U.S. Department of Homeland Security
Washington, DC 20229

U.S. Customs and
Border Protection

Mr. C. Harvey Monk, Jr.
Chief, Foreign Trade Division
Bureau of the Census
4700 Silver Hill Road, Room 2049
Federal Building #3
Washington, DC 20233

Dear Mr. Monk:

U.S. Customs and Border Protection (CBP) has reviewed and is submitting the following comments on the Department of Commerce, Bureau of Census 15 CFR 30, "Foreign Trade Regulations: Mandatory filing for All Shipments Requiring Shipper's Export Declaration Information."

Overall, the proposed regulations for mandatory filing of electronic export information (EEI) through AES will certainly strengthen and support CBP's efforts to identify high-risk shipments and to ensure compliance with other agency requirements. The proposed criminal and civil penalty provisions will provide Census and CBP with much needed enforcement options that will ultimately improve compliance. Additionally, having the advance EEI will allow CBP to better address the anti-terrorism concerns in the outbound environment.

1. 30.1

In the proposed regulations, only those shipments where a SED is called for would require an AES transmission. We recommend that all exports, whether they require an SED or not, should be transmitted in AES to ensure that Customs and Border Protection (CBP) has the ability to target and identify suspicious shipments. Without mandatory AES transmissions, shippers have the opportunity to use the SED exemption to circumvent export laws and Shippers could possibly export items to unauthorized persons and destinations. If all exports are transmitted in AES, then CBP has the capability to target, review and examine shipments of interest to enforce applicable laws and regulations.

- The pre-departure electronic filing of all export information would further enhance CBP's ability to prevent the export of items subject to controls and licenses. It would facilitate anti-terrorism risk management and targeting efforts. The utilizing of a more comprehensive and timely AES database, in conjunction with

ATS-AT would allow for the development of additional targeting tools to better establish risk and conduct more effective outbound examinations. Electronic filing should be made mandatory for all export shipments. This would be in line with the security intentions underscored in the Trade Act of 2002, and with overall cargo security concerns. Current regulatory authority provides for a variety of filing exemptions, not the least of which concerns shipments valued at less than $ 2,500. The principal concern is not with the legitimate shipper, but with those who would knowingly attempt to circumvent electronic filing requirements and licensing regulations. As an ancillary benefit, if all exports regardless of value are recorded in AES, with virtually no further work, CBP will have its automated air export manifest.

2. 30.2(2)

This addresses the development of AES software using AES Trade Interface Requirements (AESTIR). The current automated filing module has been useful to Outbound Teams and has yielded enforcement results. However, CBP spends too much time researching bookings with the current system because key identifiers such as booking numbers and container numbers are not mandatory. Contact phone numbers for the forwarder / exporter are also very helpful as they frequently need to be contacted by CBP to obtain further information for hold / release decisions. If we read 30.2 correctly this proposal will allow the trade community to develop their own software to interface with AES. It is very important that container numbers, booking numbers, and contact phone numbers be required as mandatory fields.

3. 30.2

Outbound subject matter experts have also noted that the Proposed Rule has positively affected operations by eliminating the requirement for CBP to collect in-transit SED's (Commerce Form 7513) for forwarding to the Army Corps of Engineers by transferring the responsibility to the Corps of Engineers for the collection of the forms. With continued use of a hard copy Form 7513 to report intransit cargo shipments reflects a gap in our efforts to ensure the electronic recordation of all vessel export cargo activity. An electronic reporting mechanism should be established.

4. 30.4

- Outbound subject matter experts also observed that while an important first step has been made with the proposed changes to the filing of SED information, the two-hour filing deadline in the air environment still presents challenges to enforcement. The proposal sets pre-departure cutoff times for filing. The proposal is 24 hours vessel, 2 hours for air/rail/mail and 1 hour for truck. We believe this is not long enough, for vessel cargo particularly the cutoff should be 48 hours for vessel, and for air no later than 8 hours prior to the delivery at the exporting carrier location. Justification: CBP needs sufficient time to conduct document reviews, inspections and examinations of exports.

- Use of the ITN# on shipping documents (AWB, BOL, etc.) instead of the ITN or XTN

- **30.4(b)(3)(ii) and 30.7(4)** talks about using the statement AESDOWN in place of the ITN# when the AES system is unavailable. Some filers seem to have problems with their own software or do not complete all required data and receive error messages from AES as a result. It seems that filers might misuse this statement when AES will not accept transmissions due to errors.

- **30.4(b)(1) and 30.4(b)(3)** include language that mandates the use of the AES Downtime Procedures in the event that AES, AES Direct is unavailable.

- **30.4(a)(5)** Is the "routed export transaction" the same as what is referred to as a "triangle transaction"? For example, instead of a US exporter shipping to the foreign company they sold the goods to, they ship it directly to whom their foreign customer sold it to (a third company). The invoice to the third company reflects a much higher value, and often this is the difference between claiming the value as being either under $2,500 or over $2,500. In other words, the exporter claims a $2,500 exemption but the accompanying invoice indicates a value over $2,500 for the schedule B commodities. How do they identify to CBP that they are entitled to claim this exemption when there is no mention of the first transaction on any of the documents, needless to say, also no mention of the original selling price?

5. **30.6 (b)(14)(ii)**

Air Shipments currently reads: "The TRN is optional for air shipments." **This should be amended to read: "The TRN is required for air shipments." JUSTIFICATION**: The master airway bill number is the only common denominator available to locate air shipments requiring CBP inspection and/or examination. Time and effort are wasted in attempting to locate export shipments through phone calls, faxes and e-mail requests for information from shippers and freight forwarders, as well as manually rifling through exorbitant volumes of export documents at the carrier's location. Without a master airway bill number, the ability of CBP to locate export shipments for inspection, examination and verification is severely curtailed. Reviews of AES filings have shown to reflect incorrect carrier codes and port of export. The incorrect data in these two data fields by themselves are enough to potentially allow illegal exports of technology and/or material deemed dangerous to national security of the United States to go undetected. By having the master airway bill number listed in the AES Transportation Reference Number CBP officers will be better apt to facilitate the flow of lawful exports and interdict export violations. All parties in both the trade community and government sector will realize Greater efficiency. This data field should be mandatory for air shipments but in trying to balance demands and restrictions imposed upon the trade community with the needs of enforcement verification it is our opinion that this vital information be listed in AES as soon as it is known, as a minimum.

6. **30.6 (Electronic Export Information Data Elements):**

- Include language that mandates the inclusion of a waybill identifier number in the AES, AES Direct transmission, to be utilized for targeting purposes by CBP Officers.

- Date of export - change to read or add (but not before the AES export date).

- The Electronic Export Information should contain a mandatory field requiring master bill or master air waybill information. Currently, CBP Officers are spending an inordinate amount of time attempting to identify and locate specific shipments for examination (i.e. carrier, bill of lading) as a result of the lack of this data.

- While it was observed that a mandatory EEI data element under the proposed rule is the transmission of the contact information for the U.S. Principle Party of Interest, concern was expressed over the quality of the data element. Subject matter experts proposed that the contact information should be to an individual or agent who is available on a 24X7 basis. This requirement would ultimately increase the facilitation of legitimate cargo, as smaller issues could be quickly resolved without impeding the cargo flow.

- While proposed regulations mandate filing of the EEI data, there is no regulatory requirement for the exporting carrier to file electronic booking/manifest data. From an enforcement standpoint, the targeting process (inbound or outbound) is most effective when we have advance electronic information from both the carrier and the importer/exporter. Additionally, the carrier's advance booking data is the only available targeting source in those cases when the electronic export information (EEI) is not required, not filed, or filed late.

7. **30.9 (Transmitting and Correcting AES information):**

All information must be correct before the attempted export of ITAR controlled cargo.

8. **30.29 (Reporting of Repairs and Replacements):**

Add that this section is not for cargo controlled by the Department of State.

9. **30.37**

FTSR Letter 168, Amendment 2 will have to be amended. There will no longer be an exemption of 15CFR30.55h for shipments under $2500. As such, brokers will no longer be able to put this stamp on invoices where all items are under $2500. It appears that the exemption will be 15CFR30.37. Census needs to take a look at this.

10. 30.53 (import of goods returned for repair):

Add that this section is not for cargo controlled by the Department of State.

11. Handcarry of Items by Air. No provision found in the NPR Census Regulation for the AES filing of handcarried items exported by Air/Sea/Rail/Vehicle or Pedestrian. JUSTIFICATION: For exports handcarried by air passengers it is recommended the AES filing contain the traveler's name, flight number and passenger locator number in addition to other mandatory and conditional data fields for air shipments. MISSION IMPACT: Officer initiated inspections and examinations of handcarried articles filed in AES and exported have not been conducted due to unknown passenger and flight information. In most instances information cannot be obtained in a timely manner from the shipper/filer due to after hour contact availability on nights and weekends.

14. State Department requires electronic filing for all licensed items including temporary licenses (DSP-61, and DSP-73), the Foreign Military Sales program (FMS) and shipments of classified material (DSP=85). The ability to decrement these licenses electronically has not been entered into the Automated Export System and AES should be modified to provide this functionality.

If you have any questions, please contact Ms. Linda Shoupe at (202) 344-3251.

Sincerely,

Robert M. Jacksta
Executive Director
Border Security and Facilitation