

REGULATIONS AND PROCEDURES TECHNICAL ADVISORY COMMITTEE

18 April 2005

Charles Louis Kincannon
Director, Bureau of the Census
US Census Bureau
Room 2049
Federal Building 3
Washington, DC 20233

48541

FTD

Info: DIR

T. J. Kelley

received
4/19/05

RE: Foreign Trade Regulations: Mandatory Automated Export System Filing for All Shipments Requiring Shipper's Export Declaration Information; Proposed Rule (RIN 0607-AA38)

Dear Mr. Kincannon:

The RPTAC would like to take this opportunity to comment on the above referenced proposed rule and request for comments published in the Federal Register on February 17, 2005 and requests that the following comments be considered before a final rule is published.

1. 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). The definitions should be harmonized. 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?

2. 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 ultimate and intermediate consignees. Will these definitions be harmonized?

3. Section 30.1 of the proposed rule discusses downtime, has Customs detailed how exporters are going to handle AES filing of shipments when Customs computer system is down?

4. Section 30.3. Responsibilities of parties to export transactions. Paragraph if 30.3(c) states the responsibilities of the USPPI, authorized agent, and AES filer. We note that the FTR states that the USPPI is responsible to provide accurate export information necessary to file the EEI, the agent is responsible to prepare and submit accurate EEI information received from the USPPI, and the AES filer is responsible to transmit complete and accurate information in a timely manner in accordance with the FTR requirements. Therefore, we believe that the USPPI has fulfilled its responsibilities by providing the complete and accurate information to the authorized agent and the filer in a timely manner. We request confirmation from the Census that should the USPPI be able to document fulfillment of its responsibilities and the agent or filer fail to fulfill its responsibilities accordingly, that the USPPI will not be held responsible by the Census for the failure of its agent or the filer to comply with the FTR.

5. 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 USPPI's 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 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*." When the proposed rule is implemented, will the USPPI still be able to report the "best estimate of departure" if the actual date of departure is not known? If so, and the USPPI reports the "best estimate", is the USPPI obligated to obtain the actual date of export from the forwarder and amend the AES record later? Will the amending of the departure date be considered an error? If so, is it subject to a fine/penalty? What corrections are considered errors? What errors are subject to fines?

6. Section 30.6 EEI data elements.(a)(12) Commodity classification number. Although the AES requires the commodity classification number to be reported for statistical purposes to the 10-digit U.S. statistical numbering system, we request that strict compliance requirements be held to the 6-digit international numbering system. In many instances it is difficult to make a technical determination to the 10-digit level and foreign counterparts may reference a different number to the 10-digit level. Requiring consistency for compliance purposes to the 6-digit level is reasonable as the 6-digit level is the international world-wide number.

7. 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 predeparture shipments the Shipment Reference Number or XTN. Is the XTN being eliminated?

8. Section 30.9 (a) of the proposed rule states that corrections, cancellations, or amendments to the information transmitted to AES should be transmitted "*as soon as possible* after exportation". Is it possible to define "as soon as possible" or provide an outer limit?

9. Section 30.37. Miscellaneous exemptions. (g) Intangible exports of software and technology are exempt from the EEI requirement. Please confirm that this exemption also applies for exports under Commerce Dept. export license, Commerce Dept. license exception, State Dept. export license, and State Dept. license exemption.

10. 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 define "other commercial forms" or provide examples?

Post departure filers – The rule needs to be clarified what is meant by minimum number of shipments and clarify volume thresholds since status can be revoked for low volume and the 30 day revocation notice may be insufficient for the exporter to make alternative arrangements - no statutory requirement for a warning letter could be found in the proposed rule.

Post departure approval allows for each agency to determine its own internal standards of approval and a denial by any agency can constitute full denial of post departure status. The agencies that have a say in the approval must be required to publicize their standards or else this is an arbitrary process.

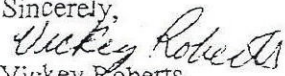
Not enough clarification or reference to other Agencies' regulations that are directly related to AES filing. General citations to the ITAR and Customs' Regulations are insufficient, especially since substantial penalties attach to filing errors.

Census currently approves independent software vendors as AES certified vendors - what is the certification process and what standards are the Vendors held to? Is this data anywhere in the Regulations?

With respect to issues, Census should consider the time it will take to make any modifications to business systems to compile with the new rule. The proposed rule has a (90) day grace period. We recommend (180) days.

Thank you for your consideration of these recommendations.

Sincerely,


Vickey Roberts

RPTAC Policies and Procedures Subcommittee Chair