



Friday
February 12, 1999

Part VIII

**Department of the
Treasury**

Customs Service

**19 CFR Parts 4, 101, and 192
Automated Export System (AES);
Proposed Rule**

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 101, and 192

RIN 1515-AC42

Automated Export System (AES)

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Automated Export System (AES) is an electronic reporting system jointly developed by the Bureau of the Census (Census) and Customs that allows exporters to electronically transmit commodity information contained on Shipper's Export Declarations and sea carriers to electronically transmit outbound vessel manifest information. A general description of how AES works, including the application, qualification, and certification procedures for exporters and sea carriers is being proposed in a document issued by the Bureau of the Census in today's **Federal Register**. This document proposes to amend the Customs Regulations to cross-reference the Census proposed regulations. Also, this document proposes to set forth criteria under which Customs will determine whether to approve an exporter for the option to transmit commodity information through AES after a carrier has left the United States (post-departure). This document also sets forth the appeal procedures for AES exporters if Customs denies the exporter the post-departure option; or, if Customs approves the post-departure option for the AES exporter, the grounds for revocation of the use of the option and the appeal procedures if Customs revokes the use of that option.

Exporters that utilize the AES can expect to benefit from fewer delays in the processing of export information by Customs due to missing paperwork; fewer, but faster inspections of export shipments; and reduced administration costs due to automation.

DATES: Comments must be received on or before April 13, 1999.

ADDRESSES: Written comments should be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Regulations Branch, Suite 3000, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the U.S. Customs Service, Office of Regulations and Rulings, Regulations Branch, Suite 3000, 1300 Pennsylvania Avenue, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Maritza Castro, Office of Field

Operations, Outbound Process, (703) 921-7465.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1998, Customs and the Bureau of the Census (Census) 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), an electronic reporting system jointly developed by Census and Customs that allows exporters to transmit commodity information contained on Shipper's Export Declarations (SEDs), and carriers to transmit outbound vessel manifest information. That notice informed the public of developments affecting the implementation of the AES and announced that Census 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.

AES Requirements in General

In a separate document published in today's **Federal Register**, the Bureau of the Census is proposing to set forth general requirements for the AES in the Census Regulations (chapter I of title 15 of the Code of Federal Regulations) at redesignated subpart E of part 30 (15 CFR part 30). Although Customs proposes in this document to cross-reference the Census Regulations that will provide for the AES, a general description of the AES follows.

1. *Eligibility.* Participation in AES is voluntary. Regarding the submission of SEDs, AES allows exporters, agents, and service companies (collectively referred to as export commodity information filers) that are required to report commodity export information to electronically file such information on all export commodities regardless of the mode of transportation in which the commodities are being exported. See, proposed § 30.60(a) of the Census Regulations. Regarding outbound vessel manifest information, sea carriers will be eligible to electronically file outbound manifest information pursuant to the Sea Carrier's Module of AES proposed in this document and in the Census proposal. It is expected that modules will be created at a later date that will allow air carriers and rail carriers to electronically file outbound manifest information.

2. *Application.* Export commodity information filers and sea carriers who wish to participate in AES may apply by filing a "Letter of Intent," that contains the information described in proposed § 30.60(b) of the Census Regulations. For export commodity information filers, the

application will provide up to three electronic filing options (denominated as options 2-4) for the submission of commodity information, in addition to the present method of filing paper documents (denominated as option 1):

a. Filing Full Pre-Departure Information (Option 2). Under this option, all commodity information is required to be transmitted by the export commodity information filer before the export of the merchandise;

b. Filing Partial Pre-Departure Information (Option 3). Under this option, only fourteen (14) identified data elements of commodity information are required to be transmitted by the export commodity information filer prior to exportation. The remaining data elements of commodity information are to be transmitted within five (5) business days of the date of exportation; or

c. Filing with No Pre-Departure Information (Option 4). This option is only available to approved exporters wanting to export qualifying commodities without submitting any pre-departure information. However, complete commodity information must be electronically filed within ten (10) business days of exportation. (Note that export commodity information filers other than exporters, such as agents and service companies, may not apply for this filing option. The meaning of exporter in this context will be defined by Census.)

3. *Certification of AES Filers and Approval of Option 4 for Exporters.* The AES certification procedure generally provides that, following the processing of the Letter of Intent to participate in the AES, the prospective AES filer must perform an initial two-part communication test so that it can be ascertained whether the prospective filer's electronic system is capable of communicating with the AES; applicants will be tested for the ability to send and receive messages. For applicants applying for AES filing Options 2 or 3 or for electronic filing through the Sea Carrier's Module of AES, Customs and Census will make the determination of whether a particular export commodity information filer or sea carrier is qualified, and certify them to participate in AES. See, proposed § 30.62 of the Census Regulations. Once an export commodity information filer is qualified and certified to use either Option 2 or 3 as an AES participant, he may electronically file export commodity information without any further approval process. Similarly, once a sea carrier is qualified and certified to use the Sea Carrier's Module as an AES participant, it may electronically file outbound manifest information without any further approval process.

For exporters applying for Option 4 (post-departure) filing privileges, the application will be reviewed by a panel of participating partnership agencies for approval. (Agencies currently participating include Census, Customs, Bureau of Export Administration, Nuclear Regulatory Commission, and the Office of Foreign Assets Control.)

4. *Responsibilities of participants in AES.* The responsibilities of participants include, for export commodity information filers, making timely transmissions of the required export data elements, as proposed in § 30.63 of the Census Regulations, and for sea carrier

module filers, making timely transmissions of the messages proposed in § 4.76 of the Customs Regulations. Participants are also responsible, in accordance with the AES Trade Interface Requirements handbook, which will be posted to the Customs internet web site (www.customs.ustreas.gov) and will be available through the Customs Electronic Bulletin Board (703-921-6155), for responding to government-generated messages, making appropriate corrections or cancellations to previously transmitted information, and maintaining proper records concerning AES transactions. AES participants are subject to the same penalty provisions that apply to paper filers of SED and manifest information. See, proposed § 30.60 of the Census Regulations, if employing non-AES carriers or forwarders, an AES export commodity information filer will be responsible for identifying his status as an AES participant on transportation documents so that Customs and the carrier know that paper SEDs are not required because the filing was made via AES. See, proposed § 30.65 of the Census Regulations. AES participants will be required to comply with the recordkeeping requirements proposed in § 30.66 of the Census Regulations and any other applicable recordkeeping requirements that AES participants are subject to under existing law.

Customs Denial of Requests for Option 4 Filing Status; Revocation of Option 4 Filing Privileges Granted

Applicants requesting Option 4 filing status will have their applications reviewed by the panel of participating partnership agencies (identified above). (AERP participants who apply for Option 4 privileges will receive priority handling of their application. AERP participants should note their status on their Letter of Intent to ensure priority processing. Current participating AES-PASS filers will be grandfathered into Option 4.) Although each agency has its own evaluation criteria, a rejection by any of the agencies will result in non-acceptance of the application for Option 4 filing status. Following inter-agency review of applicants' credentials, Census will notify applicants in writing of their approval or denial within thirty (30) calendar days of receipt of the application.

Customs may deny an applicant's request for Option 4 filing status, based on any of 4 separate grounds. If Customs denies an applicant's request for Option 4 status, the applicant will receive a letter from Census specifying the grounds on which Customs bases its denial and setting forth the appeal procedures the applicant may use to challenge Customs decision.

Once approved for Option 4 privileges, Customs may revoke the privilege, based on any of 4 separate grounds. Such participants will be advised in writing by Customs of the

basis for the revocation and may file an appeal to challenge Customs decision. In these cases, the AES filer will be allowed to continue filing under Option 4 until the administrative appeal process has been exhausted. However, Customs may revoke a participant's Option 4 privileges immediately in cases of intentional violations of any Customs law or when required by national security.

The Sea Carrier's Module

Since 1996, Customs has held a series of open meetings with representatives of the sea carrier industry to discuss methods of improving compliance with manifest regulations and to create electronic manifesting procedures that conform to the current business practices of the industry. As a result of these meetings, Customs is proposing to require sea carriers to electronically file booking information (*i.e.*, cargo reservation information) before the loading and departure of the sea carrier as part of the AES outbound manifesting procedures.

It is proposed that booking information be provided to Customs through AES as the information becomes available as far in advance as practical of the loading of the vessel. It is proposed that the booking information be provided not later than seventy-two (72) hours prior to departure of the vessel and that booking information received by the carrier later in time, *i.e.*, within seventy-two (72) hours of a vessel's departure, will be transmitted immediately as it becomes available. Customs will use this advanced booking information to screen shipments for enforcement targeting.

It is also proposed that when an AES sea carrier receives the actual freight, it will notify Customs via AES by transmitting a "Receipt of booking" message. Customs will then notify the AES carrier if Customs will examine the booked cargo before the cargo is to be loaded on the vessel. If the booked cargo is scheduled by Customs for examination, then the carrier will not load the cargo until Customs examines and releases the cargo. Not later than one day after a vessel departs, an AES carrier will notify Customs of the date and time of the departure of the vessel ("Departure" message).

Sea carriers will normally have ten (10) business days after the departure of the vessel to electronically file outbound vessel manifest information ("Manifest" message), except as otherwise provided for in §§ 4.75 and 4.84 of the Customs Regulations. Even though a sea carrier files an electronic manifest, if paper SEDs are submitted by

filers of the export commodity information, participant sea carriers will be responsible for submitting those SEDs to Customs within four (4) business days after departure of the vessel, unless another time frame is specified in §§ 4.75 or 4.84 of the Customs Regulations. Upon written agreement with participant sea carriers, Customs and Census can provide for an alternative to the location filing requirement for paper SEDs set forth in § 4.75(b).

Filing outbound vessel manifest information electronically through AES will be treated by Customs as meeting the outward cargo declaration filing requirements (CF 1302-A) required by §§ 4.63 and 4.75 of the Customs Regulations, if the procedures set forth in the AES Trade Interface Requirements handbook are followed.

Proposed Amendments Concerning AES, Customs Administrative Procedures for Option 4 Privileges, and the Sea Carrier's Transportation Module

In this document Customs is proposing to create a new § 4.76 describing the Sea Carrier's module of AES which cross-references the proposed Census Regulations on AES; and a new subpart 192 which generally describes AES, cross-references the proposed Census Regulations on AES, sets forth criteria under which Customs will determine whether to approve an exporter for the AES option to transmit commodity information after a carrier has left the United States (post-departure), sets forth appeal procedures for AES exporters if Customs denies the exporter the post-departure option, or, if Customs approves the post-departure option for the AES exporter, the grounds for revocation of the use of the option and the appeal procedures if Customs revokes the use of the option. Customs is also proposing to revise the authority citation for part 192 to more clearly show the statutory basis of Customs authority to collect and examine manifest and export data information.

Customs is also using this document as the vehicle to propose an amendment to the general provisions of Part 101 of the Customs Regulations to include a definition of the term "business days." While the term "business days" is used in this document in reference to filing times for sea carriers, the definition is proposed to have applicability wherever the term is used throughout the Customs Regulations (19 CFR).

A more detailed description of the proposed regulatory changes follow:

Proposed § 4.76

Proposed § 4.76 is entitled "Procedures and responsibilities of carriers filing outbound vessel manifest information via the AES." This section will provide that the Sea Carrier's Module of the AES allows sea carriers to submit required outbound vessel manifest data electronically. This section will cross-reference proposed subpart E of the Census Regulations (15 CFR Subpart E). Section 4.76 sets forth the types of messages sea carriers on the module will be required to transmit and the time frames for their transmission. Sea carriers certified to use the module and adhering to the procedures concerning the electronic submission of outbound vessel manifest information will meet the outward cargo declaration filing requirements (CF 1302-A) of §§ 4.63 and 4.75 of the Customs Regulations (19 CFR 4.63 and 4.75), except as otherwise provided in §§ 4.75 and 4.84, if the procedures set forth in the AES Trade Interface Requirements handbook are followed.

Revision of § 101.1

Section § 101.1 will be amended to define the term "business days" to mean the normal days of a work week: Monday through Friday, excluding national holidays as specified in § 101.6(a).

Revision of § 192.0

Section § 192.0 will be revised to account for the addition of a new Subpart B entitled "The Automated Export System (AES)."

Proposed § 192.11

Proposed § 192.11, entitled "Description of the AES", will describe, in general terms, the nature of the electronic filing system as an alternate method for exporters to comply with the export reporting requirements, and cross-reference proposed subpart E of the Census Regulations (15 CFR subpart E) as providing more fully for the AES.

Proposed § 192.12

Proposed § 192.12, entitled "Criteria for denial of applications requesting AES post-departure (Option 4) filing status; appeal procedures", will state the four (4) grounds on which Customs will base its denial of an applicant's request for this status, and provide the appeal process by which an applicant may challenge Customs decision. The four (4) grounds for rejection will be that the applicant:

1. Is not an exporter, as defined in the Census Regulations;
2. Has a history of non-compliance with export regulations. For example,

the exporter has a history of late electronic submissions of commodity information or a record of non-submission of required export documentation;

3. Has been indicted, convicted or is currently under an investigation, wherein Customs has developed probable cause, for a felony involving any Customs law or any export law administered by another government agency; or

4. 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.

Applicants denied Option 4 status by Customs will have the opportunity to appeal the decision by following the appeal procedure provided at proposed § 192.13(b). Applicants will be notified of the status of their appeal within thirty (30) calendar days of receipt by Customs, or, if a decision cannot be reached at that time, the applicant will be notified of an expected date for the final decision as soon as possible after the 30 calendar days. Applicants that are not approved by Customs may reapply after one year from the date of the final decision.

Proposed § 192.13

Proposed § 192.13, entitled "Revocation of AES participants' post-departure (Option 4) filing privileges; appeal procedures", will state the 4 grounds on which Customs may revoke a participant's Option 4 privileges, and provide the appeal process by which applicants may challenge Customs decision. The 4 reasons for revocation will be that the filer:

1. 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;

2. Is indicted, convicted or is currently under an investigation, wherein Customs has developed probable cause, for a felony involving any Customs law or any export law administered by another government agency;

3. Fails to substantially comply with export regulations. For example, the filer develops a history of late submissions of Option 4 commodity information or develops a history of non-compliance with other agencies' licensing regulations; or

4. Poses a significant threat to national security, such that his continued participation in Option 4 should be terminated.

Participants issued a revocation notice will have the opportunity to appeal the decision by contacting Customs at the address indicated within

thirty (30) calendar days of receipt of notification. Applicants will be notified of the status of their appeal within thirty (30) calendar days of receipt by Customs, or if a decision cannot be reached at that time, the applicant will be notified of an expected date for the final decision as soon as possible after the 30 calendar days. Except as stated below, final revocation of Option 4 privileges will not take effect until all appeal procedures have been exhausted or until 30 calendar days after written notification of revocation, if no appeal is made. This will give the participant time to take corrective actions and include these actions as part of the appeal. However, Customs reserves the right to make the revocation effective immediately in cases of intentional violations of any Customs law on the part of the program participant or when required by national security. In such a case, the participant will be notified in writing and may appeal the decision, but will not be able to continue to file under Option 4 during the appeal process. The participants will be notified in writing of any revocation decision. Participants who have had their Option 4 privileges revoked, may still use the other two options for AES transmissions.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, the Ronald Reagan Building, 1300 Pennsylvania St., N.W., Suite 3000, Washington, D.C.

Inapplicability of the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities, because booking information is already collected in the ordinary course of business by sea carriers and the cost of transmitting the information electronically to Customs through AES, even if the carrier is not a certified AES participant, is not substantial.

Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Customs does request comments specifically concerning the economic impact of transmitting booking information on small carriers. This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collection of information should be sent to the OMB, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to Customs at the address set forth previously. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection of information displays a valid control number.

The collection of information in these proposed regulations is at § 4.76, which provides for the transmission of booking information through the Sea Carrier's Module in the AES. Departure and manifest information is already approved under OMB control numbers: 1515-0062 for the General Declaration (Vessel Clearance) and 1515-0078 for the Cargo Declaration and the Cargo Declaration Outward with Commercial Forms. The paperwork burden for the application procedure for the Sea Carrier's Module is covered by the Census paperwork submission for proposed 15 CFR 30.60.

The booking information to be collected is necessary so that Customs can more effectively target high-risk shipments. The likely respondents are sea carriers that are required to submit outbound vessel manifest data.

The data which follows is presented in a range format. Depending on the size of the shipping company, the numbers reflecting the frequency of responses and the time associated with transmissions will vary:

Estimated total annual reporting and/or recordkeeping burden: 1,800-2,225 hours.

Estimated average annual burden per respondent/recordkeeper: 1-72 hours.

Estimated number of respondents and/or recordkeepers: 120-200.

Estimated annual frequency of responses: 6,500,000-8,000,000.

Comments are invited on:

a. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

b. The accuracy of the agency's estimate of the burden of the collection of information;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Cargo vessels, Common carriers, Customs duties and inspection, Declarations, Exports, Foreign commerce and trade statistics, Freight, Inspection, Maritime carriers, Merchandise, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Foreign trade statistics, Harbors, Imports, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Shipments, Vessels.

19 CFR Part 192

Customs duties and inspection, Electronic filing, Export control, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

For the reasons stated above, it is proposed to amend parts 4, 101, and 192 of the Customs Regulations (19 CFR parts 4, 101, and 192), as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C.App. 3, 91.
* * * * *

2. A new § 4.76 is added to read as follows:

§ 4.76 Procedures and responsibilities of carriers filing outbound vessel manifest information via the AES.

(a) *The sea carrier's module.* The Sea Carrier's Module is a component of the Automated Export System (AES) (see, part 192, subpart B of this chapter) that allows for the filing of outbound vessel manifest information electronically (see, 15 CFR part 30). All sea carriers are eligible to apply for participation in the Sea Carrier's Module. Application and certification procedures for AES are found at 15 CFR 30.60. A sea carrier certified to use the module that adheres to the procedures set forth in this section and the Census Regulations (15 CFR part 30) concerning the electronic submission of an outbound vessel manifest information meets the outward cargo declaration filing requirements (CF 1302-A) of §§ 4.63 and 4.75 of this part, except as otherwise provided in §§ 4.75 and 4.84, and if procedures set forth in the AES Trade Interface Requirements handbook (see Customs internet website (www.customs.ustreas.gov)) are followed.

(b) *Responsibilities.* Carriers and their agents are responsible for reporting accurate and timely information and for responding to all notifications concerning the status of their transmissions and the detention and release of freight in accordance with the procedures set forth in the AES Trade Interface Requirements handbook. Customs will send messages to participant carriers regarding the accuracy of their transmissions. AES participants are required to comply with the recordkeeping requirements contained at § 30.66 of the Census Regulations (15 CFR 30.66) and any other applicable recordkeeping requirements. Where paper SEDs have been submitted by exporters, participant carriers will be responsible for submitting those SEDs to Customs within four (4) business days after the departure of the vessel, unless a different time requirement is specified by §§ 4.75 or 4.84 of this part. Upon written agreement with participant sea carriers, Customs and Census can provide for an alternative to the location filing requirement for paper SEDs set

forth in § 4.75(b) by which the participant carriers are otherwise bound.

(c) *Messages required to be filed within the sea carrier's module.*

Participant carriers will be responsible for transmitting and responding to the following messages:

(1) *Booking.* Booking information identifies all the freight that is scheduled for export. Booking information will be transmitted to Customs via AES for each shipment as far in advance of departure as practical, but no later than seventy-two hours prior to departure for all information available at that time. Bookings received within seventy-two hours of departure will be transmitted to Customs via AES as received;

(2) *Receipt of booking.* When the carrier receives the cargo or portion of the cargo that was booked, the carrier will inform Customs so that Customs can determine if an examination of the cargo is necessary. Customs will notify the carrier of shipments designated for examination. Customs will also notify the carrier when the shipment designated for inspection is released and may be loaded on the vessel;

(3) *Departure.* No later than the first business day following the actual departure of the vessel, the carrier will notify Customs of the date and time of departure; and

(4) *Manifest.* Within ten (10) business days after the departure of the vessel, the carrier will submit the manifest information to Customs via AES for each booking loaded on the departed vessel. However, if the destination of the vessel is a foreign port listed in § 4.75(c), the carrier must transmit complete manifest information before vessel departure. Time requirements for transmission of complete manifest information for carriers destined to Puerto Rico and U.S. possessions are the same as the requirement for the submission of the complete manifest as found in § 4.84.

(d) All penalties and liquidated damages that apply to the submission of paper manifests (see, applicable provisions in part 4 of this chapter) apply to the electronic submission of outbound vessel manifest information through the Sea Carrier's Module.

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * * *

2. In § 101.1, add, in appropriate alphabetical order, the definition of "business day":

§ 101.1 Definitions.

* * * * *

Business day. A "business day" means a weekday (Monday through Friday), excluding national holidays as specified in § 101.6(a) of this part.

* * * * *

PART 192—EXPORT CONTROL

1. The authority citation for part 192 is revised to read as follows:

Authority: 19 U.S.C. 66, 1624, 1646c. Subpart A also issued under 19 U.S.C. 1627a, 1646a;

Subpart B also issued under 13 U.S.C. 303; 46 U.S.C. App. 91.

2. In § 192.0, a third sentence is added to read as follows:

§ 192.0 Scope.

* * * This part also makes provision for the Automated Export System (AES), implemented by the Census Regulations and Subpart E (15 CFR Subpart E), and provides the grounds under which Customs, as one of the reviewing agencies of the government's export partnership, may deny an application for post-departure filing status or revoke a participant's privilege to use such filing option, and provides for the appeal procedures to challenge such action by Customs.

3. A new subpart B, consisting of §§ 192.11 through 192.13, is added to read as follows:

Subpart B—Filing of Export Information Through the Automated Export System (AES)

Sec.

192.11 Description of the AES.

192.12 Criteria for denial of applications requesting AES post-departure (Option 4) filing status; appeal procedures.

192.13 Revocation of participant's AES post-departure (Option 4) filing privileges; appeal procedures.

Subpart B—Filing of Export Information Through the Automated Export System (AES)

§ 192.11 Description of the AES.

AES is a voluntary program that allows all exporters required to report commodity export information (see, 15 CFR 30.16) to submit such information electronically, rather than on paper, and sea carriers to report required outbound vessel information electronically (see, §§ 4.63, 4.75, and 4.76 of this chapter). Eligibility and application procedures are found at subpart E of part 30 of the Census Regulations (15 CFR subpart E), denominated Electronic Filing

Requirements—Exporters. These Census Regulations provide that exporters may choose to submit export information through AES by any one of three electronic filing options available. Only Option 4, the complete post-departure submission of export information, requires prior approval by participating agencies before it can be used by AES participants.

§ 192.12 Criteria for denial of applications requesting AES post-departure (Option 4) filing status; appeal procedure.

(a) *Approval process.* Applications for the option of filing export commodity information electronically through AES after the vessel has departed (Option 4 filing status) must be unanimously approved by Customs, Census and other participating government agencies. Disapproval by one of the participating agencies will cause rejection of the application.

(b) *Grounds for Denial.* Customs may deny a participant's application for any of the following reasons:

(1) The applicant is not an exporter, as defined in the Census Regulations (15 CFR 30.7(d));

(2) The applicant has a history of non-compliance with export regulations (e.g., exporter has a history of late electronic submission of commodity records or a record of non-submission of required export documentation);

(3) The applicant has been indicted, convicted, or is currently under an investigation, wherein Customs has developed probable cause, for a felony involving any Customs law or any export law administered by another government agency; or

(4) The 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.

(c) *Notice of denial; appeal procedures.* Applicants will be notified of approval or denial in writing by Census. (Applicants whose applications are denied by other agencies must contact those agencies for their specific appeal procedures.) Applicants whose applications are denied by Customs will be provided with the specific reason(s) for non-selection. Applicants may challenge Customs decision by following the appeal procedure provided at § 192.13(b) of this part.

§ 192.13 Revocation of participants' AES post-departure (Option 4) filing privileges; appeal procedures.

(a) *Reasons for revocation.* Customs may revoke Option 4 privileges of participants for the following reasons:

(1) The exporter 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;

(2) The exporter submitting the "Letter of Intent" is indicted, convicted, or is currently under an investigation, wherein Customs has developed probable cause, for a felony involving any Customs law or any export law administered by another government agency;

(3) The exporter fails to substantially comply with export regulations; or

(4) Continued participation in AES as an Option 4 filer would pose a threat to national security, such that his continued participation in Option 4 should be terminated.

(b) *Notice of revocation; appeal procedures.* When Customs has decided to revoke a participant's Option 4 filing privileges, the participant will be

notified in writing of the reason(s) for the decision. The participant may challenge Customs decision by filing an appeal within thirty (30) calendar days of receipt of the notice of decision.

Except as stated below, the revocation shall become effective when the participant 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 of intentional violations of any Customs law on the part of the program participant or when required by the national security, revocations will become effective immediately upon notification. Appeals should be addressed to the National Outbound Process Owner, U.S.

Customs, Ronald Reagan Building, 1300 Pennsylvania Ave, NW, Room 5.4c, Washington D.C. 20229. Customs will

issue a written decision or notice of extension to the participant within thirty (30) calendar days of receipt of the appeal. If a notice of extension is forwarded, the applicant will be provided with the reason(s) for extension of this time period and an expected date of decision. Participants who have had their Option 4 filing privileges revoked and applicants not selected to participate in AES, may not reapply for this filing status for one year following written notification of rejection or revocation.

Raymond W. Kelly,

Commissioner of Customs.

Approved: December 9, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

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