AeA
Advancing the Business of Technology

April 18, 2005

Comments sent via Fax

Director, U.S. Census Bureau
Room 2049, Federal Building 3
Washington, DC 20233

Re: RIN number 0607-AA38

Dear Director:

AeA, America's largest high-technology association, welcomes the opportunity to comment on the Census Bureau's proposal to require mandatory filing of export information through the Automated Export System (AES) or through the AESDirect for all shipments where a Shipper's Export Declaration (SED) is currently required.

Please reference the attached document. Our detailed comments include:

- What is good about the proposed FTSR regulations
- Recommended proposed changes to the regulations

Thank you for the opportunity to provide our comments. Please contact me by phone at: (202) 682 – 4433 or via e-mail at: Ken_Montgomery@aeanet.org if I can be of further assistance.

Sincerely,

Ken Montgomery
Director, International Trade Regulation

attachment

AeA – Advancing the Business of Technology
Written Comments on Proposed Rule

Submitted on: April 18, 2005

FR Doc. 05-02926

Title: Foreign Trade Regulations: Mandatory Automated Export System Filing for All Shipments Requiring Shippers Export Declaration Information

CFR Citation: 15 CFR 30

Published: February 17, 2005

What's good about the proposed FTSR regulations:

- The Regulations removed License Requirements for people/companies filing AES information.
- FTR still has the exemptions as they did before as to when you do not need to file EEI (old SED).
- The Regulations identify specific roles and responsibilities for each party in the export transaction.
- The draft regulations make exporters, freight forwarders, and manufacturers more aware of their responsibilities, leading to greater compliance.
- Automation allows easier reporting, research and online corrections but needs to be expanded upon.
- Reduces paper trail.
- USPPI responsibility is very clear and helps identify a domestic versus international sale.
- The different filing methods and options support industry practices.
- Allows reporting of licensed and ITAR shipments.
- Option 4 limitation to USPPIs and not agents of USPPIs keeps responsibility very clear and doesn't jeopardize an Option 4 filer's status.
- Technical support is available.
- FPPI authorization can be written, but not in any specific format.
- Supports email.

Recommended proposed changes to the regulations:

- Currently report cards must be requested from Census and seem to be done on "granting a favor basis." No history functionality is available on the system today. A USPPI must have the ability to access the AES system and review all filings made under their EIN number even if the data was filed by an agent. Since the USPPI is responsible for all data being

accurately reflected, it is in their best interest to be able to review this information. The USPPI should be able to run reports based on a certain time frame or at the shipment detail level. A good compliance program would allow for such auditing capability. The USPPI must have access with regard to the above in the following views off the system: Shipment View, Shipment Commodity View, or Shipment Party View. By enhancing the system to allow the above, it will reduce the government's staff's time to prepare reports and allow USPPIs the ability to have ad hoc reports when necessary. USPPIs would also like to see if an agent is filing information on their behalf without an authorized Power of Attorney.

- The AES system needs to assist with validation particularly when it comes to data such as ECCN or HTS to indicate to a filer whether or not the data element is valid. This will help reduce corrections after the shipment. It will also reduce the amount of work involved with reviewing data by government agencies. Exporters would like clarification/identification where data elements in the AES system don't require correction since they are immaterial changes for Census statistical information gathering.

- It is recommended that the unit of measure be automatically populated after data entry of Harmonized Tariff number since the two are related

- Some users of the system have noticed that upon entry of HS #, the associated description is not always auto-populated.

- Option 4 filers should be able to use Option 4 for all countries, rather than Option 2 for proscribed countries even though Broadcast #2004039 is still in effect.

- Under 30.5 revisions to Option 4 filing. There should be a warning before revocation of qualification for Option 4. Revocation of Option 4 could have a major impact on business; and process changes would require time for implementation. The regulations also state that if the business volume falls below a minimum amount, a business could lose Option 4. The regulations need to specifically state what the minimum business volume is.

- There needs to be established guidelines/criteria for detaining versus seizing a shipment and these guidelines need to be shared with all field agents and industry. These guidelines need to be consistently applied by all ports of export. It is recommended that these guidelines help field agents understand when questions can be asked of an exporter with answers leading to closure of the inquiry so a shipment can continue on its way while maintaining country security requirements. An example would be if there is a question on whether or not an item being exported requires a license and the exporter can provide and CCATS or other document to

verify the data supplied, why can't the shipment be released without escalation to detainment or seizure status?

- In addition, field agents need to be trained on FTSR general requirements and apply those requirements consistently across the ports of export.

- Under 30.6 data elements, the selling price and defined adjustments do not support industry practice; i.e. inland freight and insurance charges are usually not known. Therefore they are not listed on the Commercial Invoice. They may or may not be included in overhead. Under the proposed regulations, it is requested that an estimate be made and added to the cost of the goods or selling price. This information and adjustment are not a common industry practice and the chance for great variation and error could occur in determining the reportable value in the EEI.

- Section 30.6 (a)(2) of the proposed rule states: "The date of export is the date when goods are scheduled to leave the port of export on the exporting carrier that is taking the goods out of the United States." Section 30.7 (b)(2)(i) of the proposed rule states: "If the USPPI files the EEI post departure, only the USPPIs EIN and the date of export are required in the post departure filing citation (e.g., AESPOST EIN (USPPI) mm/dd/yyyy)." Section 30.63 of the current regulation states: "The exporter or authorized forwarding or other agent...must report the date the merchandise is scheduled to leave the United States...If the actual date is not known, report the best estimate of departure." It is recommended that Section 30.63 of the current regulations continue and be reflected in the proposed rule upon implementation so that the USPPI is still authorized to report the "best estimate of departure" as the actual date of departure and not have to amend the AES records.

- Section 30.7 (b) (1) of the proposed rule states: For shipments other than USML, the proof of filing citation shall include the statement "AES," followed by the returned confirmation number provided by the AES when the transmission is accepted, referred to as the ITN (for example, AES ITN). The current regulation requires in the filing citation for pre-departure shipments the Shipment Reference Number or XTN. Is the XTN is being eliminated? The regulations need to clarify what is required to be on the documents such as the AWB such as the AES XTN or AES ITN etc. The regulations also need to clarify any differences in requirements between air versus ocean shipments specifically with regard to NVOCC.

- Section 30.1 of the proposed rule defines "ultimate consignee" as the "person located abroad who is the true principal party in interest, receiving the export or re-export for the designated end-use. (See also end-user.)" Section 30.6 (a)(3) defines "ultimate consignee" as the

"person, party, or designee that is located abroad and actually receives the export shipment." The person that receives the export shipment may not be the same person that ultimately receives the export or re-export for the designated end-use (i.e., the end-user). When using AES direct the word "recipient" is used not "ultimate consignee". The definitions should be harmonized with a consistent use of terms not only within AES system/regulatory use but also in line with other regulations such as the EAR. We assume the name of the person who receives the export or re-export for the designated end-use is the party that should be reported. Is that correct? If so, the term "end-user" should be used instead of the term "ultimate consignee".

- Section 30.1 of the proposed rule defines a "shipment" as all goods being sent "from one exporter to one consignee in a single country of destination on a single conveyance." The AES User Guide (Version 2.4, 11/19/03, page 7) defines an "export shipment" as all goods being sent "from one U.S. Principal Party in Interest (USPPI) to one ultimate consignee, on one exporting carrier, to the same country, on the same day." Part 772 of the EAR defines "single shipment" as "all items moving at the same time from exporter to one consignee or intermediate consignee on the same exporting carrier even if these items will be forwarded to one or more ultimate consignees." These definitions vary slightly with respect to ultimate and intermediate consignees. Will these definitions be harmonized? Otherwise interpretations may vary and "shipments" may be reported incorrectly.

- Section 30.45 (d) of the proposed rule requires that bills of lading, cargo lists, "or other commercial forms" be securely attached to the manifest. Is it possible to provide examples of "other commercial forms"?

- It is recommended that a chart identifying responsibilities in export transactions, similar to the chart published in the first USPPI regulation draft be created to help with clarification.

- Conveyance name/carrier name and carrier identification are redundant and confusing to data entry personnel. This is applicable to ocean shipments and should be marked as such for clarification in the regulations.

- The proposed rule has a (90) day grace period, we request that the grace period be extended to (180) days to allow companies to adjust their systems/processes to meet the new regulatory requirements. System modifications depending on the size of the company and number of systems involved could take some time to implement.

Submitted on behalf of the AeA Member Companies

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