detailed information on method of transportation.)

(7) *Conveyance name.* The name of the carrier (sea—vessel name; others—carrier name) must be reported by the exporter or the exporter's agent as known at the time of shipment for all shipments leaving the country by sea, air, truck, or rail. Terms such as "airplane," "train," "truck," or "international footbridge" are not acceptable and will generate an error message. (See § 30.7(c) for more information.)

(8) *Carrier identification.* Report the 4-character Standard Carrier Alpha Code (SCAC) for vessel, rail, and truck shipments and the 2- or 3-character International Air Transport Association (IATA) Code for air shipments to identify the carrier actually transporting the merchandise out of the United States.

(9) *Port of export.* Report the code of the Customs port of export in terms of Schedule D, "Classification of Customs Districts and Ports." (See §§ 30.7(a) and 30.20(c) and (d) for more information on port of export.)

(10) *Related/nonrelated indicator.* Indicate if the shipment is between related parties. Report the information as defined in § 30.7(v).

(11) *Domestic or foreign indicator.* Indicate if the commodities are of domestic or foreign production. Report the information as defined in § 30.7(p).

(12) *Commodity classification number.* Report the 10-digit commodity classification number as provided in Schedule B, "Statistical Classification of Domestic and Foreign Commodities Exported from the United States" (Schedule B). The 10-digit commodity classification number provided in the Harmonized Tariff Schedule (HTS) may be reported in lieu of the Schedule B Commodity classification number except as noted in the headnotes of the HTS. (See § 30.7(l) for detailed information.)

(13) *Commodity description.* Report the commercial description in sufficient detail to permit the verification of the commodity classification number. (See § 30.7(l) for more information regarding reporting the description.)

(14) *First net quantity/unit of measure.* Report the primary net quantity in the specified unit of measure and the unit of measure as prescribed in the Schedule B or HTS or as specified on the export license.

(15) *Gross shipping weight.* Report the gross shipping weight in kilograms for vessel, air, truck, and rail shipments. Include the weight of containers, but exclude the weight of carrier equipment. (See § 30.7(o) for more information.)

(16) *Value.* The value shall be the selling price or cost if not sold, including inland freight, insurance, and other charges to the U.S. port of export. Report the value in U.S. currency. (See § 30.7(q) for more information.)

(17) *Export information code.* Report the appropriate 2-character export information code as provided in Part II of Appendix C of this part.

(18) *Shipment reference number.* The filer of the export shipment provides a unique shipment reference number that allows for the identification of the shipment in their system. This shipment reference number must be unique for five years.

(19) *Line item number.* Report a line number for each commodity for a unique identification of the commodity.

(20) *Hazardous material indicator.* This is a "Yes" or "No" indicator identifying the shipment as hazardous as defined by the Department of Transportation.

(21) *In-bond code.* Report one of the 2-character in-bond codes listed in Part IV of Appendix C of this part to indicate the type of In-Bond or Not In-Bond shipment.

(22) *License code.* Report the 3-character code listed in Part III of Appendix C of this part to indicate the type of license, permit, license exemption, or no license required.

(b) Conditional data elements are as follows:

(1) *Forwarding agent/forwarding agent identification.* (i) *Name and address of the forwarding agent.* The forwarding agent is any person in the United States or under jurisdiction of the United States who is authorized by the exporter to perform the services required to facilitate the export of merchandise out of the United States or the person named in the validated export license. (See §§ 30.4(a) and 30.7(e) for details on responsibilities of forwarding agents).

(ii) *Forwarding agent's profile.* The forwarding agent's identification number, EIN, DUNS, or SSN and name and address must be reported with the initial shipment. Subsequent shipments may be identified by the identification number.

(2) *Intermediate consignee.* The intermediate consignee is the intermediary (if any) who acts in a foreign country as an agent for the exporter or the principal party in interest or the ultimate consignee for the purpose of effecting delivery of the export shipment to the ultimate consignee or the person named on the export license. (See § 30.7(g) for more information.)

(3) *Foreign Trade Zone number.* Report the unique 5-character code assigned by the Foreign Trade Board that identifies the Foreign Trade Zone from which merchandise is withdrawn for export. (See § 30.7(t)(3) for more information.)

(4) *Foreign port of unloading.* For sea shipments only, the code of the foreign port of unloading should be reported in terms of the 5-digit codes designated in Schedule K, "Classification of Foreign Ports by Geographic Trade Area and Country." For air shipments from the United States to Puerto Rico, report the Puerto Rico port of unloading. For air shipments from Puerto Rico to the United States, report the United States port of unloading. Report the code of the port of unloading in terms of Schedule D, "Classification of Customs Districts and Ports." (See § 30.7(h) for more information on port of unloading.)

(5) *License number/Code of Federal Regulations (CFR) citation.* For licensable commodities, report the license number of the license issued for the merchandise. If no license is required, report the regulatory citation exempting the merchandise from licensing or the conditions under which the merchandise is being shipped that make it exempt from licensing.

(6) *Export Control Classification Number.* Report the Export Control Classification Number for merchandise as required by the Bureau of Export

Administration (BXA) Regulations (15 CFR Parts 730 through 774).

(7) *Second net quantity/unit of measure.* When Schedule B requires two units of quantity to be reported, report the second net quantity in the specified unit of measure and the unit of measure as prescribed in the Schedule B or HTS. (See § 30.7(n) for more information.)

(8) *Used self-propelled vehicles.*

Report the following items of information for used self-propelled vehicles as defined in 19 CFR 192.1:

(i) *Vehicle Identification Number.* Report the unique Vehicle Identification Number (VIN) in the proper format;

(ii) *Product Identification Number.* Report the Product Identification Number (PIN) for those used self-propelled vehicles for which there are no VINs;

(iii) *Vehicle title number.* Report the unique title number issued by the Motor Vehicle Administration; and

(iv) *Vehicle title state.* Report the 2-character postal abbreviation for the state or territory of the vehicle title.

(9) *Entry number.* Report the Import Entry Number when the export transaction is to be used as proof of export for import transactions such as In-Bond, Temporary Import Bond, Drawback, and so forth.

(10) *Waiver of prior notice.* This is a "Yes" or "No" indicator to determine if the person claiming drawback received a waiver of prior notice for the exported merchandise.

(11) *Transportation reference number.* Report the booking number for all sea shipments. The booking number is the reservation number assigned by the carrier to hold space on the vessel for the cargo being exported.

(12) *Equipment number.* Report the container number for containerized shipments. This number may be reported in conjunction with the booking number.

(13) *Filing option indicator.* Report the 1-character filing option that indicates Option 3 or Option 4 filing, or the AES-Post Departure Authorized Special Status (PASS) standard or expanded IOU's, if applicable.

(c) Optional data elements are as follows:

(1) *Marks and numbers.* The exporter or the authorized forwarding agent in the export transaction may opt to report any special marks or numbers that appear on the physical merchandise or its packaging that can identify the shipment or a portion thereof. (See § 30.7(j) for more information.)

(2) *Seal number.* Report the security seal number of the seal placed on the equipment.

§ 30.64 Transmitting and correcting AES information.

(a) The exporter or their authorized filing agent is responsible for electronically transmitting corrections, cancellations, or amendments to shipment information previously transmitted using the AES. Corrections, cancellations, or amendments should be made as soon as possible after exportation when the error or omission is discovered.

(b) For shipments where the exporter or their authorized filing agent has received an error message from AES, the corrections must take place as required. A fatal error message will cause the shipment to be rejected. This error must be corrected prior to exportation of the merchandise. For shipments where a warning message is received, the correction must be made within four (4) working days of receipt of the transmission, otherwise AES will generate a reminder message to the filer. For shipments with a verify message, corrections when warranted, should be made as soon as possible after notification of the error by the AES.

§ 30.65 Annotating the proper exemption legends for shipments transmitted electronically.

The exporter or their authorized forwarding agent is responsible for annotating the proper exemption legend on the bill of lading, airway bill, or other commercial loading document for presentation to the carrier, either on paper or electronically prior to export. The exemption legend will identify that the shipment information has been transmitted electronically using the AES. The exemption legend will include the statement "NO SED REQUIRED—AES" followed by the filer's identification number and a unique shipment reference number or the returned confirmation number. For exporters who have been approved to participate in Filing Option 4, the exemption statement, "NO SED REQUIRED—AES," should include the exporter's identification number and the filer's identification number if other than the exporter. The exemption legend must appear on the first page of the bill of lading, airway bill, or other commercial loading document and must be clearly visible.

§ 30.66 Recordkeeping and documentation requirements.

All parties to the export transaction (owners and operators of the exporting carriers and exporters and their authorized agents) must retain documents or records verifying the shipment for five (5) years from the date

of export. Customs, the Census Bureau, and other participating agencies may require that these documents be produced at any time within the 5-year time period for inspection or copying. These records may be retained in an elected format including electronic or hard copy as provided in the applicable agency's regulations. Acceptance of the documents by Customs or the Census Bureau does not relieve the exporter or their authorized agent from providing complete and accurate information after the fact.

Subpart H—General Administrative Provisions

7. In newly redesignated subpart H, § 30.91 is amended by revising paragraph (a) to read as follows:

§ 30.91 Confidential information, Shipper's Export Declarations.

(a) *Confidential status.* The Shipper's Export Declaration is an official Department of Commerce form, prescribed jointly by the Bureau of the Census and the Bureau of Export Administration. Information required thereon is confidential, whether filed electronically or in any other approved format, for use solely for official purposes authorized by the Secretary of Commerce. Use for unauthorized purposes is not permitted. Information required on the Shipper's Export Declarations may not be disclosed to anyone except the exporter or his agent by those having possession of or access to any copy for official purposes, except as provided in paragraph (e) of this section.

* * * * *

8. Appendixes A, B, and C are added to part 30 to read as follows:

Appendix A to Part 30—Format for Letter of Intent, Automated Export System (AES)

A. Letters of Intent should be on company letterhead and must include:

1. Company Name, Address (no P.O. Boxes), City, State, Postal Code
2. Company Contact Person, Phone Number, Fax Number, E-mail Address
3. Technical Contact Person, Phone Number, Fax Number, E-mail Address
4. Corporate Office Address, City, State, Postal Code
5. Computer Site Location Address, City, State, Postal Code
6. Type of Business—Exporter, Freight Forwarder/Broker, Carrier, NVOCC, Port Authority, Software Vendor, Service Center, etc. (Indicate all that apply.)
 - (i) Are you currently an AERP Participant? What is the AERP symbol?
 - (ii) Freight Forwarder/Brokers indicate the number of exporters for whom you file export information (AERP and SEDs).

- (iii) Exporters indicate whether you are applying for AES, Option 4 filing, or both.
7. U.S. Ports of Export Currently Utilized
8. Average Monthly Volume of Export Shipments (Monthly SED volume)
9. Average Monthly Value of Export Shipments (Monthly SED volume)
10. Filer Code—EIN, DUNS, SSN, or SCAC (Indicate all that apply.)
11. Software Vendor Name, Contact, and Phone Number (if using vendor provided software)
12. Look-a-Like Remote to Copy (as provided by vendor)
13. Modes of Transportation used for export shipments (Air, Vessel, Truck, Rail, etc.)
14. Types of Merchandise exported
15. Types of Licenses or Permits
16. Anticipated Implementation Date

B. The following self-certification statement, signed by an officer of the company, must be included in your letter of intent: "I hereby certify that *Company Name* is, and will continue to be, in compliance with all applicable laws and regulations."

C. Send AES Letter of Intent to: Chief, Foreign Trade Division, U.S. Census Bureau, Washington, DC 20233. Or, the copy can be faxed to: 301-457-1159.

Appendix B to Part 30—Required Pre-Departure Data Elements for Filing Option 3

- (1) Identifier of Exporter—EIN, etc.
- (2) Forwarding Agent I.D.—EIN, etc.
- (3) Carrier I.D. (SCAC or IATA).
- (4) Country of Ultimate Destination—ISO code.
- (5) Name of Ultimate Consignee.
- (6) (a) Commodity description or (b) Optional—Schedule B No. or HTS code
- (7) Shipment reference number (17 characters or less). The filer of the export shipment provides a unique shipment reference number that allows for the identification of the shipment in their system. This shipment reference number must be unique for five years.
- (8) Intended U.S. Port of Export
- (9) Estimated Date of Export
- (10) Transportation Reference Number, e.g., vessel booking number
- (11) Method of Transportation (MOT) code
- (12) HAZMAT—Y/N
- (13) License code
- (14) Export License Number

Appendix C to Part 30—Electronic (AES) Filing Codes

Part I—Method of Transportation Codes

- 10 Sea
- 11 Sea Containerized
- 12 Sea (Barge)
- 20 Rail
- 21 Rail Containerized
- 30 Truck

- 31 Truck Containerized
- 32 Auto
- 33 Pedestrian
- 34 Road, Other
- 40 Air
- 41 Air Containerized
- 50 Mail
- 60 Passenger, Hand Carried
- 70 Fixed Transport (Pipeline and Powerhouse)

Part II—Export Information Codes

- LC Shipments valued \$2,500 or less per classification number that are required to be reported
- TP Temporary exports of domestic merchandise
- IP Shipments of merchandise imported under a Temporary Import Bond for further manufacturing or processing
- IR Shipments of merchandise imported under a Temporary Import Bond for repair
- DB Drawback
- CH Shipments of goods donated for charity
- FS Foreign Military Sales
- OS All other exports
- HV Shipments of personally owned vehicles
- HH Household and personal effects
- SR Ship's stores
- TE Temporary exports to be returned to the United States
- TL Merchandise leased for less than a year
- IS Shipments of merchandise imported under a Temporary Import Bond for return in the same condition
- CR Shipments moving under a carnet
- GP U.S. government shipments
- LV Shipments valued \$2,500 or less that are not required to be reported
- SS Carriers' stores for use on the carrier
- MS Shipments consigned to the U.S. Armed Forces
- GS Shipments to U.S. government agencies for their use
- DP Diplomatic pouches
- HR Human remains
- UG Gift parcels under Bureau of Export Administration License Exception GFT
- IC Interplant correspondence
- SC Instruments of international trade
- DD Other exemptions:

- Currency
- Airline tickets
- Bank notes
- Internal revenue stamps
- State liquor stamps
- Advertising literature
- Shipments of temporary imports by foreign entities for their use
- RJ Inadmissible merchandise (For Manifest Use Only by AES Carriers)
- RP Shipment information filed through Census Bureau's AERP
- AE Shipment information filed through AES

(See §§ 30.50 through 30.58 for information on filing exemptions.)

Part III—License Codes

Department of Commerce, Bureau of Export Administration (BXA) Licenses

- C30 BXA Licenses
- C31 SCL
- C32 NLR (CCL/NS Column 2)
- C33 NLR (All Others)
- C34 Future Use
- C35 LVS
- C36 GBS
- C37 CIV
- C38 TSR
- C39 CTP
- C40 TMP
- C41 RPL
- C42 GOV
- C43 GFT
- C44 TSU
- C45 BAG
- C46 AVS
- C47 APR
- C48 KMI
- C49 TAPS
- C50 ENC

Nuclear Regulatory Commission (NRC) Codes

- N01 NRC Form 250/250A
- N02 NRC General License

Department of State, Office of Defense Trade Controls (ODTC) Codes

- SAG Agreements
- S00 License Exemption Citation
- S05 DSP-5
- S61 DSP-61
- S73 DSP-73
- S85 DSP-85

Department of Treasury, Office of Foreign Assets Control (OFAC) Codes

- T10 OFAC Specific License
- T11 OFAC General License

Other License Types

OPA Other Partnership Agency Licenses not listed above

Part IV—In-Bond Codes

- 70 Not-In-Bond
- 36 Warehouse Withdrawal for Immediate Exportation
- 37 Warehouse Withdrawal for Transportation and Exportation
- 62 Transportation and Exportation
- 63 Immediate Exportation
- 67 Immediate Exportation from a Foreign Trade Zone
- 68 Transportation and Exportation from a Foreign Trade Zone

Dated: July 1, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

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