



Global Trends and Customs:

## **U.S. Census Bureau Poised to Issue Final Rule on Mandatory AES Filings**

By Peter A. Quinter and Caleb W. Sullivan

pquinter@becker-poliakoff.com

csullivan@becker-poliakoff.com

Tel. 954.985.4101

Fax 954.985.4176



The U.S. Census Bureau is reportedly close to issuing a Final Rule which shall require the mandatory filing of export information through the Automated Export System (“AES”) for all shipments where a Shipper’s Export Declaration (“SED”) is presently permitted. The Final Rule will entirely phase out the paper version of the SED (Form 7525-V), substantially increase penalties for untimely or inaccurately filed Electronic Export Information (“EEI”), and specify time frames within which EEI must be transmitted to the exporting carrier depending upon the mode of transportation. It will also provide for regulatory enforcement through three agencies including U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and the Bureau of Industry and Security (BIS) of the U.S. Department of Commerce. The Final Rule, through the amendment of many existing regulations, will have broad ramifications for exporters, freight forwarders, and carriers. Therefore, a thorough understanding of the rule and its impact on the international trade community is absolutely essential.

To comply with existing law, it is anticipated that the Final Rule issued by the Census Bureau will substantially amend the Foreign Trade Statistics Regulations located at 15 CFR Part 30. The provisions will be renamed the Foreign Trade Regulations (“FTR”). The most important revisions to the FTR are summarized below:

- The U.S person or entity which receives the “primary benefit” of the export transaction (the U.S. Principal Party in Interest or “USPPI”) will have four optional means for filing EEI: (1) use AESDirect; (2) develop AES software utilizing CBP Automated Export System Trade Interface Requirements (“AESTIR”);

(3) purchase software from certified vendors using AESTIR; or (4) use an authorized agent such as a freight forwarder.

- Filers of EEI shall be required to meet certain application, certification, and filing requirements before being approved to submit export data through the AES or AESDirect. The first requirement for participation in AES will be to submit a Letter of Intent to the U.S. Census Bureau setting forth a commitment to develop, maintain, and adhere to CBP and Census Bureau performance requirements and operational standards. USPPI wishing to file through AESDirect must complete the AESDirect registration form in lieu of submitting a Letter of Intent. To become certified for AESDirect, USPPI must demonstrate adequate knowledge of the FTR via on-line testing.
- As a general rule, EEI shall be filed prior to exportation. USPPI can prepare the EEI, or may authorize an agent to prepare and file the EEI on its behalf. If the USPPI prepares the EEI, the USPPI is responsible for the timeliness of the reported export information. If the USPPI’s agent files the EEI, the USPPI is responsible for: (1) providing the authorized agent with accurate and necessary information necessary to make the filing; (2) providing the agent with a power of attorney or other written authorization to file the EEI; and (3) maintain adequate documentation to substantiate the information provided to the agent for the filing.
- Mandatory data elements that shall be reported for each transaction include: (1) the name of the USPPI,

the address or location from which the goods are transported to the port of export, the USPPI's EIN or SSN, and the USPPI's current contact information; (2) the date of scheduled exportation; (3) the name and address of the ultimate consignee; (4) the U.S. state of origin where the goods begin the journey to the port of export; (5) the country of ultimate destination (where the goods will be consumed, further processed or manufactured); (6) the mode by which the goods will be exported from the country; (7) the conveyance or carrier name; (8) carrier identification; (9) the port of export; (10) the disclosure of related party transactions involving trade between an affiliated USPPI and ultimate consignee; (11) information specifying whether the exported goods are of domestic or foreign origin; (12) the proper tariff classification for the merchandise under the USHTS; (13) a description of the goods provided in sufficient detail to permit verification of the tariff classification; (14) the unit of measure for the merchandise; (15) the quantity of goods being exported; (16) the shipping weight of the goods, including packaging; (17) the value of the goods at the port of export, defined as the selling price or the cost of the goods if unsold - including inland or domestic freight, insurance, and other charges to the port of export; (18) proper export coding information; (19) a unique shipment reference number created by the filer that allows for identification in the filer's internal system; (20) a unique number that identifies the specific commodity line item within a shipment; (21) a hazardous material (HAZMAT) indicator, where applicable; (22) a code indicating whether the shipment is being shipped under bond; (23) a code specifying whether the merchandise is subject to a federal agency requirement for a license, permit, license exception or exemption (or that no license is required); (24) an indicator that a Foreign Principal Party in Interest ("FPPI") has authorized an agent to prepare and file the EEI where applicable; (25) an indicator that allows the filer to add, change, replace or cancel an export shipment transaction; (26) an indicator that allows the filer to add, change, replace or cancel a commodity line within an export shipment transaction; and (27) an indicator whether

the filer is reporting export information predeparture or postdeparture.

- There are conditional data elements that must be included if an authorized agent is used to file and prepare the EEI. Such elements include information regarding the authorized agents, intermediate consignees, Foreign Trade Zones ("FTZs"), foreign ports of unloading and other specified information.
- For vessel cargo, the USPPI or authorized agent shall file the EEI and provide the AES Internal Transaction Number ("ITN") to the exporting carrier no later than 24 hours to departure. For air cargo, the EEI shall be filed no later than 2 days prior to the scheduled departure time. For truck cargo, the EEI must be filed no later than 1 hour prior to the arrival of the truck at the U.S. border. For rail cargo, the USPPI or authorized agent must file the EEI no later than 2 hours prior to the time that the train arrives at the U.S. border. Postdeparture filing will only be sanctioned for approved USPPIs and, in such instances, the data elements described above shall be filed no later than 10 calendar days after the date of exportation.

The Final Rule will increase the civil penalties for inaccurate or late filed EEIs from \$1,000 to a maximum of \$10,000 per violation. The Final Rule will also provide for criminal penalties not to exceed \$10,000 or imprisonment for not more than five years, or both, for USPPIs, authorized agents, or carriers who knowingly fail to file EEIs or knowingly submit false or misleading information through the AES.

We anticipate that the U.S. Census Bureau will issue the Final Rule on Mandatory AES Filing within a matter of weeks. Once the Final Rule is published, it is expected that there will be a 90-day transitional period before the mandatory AES filing and penalty provisions will become effective. The Final Rule will have significant implications for exporters, freight forwarders, and carriers. Therefore, all affected persons and companies should immediately assess their compliance readiness and develop a thorough understanding of the new regulations as expeditiously as possible. ■

*For further information, please contact:*

**Peter A. Quinter, Esq.**

pquinter@becker-poliakoff.com, Tel: 954.985.4101

**Caleb W. Sullivan**

csullivan@becker-poliakoff.com, Tel: 305.962.0303

**Customs & International Trade Department**

Becker & Poliakoff, P.A.

[www.becker-poliakoff.com](http://www.becker-poliakoff.com)

Tel: 954.987.7550

Fax: 954.985.4176

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