

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 101, 178, and 192

[T.D. 99-57]

RIN 1515-AC42

Automated Export System (AES)

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to make provision for the Automated Export System (AES)—an electronic reporting system jointly developed by the Bureau of the Census (Census) and Customs that allows exporters to transmit commodity information contained on Shipper's Export Declarations and sea carriers to transmit outbound vessel manifest information. These amendments generally describe the AES, cross-referencing the applicable Census Regulations that will provide for the AES. They also set forth the criteria by which Customs will determine whether to approve an exporter for the option to transmit commodity information through AES after the carrier has left the United States (post-departure) and 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. This document also provides for the Sea Carrier's Module in the AES.

These regulatory changes are designed to help exporters that utilize the AES realize the benefits of fewer delays in the processing of export information by Customs due to missing paperwork, and to provide for fewer and faster inspections of export shipments as well as reduced administration costs due to automation.

EFFECTIVE DATE: July 28, 1999.

FOR FURTHER INFORMATION CONTACT: Maritza Castro, (202) 927-0724, Office of Field Operations, Outbound Programs.

SUPPLEMENTARY INFORMATION:**Background**

On February 12, 1999, Customs—in conjunction with the Bureau of the Census (Census)—published a document in the *Federal Register* (64 FR 7422) that proposed to amend the Customs Regulations to allow for 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 sea carriers to transmit outbound vessel manifest information. In that document, Customs proposed to add a new subpart B in part 192 of the Customs Regulations, which pertains to Export Control, to generally describe the AES, cross-referencing proposed Census Regulations providing for the AES which were published in the same issue of the *Federal Register* (64 FR 7412). The document also proposed criteria by which Customs would determine whether to approve an exporter for the AES option to transmit commodity information after the carrier has left the United States (post-departure) and the appeal procedures for AES exporters if Customs denies the exporter the post-departure option, or, if Customs has approved the post-departure option for an AES exporter, the grounds for revocation of the use of the option and the appeal procedures if Customs revokes the use of the option.

The document also proposed to create a new § 4.76 in the Customs Regulations (19 CFR 4.76) providing for the Sea Carrier's module in the AES.

Customs also proposed 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 also used the notice 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 day." While the term "business days" was used in that document in reference to filing times for sea carriers, the proposed definition would be applicable wherever the term is used throughout the Customs Regulations (19 CFR).

These regulatory changes were proposed to help exporters that utilize the AES realize the benefits of fewer delays in the processing of export information by Customs due to missing paperwork, and to provide for fewer and faster inspections of export shipments as well as reduced administration costs due to automation. Comments were solicited on the proposed regulations in general and on the economic impact of transmitting booking information on small carriers in particular.

The comment period closed April 13, 1999; three comments were received, one being forwarded from Census. The comments and Customs responses are set forth below.

Analysis of Comments

All of the comments received concern the general requirements for the AES proposed by the Census Regulations in their document; none of the comments received concern the Sea Carrier's Module in AES, which was the thrust of the subject matter proposed in the Customs document. No comments were received on the economic impact on small carriers of transmitting booking information.

Time Frame for Submitting Outstanding Data

Comment: One commenter questions why Option 3 filers are given only 5 days to submit outstanding data required to be filed when Option 4 filers are allowed 10 days and inquiries of the compelling reason for this disparity. Although the commenter states that the AES proposed rules—published by Census—accurately represented the four options agreed upon in the Interest Based Negotiations (IBN) between Census, Customs, and the trade community, the commenter goes on to state that Option 3 filers have the same invoicing and documentation problems as Option 4 filers and that the two filing classes should have the same time frames for submitting outstanding data required to be filed. This comment concerns §§ 30.61(b) and (c) of the proposed Census Regulations.

Customs Response: The reason Option 4 filers are allowed an additional 5 days to submit outstanding export data required to be filed is because Option 4 privileges are granted only to pre-approved exporters who have provided approving agencies with basic business information, such as type of merchandise, method of operation, and volume. Since this business data is on file prior to departure, the risk factor for Option 4 shipments is minimized. Filers with Option 3 status, on the other hand, do not have such business data on file, nor do they require any prior approval from an agency. Since Option 3 filing status is available to any AES commodity filer, the risk factor for Option 3 shipments is greatly increased. The tighter time frame for reporting full data is designed to provide a level of control, minimizing the risk for shipments which might require redelivery, or for which subsequent data is filed late or not at all. It should also help ensure a better workflow and more timely submission of crucial trade data.

Census has indicated that no change will be made to their regulations based on their analysis of this comment. Customs agrees with Census.

Option 4 Privileges and Shipments Required To Be Filed With Full Predeparture Information

Comment: Two commenters question why filers who are approved for Option 4 to transmit all export information post-departure should be required to transmit any export information predeparture under Option 2 or 3. Option 4 is not permitted for specific types of shipments, such as those requiring export licenses. These commenters believe that Option 4 was conceived as a "blanket" process for an exporter to submit all data post-departure and do not see the need, even when an export requires an export license, for predeparture reporting for Option 4 filers, since the license itself is permission to export. (Emphasis in comment). This comment concerns §§ 30.61(a) and (c) of the proposed Census Regulations.

Customs Response: This comment reflects confusion concerning the scope of Option 4 privileges. Option 4 filing privileges extend only to pre-approved filers, and then only for qualified shipments. An exporter's status as an approved Option 4 filer under § 30.61(c) of the Census Regulations does not negate the restrictions imposed when exporting specifically exempted shipments, identified under § 30.61(a) of the Census Regulations, or shipments requiring an export license. The specific types of shipments requiring full predeparture information under AES Option 2 are: (1) Used, self-propelled vehicles; (2) essential and precursor chemicals requiring a permit from the Drug Enforcement Administration; (3) shipments defined as "sensitive" by Executive Order; and (4) shipments where full export information is required prior to exportation by a Federal government agency. It would be the responsibility of that government agency to approve filers to use Option 4 for those shipments.

Census has indicated that no change will be made to their regulations based on their analysis of this comment. Customs agrees with Census.

Option 4 Filing Status & the Export of Used, Self-Propelled Vehicles

Comment: One commenter requests that § 30.61 of the Census Regulations be modified to allow approved exporters to report the export of used, self-propelled vehicles in AES under Option 4.

Customs Response: Customs disagrees. As discussed above in the second comment response, certain specific types of export shipments require that full predeparture

information be filed under Option 2. These are high-risk shipments. Used, self-propelled vehicles are one of these type of shipments. Predeparture information is required for shipments of used, self-propelled vehicles because they are subject to the regulatory requirements of Subpart A of Part 192 of the Customs Regulations (19 CFR part 192, subpart A), which were promulgated pursuant to specific statutes aimed at stopping the export of stolen vehicles. Law enforcement concerns to counter this threat of exporting stolen vehicles require that the original title for the vehicle be physically presented to Customs before the export of the used, self-propelled vehicle. See, T.D. 99-34 (64 FR 16635; published April 6, 1999). Accordingly, because full predeparture information is considered necessary before the exportation of used, self-propelled vehicles, Customs is not asking Census to change the regulations on this matter.

It is noted that new self-propelled vehicles (those for which the title has not been transferred to an ultimate purchaser) may be reported in the AES by an approved filer using Option 4. It is also noted that used, self-propelled vehicles shipped between the United States and Puerto Rico are not subject to the regulatory requirements of Subpart A of Part 192 of the Customs Regulations and are approved commodities that may be reported in the AES by an approved filer using Option 4. The Census Regulations have been amended to reflect this.

Comment: Two commenters suggest that the Census Bureau program, the Automated Export Reporting Program (AERP), should be retained. One of these commenters further suggests that AES data formats do not conform to the Treasury Department's International Trade Data System (ITDS), which will replace the AES.

Customs Response: Census and Customs have been informing the trade community since 1995 that the AERP would expire on December 31, 1999. Again, in a notice published in the **Federal Register** (63 FR 54438) on October 9, 1998, it was announced that the AERP would expire on December 31, 1999. This time frame was established to allow sufficient time for AERP participants to convert to AES. The AES is able to process trade data for all AERP companies. The AERP will not be extended past December 31, 1999.

In response to the comment regarding AES compatibility with ITDS, it should be noted that AES is compatible with the functional requirements of the ITDS and may be incorporated into that system in the future.

Conclusion

After careful consideration of all the comments received and further review of the matter, Customs has decided to adopt as a final rule, with one substantive change and minor changes for clarity, the proposed amendments published February 12, 1999, in the **Federal Register** (64 FR 7422). The one substantive change involves the definition of the term "business day."

In the proposal, Customs proposed to amend the general provisions of Part 101 of the Customs Regulations to include a definition of the term "business day" and the term "business days" was used in §§ 4.76(b), (c)(3), and (c)(4). While the definition of "business day" is adopted in this final rule document because of its use at § 4.76(b), Customs has determined that the term is not appropriate at §§ 4.76 (c)(3) and (4) because AES programming only allows for calculation of calendar days.

Accordingly, the term "business days" is replaced with "calendar days" at § 4.76(c)(4).

It is noted that in a separate document published in today's **Federal Register**, the Bureau of the Census is publishing its final rule document setting forth the general requirements for the AES in the Census Regulations (chapter I of title 15 of the Code of Federal Regulations) at new subpart E of part 30 (15 CFR part 30).

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 the amendments will not have a significant economic impact on a substantial number of small entities. 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 amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. These amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Inapplicability of Delayed Effective Date

Pursuant to 5 U.S.C. 553(d)(1) and (3), a delayed effective date is not required for this rule. For purposes of 5 U.S.C. 553(d)(1), this rule reflects a grant of an exemption from the normal export manifest reporting requirements to AES

participants using the Sea Carrier's module. A complete outbound cargo manifest is generally required to be delivered to a Customs port director not later than the fourth business day after clearance of the vessel from each port. According to this rule, a carrier can file the manifest information with Customs via AES for each booking loaded on a departed vessel within ten calendar days after the departure of the vessel from each port. Because the ability to file export manifest information electronically benefits the public, pursuant to 5 U.S.C. 553(d)(3), good cause exists for not delaying the effective date of this rule.

Paperwork Reduction Act

The collection of information contained in these final regulations has been revised, reviewed, and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1515-0221. 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 assigned by OMB.

The collection of information in this final rule is at § 4.76. This information is required to determine which export shipments are high risk. This information will be used to screen shipments for enforcement targeting. The likely respondents are sea carriers that engage in foreign commerce and trade with the United States and are required to submit outbound vessel manifest data. The estimated average burden associated with the collection of information in this final rule is one to seventy-two hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Ave., NW, Washington, DC 20229; and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

Part 178 of the Customs Regulations is amended to reflect this paperwork requirement.

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 178

Reporting and recordkeeping requirements.

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, parts 4, 101, 178, and 192 of the Customs Regulations (19 CFR parts 4, 101, 178, and 192) are amended 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, except as otherwise provided in §§ 4.75 and 4.84.

(b) *Responsibilities.* The performance requirements and operational standards and procedures for electronic submission of outbound vessel manifest information are detailed in the AES Trade Interface Requirements handbook (available on the Customs internet web site (www.customs.gov)). 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 prior to departure, participant carriers will be responsible for submitting those SEDs to Customs within four (4) business days after the departure of the vessel from each port, unless a different time requirement is specified by §§ 4.75 or 4.84. 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 calendar 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) calendar days after the departure of the vessel from each port, 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 this part) 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.

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

§ 101.1 Definitions.

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

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PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding, in appropriate numerical order, a listing for § 4.76 to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.
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19 CFR Section	Description	OMB control No.
* * *	* * *	* * *
§ 4.76	Booking information for the Sea Carrier's Module of the AES.	1515-0221
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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, 1646b; Subpart B also issued under 13 U.S.C. 303; 46 U.S.C. App. 91.

2. In § 192.0, a sentence is added at the end of the section to read as follows:

§ 192.0 Scope.

* * * This part also makes provision for the Automated Export System (AES), implemented by the Census Regulations at part 30, subpart E (15 CFR part 30, 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 part 30, subpart E), denominated Electronic Filing Requirements—Exporters. These Census Regulations (15 CFR part 30,

subpart E) 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 procedures.

(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).

§ 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 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 elsewhere in this paragraph, the revocation will 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 Director, Outbound Programs, U.S. Customs, Ronald Reagan Building, 1300 Pennsylvania Ave, NW, Room 5.4c, Washington, DC 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 Option 4 of 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: July 22, 1999.

Timothy G. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 99-19177 Filed 7-23-99; 9:55 am]

BILLING CODE 4820-02-P