Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket Number 010622161–2029–02]

RIN 0607–AA34

Automated Export System Mandatory Filing for Items on the Commerce Control List (CCL) and the United States Munitions List (USML) That Currently Require a Shipper's Export Declaration (SED)

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice for proposed rulemaking and request for comments.

SUMMARY: The U.S. Census Bureau (Census Bureau) is amending the Foreign Trade Statistics Regulations (FTSR) to incorporate requirements for the mandatory Automated Export System (AES)/AESDirect filing for items identified on the Department of Commerce's Commerce Control List (CCL) and the Department of State's United States Munitions List (USML). The AES is the electronic method to file the Shipper's Export Declaration (SED) and the ocean manifest information directly with the U.S. Customs Service (Customs). AESDirect is the Census Bureau's free Internet-based system for filing SED information with the Customs' AES. Further references to AES covers both AES and AESDirect. You are only required to file information via AES for those items that require a SED. This rule will, among other things, provide provisions for AES mandatory filing in the FTSR.

DATES: Submit written comments on or before December 9, 2002.

ADDRESSES: Please direct all written comments on this proposed rule to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: C. Harvey Monk, Jr., Chief, Foreign Trade Division, U.S. Census Bureau, Room 2104, Federal Building 3, Washington, D.C. 20233–6700, (301) 763–2255, by fax (301) 457–2645, or by e-mail: *c.harvey.monk.jr@census.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 26, 2001, the Census Bureau published a program notice in the **Federal Register** (66 FR 39006) announcing that we would be issuing rules, and allowing the public to comment, on this subject.

The Census Bureau is responsible for collecting, compiling, and publishing trade statistics for the United States under the provisions of Title 13, United States Code (U.S.C.), Chapter 9, Section 301. The paper SED and the AES are the primary media used for collecting such trade data, and the information contained therein is used by the Census Bureau for statistical purposes only. This information is exempt from public disclosure under the provisions of Title 13, U.S.C., Chapter 9, Section 301(g). The SED and AES records also are used for export control purposes under Title 50, U.S.C., and Title 22, U.S.C., to detect and prevent the export of certain critical technology and commodities to unauthorized destinations or end users.

Under the current rules and regulations, export information is compiled from both paper and electronic transactions filed by the export community with Customs and the Census Bureau. The AES is an electronic method by which the U.S. principal party in interest or the authorized agent can transmit the required export information. For purposes of completing the SED or AES record, the U.S. principal party in interest (USPPI) is the person in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. The authorized agent is the person in the United States who is authorized by power of attorney or written authorization by the USPPI or the foreign principal party in interest to prepare and file the SED or AES record. A paper SED or the electronic equivalent AES record is required, with certain exceptions, for exports of merchandise valued at more than $2,500 from the United States, Puerto Rico, and the United States Virgin Islands to foreign countries or exports between U.S. Virgin Islands and Puerto Rico and the United States. The SED or AES record also is required for all exports under a Bureau of Industry and Security (BIS) or Department of State (State Department) export license or State Department license exemption, regardless of value, unless exempted from the requirement for an SED or AES record by the State Department (*see* 15 CFR, part 30, § 30.55(h)(2) and 22 CFR parts 120–130).

For export data filed via a paper SED, the USPPI or freight forwarder must present the SED to the exporting carrier when the cargo is tended to the carrier. The vessel, air or rail carrier must present the manifest and supporting documentation to the Customs Port Director at the port of export within four days after departure if a bond is posted with Customs. However, this rule does not apply to SEDs or AES shipments subject to BIS or State Department licenses or State Department license exemptions. If the information is filed in the AES, an exemption legend is included on the vessel, air, or rail manifest, or other commercial loading document indicating that no SED is attached, with a transaction identification number or unique identifier to identify the electronic AES record. If no manifest is required or the manifest is electronically filed, the paper SEDs or the electronically filed AES exemption legends are presented directly to Customs.

Electronic filing strengthens the U.S. Government's ability to control the export of critical goods and technologies and weapons of mass destruction to prohibited and unauthorized end-users and affords the government the ability to significantly improve the quality, timeliness, and coverage of export statistics. Currently, fifty (50) percent of the paper SEDs submitted contain one or more errors in export reporting, accounting for a significant percentage of unreported exports. Reporting on the AES has demonstrated that, compared to paper filing, the error rate is reduced substantially and coverage is improved. Currently, the error rate for export transactions filed through the AES is approximately six (6) percent. At this time, the electronic AES filing of the required export information under Title 13, U.S.C., Section 301, is strictly voluntary for the export of any item.

On November 29, 1999, the President signed H.R. 3194, the Consolidated

Appropriations Act of 1999, into law (Pub. L. 106–113). Section 1252(a) of this law, amends Title 13, U.S.C., Chapter 9, section 301 to add subsection ''(h)'' authorizing the Secretary of Commerce to require by regulation, mandatory reporting requirements for filing export information through the AES for items identified on the CCL and USML that require the SED. The effective date of this amendment is 270 days after the Secretary of Commerce, the Secretary of the Treasury, and the Director of the National Institute of Standards and Technology jointly provide a certification to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the U.S. House of Representatives that a secure AES mainframe computer system of Customs and the Internet-based AESDirect system of the Census Bureau is capable of handling the expected volume of information required to be filed, plus the anticipated volume from voluntary use of the AES has been successfully implemented and tested and is fully functional with respect to reporting all items on the USML, including quantities and destinations. The required certification report was submitted to Congress on June 2001. The certification report described the security measures in place to develop, implement, and maintain each system; summarized the information system assessment reports prepared by the General Services Administration (GSA), Office of Information Security, and Customs; and provided the Census Bureau's response to those security assessment reports listing the specific actions taken by both agencies to ensure the security and functionality of the system. In addition, the AES has received a security accreditation from Customs, and the AESDirect system has received a security accreditation from the Census Bureau. On July 26, 2001, the Census Bureau published a program notice in the **Federal Register** (66 FR 39006) announcing that the AES certification report was submitted to Congress.

As authorized by Section 1252(b) of Pub. L. 106–113, the Census Bureau proposes to amend the FTSR to specify the mandatory provisions for electronically filing SEDs as well as the time and place requirements for filing. In addition, the Census Bureau proposes to amend the FTSR to specify: (1) The requirements for the filing of SEDs through the electronic AES and the provisions and responsibilities of parties exporting items identified on the CCL and USML via the AES; (2) the provision by the Department of Commerce for the establishment of on-line assistance services to be available for those individuals who must use the AES; (3) the provision by the Department of Commerce for ensuring that an individual required to use the AES is able to print out from the AES a validated record of the individual's submission, including the date of submission and a transaction number or unique identifier, where appropriate, for the export transaction; and (4) a requirement that the Department of Commerce print out and maintain on file a paper copy or other acceptable back-up record of the individual's submission at a location selected by the Secretary of Commerce. This rule defines the regulatory revisions that would be made to implement this legislation. The Census Bureau also proposes to amend the FTSR to specify how electronic export information is identified on the manifest by mode of transportation and define the carrier's responsibilities. In addition to proposing regulations on the provisions for the mandatory filing via the AES, this Notice of Proposed Rulemaking proposes to amend §§ 30.63 (14)–(21) to collect additional data through the AES to meet the State Department's requirements. Finally, this notice proposes to add to the paper SED the requirement to enter the freight forwarder's Employer Identification Number (EIN) when required. This requirement applies to filers who are not required to file through AES and who choose to file a paper SED, rather than filing voluntarily through AES.

One additional revision the Census Bureau proposes for the FTSR is the removal of AES Filing Option 3. Option 3 allows the filer to provide partial pre-departure information and complete information five (5) working days from the date of exportation. The Census Bureau identified four (4) specific reasons for making Option 3 inactive. Option 3 has shown to be underutilized by the AES filers. Option 3 filers have frequently shown noncompliance with timely filing for both the pre-departure and post departure filings and, therefore, the data collected are often incomplete and inaccurate because of missing post departure filings. Lastly, Option 3 has shown to be a burden by requiring filers to transmit twice for one shipment. Of the 734,916 total average AES shipment transactions collected per month, Option 3 filings average only 28,739 or 3.9 percent. Additionally, of the 5,000 plus AES filers, only 53 filers are using Option 3 and of those, only 7 use Option 3 exclusively.

The mandatory compliance date for these regulatory requirements would be 90 days after issuance of any final rule.

Program Requirements

In order to comply with the requirements of Pub. L. 106–113, the Census Bureau proposes amending the appropriate sections of the FTSR to specify the requirements for the AES mandatory filing and the revision to the paper SED. For purposes of this rule, all references to filing mandatory AES shipments do not apply to the paper SED.

The Census Bureau proposes revising the following sections of the FTSR: (a) Section 30.1 to specify the general requirements for filing items identified on the CCL and USML, that require the SED, via the AES; (b) Section 30.7 to add instructions for filing the address of the USPPI, the freight forwarder's EIN on the paper SED, the transportation reference number, instructions for filing the gross shipping weight for air, vessel, truck and rail modes of transportation via paper and the AES and delete references to ''marks and numbers''; (c) Section 30.12 to specify the instructions regarding the time and place for presenting SED information; (d) Section 30.21 to specify the departing carrier's responsibility for filing export and manifest data via paper and the AES; (e) Section 30.22 to specify the responsibilities of the departing carrier to deliver to the Customs Port Director at the time of exportation, the required documentation for electronically filed items; (f) Section 30.23 to amend the requirements for the pipeline carrier when the item is identified on the CCL or USML; (g) Section 30.60 is amended to specify participation requirements in the AES; (h) Section 30.61 to specify the electronic filing options required for mandatory filing and to delete references to Option 3; (i) Section 30.62 is amended to update the specifications for certification, qualification and standards for AES and AESDirect; (j) Section 30.63 to revise the requirements for entering a USPPI's profile in AES and to add data elements required in the AES to validate State Department's Office of Defense Trade Controls (ODTC) licensed or license-exempt shipments and to delete references to Option 3; (k) Section 30.65 to specify the requirements for annotating the proper exemption legends when exports are filed through the AES; (l) Section 30.66 to specify requirements as stated in Section 1252(b)(2) of Pub. L. 106–113, which pertains to record keeping and documentation requirements; (m) revise Appendix A to amend the instructions for the Letter of Intent; (n)

revise Appendix B to delete references to Option 3 filing and to reserve it for future use; and (o) revise Appendix C, Part II—Export Information Codes and Part III—License Codes, Bureau of Industry and Security Codes and Department of State Codes to specify additional license codes required and reference as to where to locate the International Traffic in Arms Regulations (ITAR) license exemption citations. Revise Part IV—In-Bond Code to delete codes that pertain only to import shipments. The collection of additional data items listed in Appendix C has been approved by the Office of Management and Budget (OMB).

The State Department and the Department of Treasury concur with the provisions contained in this notice of proposed rulemaking.

Rulemaking Requirements

Administrative Procedure Act

This proposed rule is exempt from all requirements of Section 553 of the Administrative Procedure Act, because it deals with a foreign affairs function of the United States (5 U.S.C. 553(a)(1)). However, this rule is being published as a proposed rule with an opportunity for public comment, because of the importance of the issues raised by this rulemaking.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant impact on a substantial number of small entities. This action requires that exporters file export information through the AES for items identified on the CCL and USML that currently require the SED. Currently, 85 percent of all export transactions are voluntarily filed electronically and the remaining 15 percent are filed on paper SEDs.

Based on year 2000 data, the Census Bureau estimates there were 128,000 exporters who were considered small entities under the Small Business Act—because they had less than 500 employees—and that filed one or more export shipments. Of these 128,000 exporters, 90 percent used a forwarding agent to file export documentation, the SED, on their behalf. Although, it is not possible to determine how many of the 128,000 small businesses exported merchandise identified on the CCL or the USML and that are currently required to file an SED, the Census Bureau anticipates that the new requirement would not significantly affect the small businesses who must now file through AES. It is unlikely that the regulations that require mandatory use of AES to file export information would affect a substantial number of small entities because 90 percent of all exporters who are considered small entities already use a forwarding agent to file export documentation.

In addition, those small exporters that do not currently use a forwarding agent to file export documentation will not be significantly impacted by this regulation. We can safely assume that small businesses involved in exporting items on the CCL and USML are electronically sophisticated, and would have access to a computer and the Internet. The Census Bureau has provided a free Internet-based system, AESDirect, especially for small businesses to submit their export information electronically. The implementation of AESDirect was the primary criteria required in order for Section 1252 of Pub. L. 106–113 to become effective. Therefore, it is not necessary for small businesses to purchase software for this task. Small businesses currently filing paper and who will now be required to file electronically will be able to continue to use their current forwarding agent who will be required to file the export information electronically on their behalf or the exporters can use AESDirect and file directly for themselves.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. It has been determined that this rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, OMB approved on April 26, 2002, with control number 0607–0512, the collection of all information associated with the AES and SED under this rule. We estimate that each electronic SED will take approximately 3 minutes to complete; we estimate that each paper SED will take approximately 11 minutes to complete.

List of Subjects in 15 CFR Part 30

Economic statistics, Foreign trade, Exports, Reporting and record keeping requirements.

For the reasons set out in the preamble, it is proposed that Part 30 be amended as follows:

PART 30—FOREIGN TRADE STATISTICS

1. Revise the authority citation for part 30 to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan No. 5 of 1950 (3 CFR 1949–1953 Comp., 1004); and Department of Commerce Organization Order No. 35–2A, July 22, 1987, as amended.

PART 30—[AMENDED]

2. In Part 30, revise all references to the ''Bureau of Export Administration'' to read the ''Bureau of Industry and Security'' and revise all reference to ''BXA'' to read ''BIS.''

3. Revise the heading of Subpart A to read as follows:

Subpart A—General Requirements—U.S. Principal Party In Interest

4. Amend § 30.1 to revise all references to ''exporters or their authorized agents'' to read ''U.S. principal party in interest or the authorized agent,'' in paragraph (a), revise paragraph (b) and paragraph (c) to read as follows:

§ 30.1 General statement of requirement for Shipper's Export Declarations.

* * * * *

(b) Export information that is required to be filed for items identified on the Commerce Control List (CCL) of the Export Administration Regulations (EAR) (15 CFR Supplement No. 1 to Part 774) or the U.S. Munitions List (USML) of the International Traffic in Arms Regulations (ITAR) (22 CFR, part 121) is to be filed electronically through AES. This requirement to file information via AES applies to those items that require a Shipper's Export Declaration. Exemptions from these requirements and exceptions to some of the provisions of these regulations for particular types of transactions are found in subparts C and D of this part.

(c) In lieu of filing paper SEDs as provided elsewhere in this Section, the U.S. principal party in interest or the authorized agent is required to file shippers' export information, when required, electronically through the AES for the export of items identified on the CCL of the EAR (15 CFR Supp. No. 1 to part 774) or the USML of the ITAR (22 CFR, part 121) as provided for in

subpart E of this part, Electronic Filing Requirement-Shipper's Export Information. Information for items identified on the USML, including those exported under an export license exemption, must be filed electronically prior to export, unless exempted from the SED filing requirement by the State Department. For State Department USML shipments, refer to the International Traffic in Arms Regulations (22 CFR, parts 120–130) for State Department requirements concerning the AES exemption legend and filing time requirements. The U.S. principal party in interest or the authorized agent filing SEDs for the export of items not on the CCL or the USML have the option of filing this information electronically as provided for in subpart E of this part.

5. Amend § 30.7 as follows:

a. Add paragraph (d)(3).

b. Revise the first sentence of paragraph (e).

c. Remove and reserve paragraph (k).

d. Revise paragraphs (j) and (o).

e. Add a sentence after the second sentence in paragraph (l).

The additions and revisions read as follows:

§ 30.7 Information required on Shipper's Export Declaration.

* * * * *

(d) * * *

(3) *Address (number, street, city, state, Zip Code) of the USPPI.* In all export transactions, the USPPI shall report the address location from which the merchandise actually starts its journey to the port of export. For example, a Shipper's Export Declaration covering merchandise laden aboard a truck at a warehouse in Georgia for transport to Florida for loading onto a vessel for export to a foreign country shall show the address of the warehouse in Georgia. If the USPPI does not have a facility (processing plant, warehouse or distribution center, retail outlet, etc.) at the location from which the goods began their export journey, report the USPPI address from which the export was directed. For shipments of multiple origins reported on a single SED, report the address from which the greatest value begins its export journey or, if such information is not known at the time of export, the address from which the export is directed.

(e) *Forwarding or other agent.* The name, address, and Employer Identification Number (EIN) or Social Security Number (SSN) of the duly authorized forwarding or other agent (if any) of a principal party in interest must be recorded where required on the SED or AES record. * * *

(j) *Transportation Reference Number.* Enter the Transportation Reference Number as follows:

(1) *Vessel Shipments.* Report the booking number for all sea shipments. The booking number is the reservation number assigned by the carrier to hold space on the vessel for cargo being exported.

(2) *Air Shipments.* Report the master air waybill number for all air shipments. The air waybill number is the reservation number assigned by the carrier to hold space on the airplane for cargo being exported.

(3) *Rail Shipments.* Report the bill of lading (BOL) number for all rail shipments. The BOL number is the reservation number assigned by the carrier to hold space on the rail car for cargo being exported.

(4) *Truck Shipments.* Report the Freight or Pro Bill number for all truck shipments. The Freight or Pro Bill number is the number assigned by the carrier to hold space on the truck for cargo being exported. The Freight or Pro Bill number correlates to a bill of lading number, air waybill number or Trip number for multi-modal shipments.

(k) [Reserved]

(l) * * * Include marks, numbers or other identification shown on packages and the number and kinds of packages (*i.e.*, boxes, barrels, baskets, bales, etc.). * * *

(o) *Gross (shipping) weight.* Enter the gross shipping weight in kilograms on the SED or the AES record, including the weight of containers, for air, vessel, truck, and rail methods of transportation. However, for containerized cargo in lift vans, cargo vans, or similar substantial outer containers, the weight of such containers should not be included in the gross weight of the commodities. If the gross shipping weight information is not available for individual Schedule B items because commodities covered by more than one Schedule B number are contained in the same shipping container, approximate shipping weights should be used for each Schedule B item in the container. The total estimated weights must equal the actual shipping weight of the entire container or containers and contents.

* * * * *

6. Revise § 30.12 to read as follows:

§ 30.12 Time and place for presenting the SED or Exemption Legends.

The following conditions govern the time and place to present paper SEDs or the AES transaction identification number that identifies the electronic record. It is the duty of the principal party in interest or the authorized agent to deliver the required number of copies of the SED or the exemption legends when the cargo is tendered to the exporting carrier. Information on items identified on the Commerce Control List (CCL) of the EAR (15 CFR Supp. No. 1 to part 774) or the U.S. Munitions List (USML) of the International Traffic in Arms Regulations (ITAR) (22 CFR, Part 121) that require an SED, must be filed through the AES. Information for items identified on the USML, including those exported under an export license exemption, must be filed electronically prior to export, unless exempted from the SED filing requirements by the State Department. For State Department USML shipments, refer to the ITAR (22 CFR, Parts 120–130) for more specific requirements concerning the AES exemption legend and filing time requirements. Failure of the U.S. principal party in interest or the authorized agent of either the U.S. principal party in interest or foreign principal party in interest to comply with these requirements constitutes a violation of the provisions of these regulations, and renders such principal party or the authorized agent subject to the penalties provided for in § 30.95 of this part.

(a) *Postal Exports.* SEDs for exports of items being sent by mail, as required in § 30.1 of this part, shall be presented to the postmaster with the packages at the time of mailing.

(b) *Pipeline Exports.* SEDs for exports being sent by pipeline are not required to be presented prior to exportation; however, they are required to be filed within four (4) working days after the end of each calendar month. These SEDs must be filed with the Customs Port Director having jurisdiction for the pipeline, and the filer must deliver the SED in the number of copies specified in § 30.5 of this part to cover exports to each consignee during the calendar month.

(c) *Exports by other methods of transportation.* For exports sent other than by mail or pipeline, the required number of copies of SEDs as prescribed in § 30.5 of this part shall be delivered to the exporting carrier when the cargo is tendered to the exporting carrier.

(d) *Exports Filed Via AES.* For exports filed through the AES, it is the duty of the U.S. principal party in interest or the authorized agent to deliver to the exporting carrier, the AES exemption legends as provided for in § 30.65 of this part or 22 CFR (parts 120–130) of the ITAR when the cargo is tendered to the exporting carrier.

Subpart B—General Requirements—Exporting Carriers

7. Revise § 30.21 to read as follows:

§ 30.21 Requirements for the filing of manifests.

Carriers transporting merchandise via vessel, aircraft, or rail are required to file an outbound manifest (along with the required SEDs, supporting documentation and/or the exemption statement) to the Customs Port Director at the port of exportation. Outbound vessel manifests may be filed via paper or electronically through the vessel transportation module, a component of the AES, as provided in U.S. Customs Service Regulations, 19 CFR 4.63 and 4.76. SEDs may be filed via paper or electronically via the AES.

(a) *Paper SED—paper manifest.* If filing paper SEDs and paper manifest, attach the copies of the SEDs to the manifest. For each item of cargo, the Transportation Reference Number on the SED covering the item must be shown on the manifest.

(b) *Paper SED—electronic manifest.* If filing paper SEDs and the electronic outbound vessel manifest, carriers are responsible for submitting paper SEDs directly to the Customs Port Director.

(c) *Electronic SED—paper manifest.* If filing the electronic SED and paper outbound manifest, carriers must annotate the outbound manifest with the appropriate AES exemption legends as provided in § 30.65 of this part.

(d) *Electronic SED and manifest.* If filing the SED information and outbound vessel manifest electronically through the AES, the carrier must adhere to the instructions specified in U.S. Customs Regulations, 19 CFR, 4.76 and § 30.60 of this Part and transmit the appropriate exemption legend as provided in § 30.65 of this part.

(e) *When an SED is not required.* If an item does not require a SED, the proper exemption legend must be annotated on the outbound manifest or other appropriate commercial documents as provided in § 30.50 of this Part.

(f) *Exports to Puerto Rico.* When filing paper manifests for shipments from the United States to Puerto Rico, the manifest shall be filed with the Customs Port Director where the merchandise is unladen in Puerto Rico.

(1) *Vessels.* Vessels transporting merchandise as specified in § 30.20 of this part (except vessels exempted by paragraph (e)(4) of this section) shall file a complete Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A. In addition, vessel carriers are required to perform the following:

(i) *Bunker fuel.* Vessel manifest (including vessels carrying bunker fuel to be laden aboard vessels on the high seas) clearing for foreign countries shall show quantities and values of bunker fuel taken aboard at that port for fueling use of the vessel, apart from such quantities as may have been laden on vessels as cargo.

(ii) *Coal and Fuel Oil.* The quantity of coal shall be reported in metric tons (2240 pounds), and the quantity of fuel oil shall be reported in barrels of 158.98 liters (42 gallons). Fuel oil shall be described in such manner as to identify diesel oil as distinguished from other types of fuel oil.

(2) *Aircraft.* Aircraft transporting merchandise as specified in § 30.20 of this part, shall file a complete manifest on Customs Form 7509, as required in U.S. Customs Regulations, 19 CFR 122.72 through 122.76. All the cargo so laden shall be listed and shall show, for each item, the air waybill number or marks and numbers on packages, the number of packages, and the description of the goods.

(3) *Rail carriers.* Rail carriers transporting merchandise as specified in § 30.20 of this Part shall file a car manifest. Such manifest shall be filed with the Customs Port Director at the port of exportation, giving the marks and numbers, the name of the shipper or consignor, description of goods and the destination thereof. The manifest may be a waybill, or copy thereof, or a copy of the manifest prepared for foreign customers.

(4) *Carriers not required to file manifests.* Carriers other than vessels, aircraft, and rail carriers, or vessels under 5 net tons engaged in trade with a foreign country other than by sea are not required to file manifests. Vessels specifically exempted from entry by section 441 of the Tariff Act of 1930 are exempt from filing manifests. Carriers exempted from filing manifests are required, upon request, to present to the Customs Port Director regulatory SED exemption legends or AES exemption legends. Failure of the carrier to do so constitutes a violation of the provisions of these regulations, and renders such carrier subject to the penalties provided for in § 30.95 of this part.

8. Amend § 30.22 by adding a sentence to the end of paragraph (a), adding a sentence after the first sentence in paragraph (b), and adding paragraph (f) to read as follows:

§ 30.22 Requirements for the filing of Shipper's Export Declarations or AES Exemption Legends by departing carriers.

(a) * * * When the export information for a shipment is filed via the AES, the carrier is responsible for presenting the proper AES exemption legend as provided in § 30.65 of this part and the ITAR (22 CFR part 121) for U.S. Munitions List (USML) shipments.

(b) * * * If the export information is filed electronically via the AES, the carrier is responsible for providing the Customs Port Director at the port of exportation with the proper AES exemption legend as provided in § 30.65 of this part and the ITAR (22 CFR, part 121) for U.S. Munitions List (USML) shipments.

* * * * *

(f) Information on items identified on the Commerce Control List of the EAR (15 CFR Supp. No. 1 to part 774) or the U.S. Munitions List of the ITAR (22 CFR part 121) that require an SED, must be filed through AES. The exporting carrier must not accept paper SEDs or cargo that does not have the appropriate AES filing exemption legend as set forth in § 30.65 of this part and the ITAR (22 CFR part 121) for U.S. Munitions List (USML) shipments. Acceptance of paper SEDs or cargo without the appropriate exemption legend constitutes a violation of the provisions of these regulations, and renders such carrier subject to the penalties provided for in § 30.95 of this part.

* * * * *

9. Amend § 30.23 by adding a sentence to the end of the paragraph to read as follows:

§ 30.23 Requirements for the filing of Shipper's Export Declarations by pipeline carriers.

* * * If the merchandise transported by pipeline is identified on the Commerce Control List of the EAR (15 CFR Supplement No.1 to part 774) or the U.S. Munitions List of the ITAR (22 CFR, part 121), and requires an SED, the data regarding the shipment must be filed electronically through the AES.

Subpart E—Electronic Filing Requirements—Shipper's Export Information

10. Amend 30.60 to revise paragraph (a) to read as follows:

§ 30.60 General requirements for filing export and manifest data electronically using the Automated Export System.

* * * * *

(a) *Participation.* Filing using the AES is mandatory for those items identified on the Commerce Control List (CCL) of the EAR (15 CFR Supplement No. 1 to part 774) or the U.S. Munitions List (USML) of the ITAR (22 CFR, part 121). You are only required to file information via AES for those items that require a Shipper's Export Declaration. All other participation in the AES in voluntary. Information for items

identified on the CCL or the USML filed via AES must be filed by the U.S. principal party in interest or the authorized agent. A Data Entry Center, service center, or port authority may transmit an AES record for CCL or USML items, completed by the U.S. principal party in interest or the authorized agent, without obtaining a power of attorney or written authorization. A Data Entry Center, service center, or port authority must have a power of attorney or written authorization from the U.S. principal party in interest or foreign principal party in interest if it completes any export information in AES for CCL or USML shipments. Companies may also buy a software package designed by an AES certified software vendor. Certified trade participants (filing agents) can transmit to and receive data from the AES pertaining to merchandise being exported from the United States. Participants in the AES process, who may apply for AES certification, includeU.S. principal parties in interest or the authorized agents, carriers, non-vessel operating common carriers (NVOCC), consolidators, port authorities, software vendors, or service centers. Once becoming certified, an AES filer (filing agent) must agree to stay in complete compliance with all export rules and regulations.

* * * * *

11. Amend § 30.61 to revise the introductory text, remove paragraph (b), and redesignate paragraph (c) as paragraph (b) to read as follows:

§ 30.61 Electronic filing options.

As an alternative to filing paper Shipper's Export Declaration forms (Option 1), two electronic filing options (Option 2 and 4) for transmitting shipper's export information are available to U.S. principal parties or the authorized filing agent. The electronic filing Option 4 takes into account that complete information concerning export shipments is not always available prior to exportation. Information on the export of items identified on the Commerce Control List of the EAR (15 CFR Supplement No. 1 to part 774) or the U.S. Munitions List of the ITAR (22 CFR, part 121) that require an SED can be filed using Options 2 or 4. Option 4 may only be used when the appropriate licensing agency has granted the U.S. principal party in interest or the authorized agent authorization to use this option. The available AES electronic filing options are as follows:

* * * * *

12. Revise § 30.62 to read as follows:

§ 30.62 AES/AESDirect Certification, qualification, and standards.

Certification for AES filing will apply to the U.S. principal party in interest, authorized forwarding agent, carrier, non-vessel operating common carriers (NVOCC), consolidator, port authority, software vendor, or service center transmitting export information electronically using the AES.

(a) *AES Certification Process.* Applicants interested in AES filing must submit a Letter of Intent to the Census Bureau in accordance with the provisions contained in § 30.60. Customs and the Census Bureau will assign client representatives to work with the applicant to prepare them for AES certification. The AES applicant must perform an initial two-part communication test to ascertain whether the applicant's system is capable of both transmitting data to, and receiving data from, the AES. The applicant must demonstrate specific system application capabilities. The capability to correctly handle these system applications is the prerequisite to certification for participation in the AES. The applicant must successfully transmit the AES certification test. The Customs' and Census Bureau's client representatives provide assistance during certification testing. These representatives make the sole determination as to whether or not the applicant qualifies for certification. Upon successful completion of certification testing, the applicant's status is moved from testing mode to operational mode. Upon certification, the filer will be required to maintain an acceptable level of performance in AES filings. The certified AES filer may be required to repeat the certification testing process at any time to ensure that operational standards for quality and volume of data are maintained. The Census Bureau will provide the certified AES filer with a certification letter after the applicant has been approved for operational status. The certification letter will include:

(1) The date that filers may begin transmitting ''live'' data electronically using AES;

(2) Reporting instructions; and

(3) Examples of the required AES exemption legends.

(b) AES*Direct Certification process.* Applicants interested in AES*Direct* filing must complete the online AES*Direct* registration form. After submitting the registration, an AES*Direct* filing account is created for the filing company. The applicant will receive separate e-mails providing an AES*Direct* user name, temporary administrator code, and temporary password. The filer uses the temporary administrator code to create a permanent administrator code that allows the user to create a permanent password. The user name and new permanent password will allow the filer to complete a certification quiz. Upon passing the quiz, notification by e-mail will be sent when an account is fully activated for filing via AES*Direct*. Print the page congratulating the filer on passing the quiz for retention purposes. The activation notice will specify which AES filing status the account has been authorized.

(c) *Filing agent certification.* Once an authorized filing agent has successfully completed the certification process, the U.S. principal party in interest using that agent does not need further AES certification. The certified filing agent must have a properly executed power of attorney, a written authorization from the U.S. principal party in interest or foreign principal party in interest, or a SED signed by the U.S. principal party in interest to transmit their data electronically using the AES. The U.S. principal party in interest or authorized agent that utilizes a service center or port authority must complete certification testing, unless the service center or port authority has a formal power of attorney or written authorization from the U.S. principal party in interest to file the export information on behalf of the U.S. principal party in interest.

(d) *AES filing standards.* The certified AES filer's data will be monitored and reviewed for quality, timeliness, and coverage. The Census Bureau will notify the AES filer if the filer fails to maintain an acceptable level of quality, timeliness, and coverage in the transmission of export data or fail to maintain compliance with Census Bureau regulations contained in this Section. The Census Bureau, if necessary, will take appropriate action to correct the specific situation(s). In the case of AES*Direct*, when submitting a registration form to AES*Direct*, the registering company is certifying that they will be in compliance with all applicable laws and regulations. This includes complying with the following security requirements:

(1) AES*Direct* user names and passwords are to be neither written down nor disclosed to any unauthorized user or any persons outside of the registered company. Filers must change passwords for security purposes when prompted to do so.

(2) Registered companies are responsible for those persons having a user name and password. If an employee with access to the user name

and password leaves the company or otherwise is no longer an authorized user, the company must change the password and user name in the system and must do so immediately in order to ensure the integrity and confidentiality of Title 13 data.

(3) Antivirus software must be installed and set to run automatically on all computers that access AES*Direct*. All AES*Direct* registered companies will maintain subscriptions with their antivirus software vendor to keep antivirus lists current. Registered companies are responsible for performing full scans of these systems on a regular basis and eliminating any virus contamination. If the registered company's computer system is infected with a virus, the company should refrain from using AES*Direct* until it is virus free. Failure to comply with these requirements will result in immediate loss of privilege to use AES*Direct* until the registered company can establish to the satisfaction of the Census Bureau's Foreign Trade Division Computer Security Officer that the company's computer systems accessing AES*Direct* is virus free.

13. Amend § 30.63 by revising paragraph (a)(1), (b)(11), (b)(13), and (c), and by adding paragraphs (b)(14) through (b)(21) to read as follows:

§ 30.63 Information required to be reported electronically through AES (data elements).

(a) * * *

(1) *U.S. Principal Party in Interest (USPPI)/USPPI identification'(i) Name and address of the USPPI.* For details on the reporting responsibilities of USPPIs, see § 30.4 and § 30.7 (d)(1), (2), (3), and (e).

(ii) *USPPI's profile.* The USPPI's Employer Identification Number (EIN) or Social Security Number (SSN) and the USPPI name, address, contact, and telephone number must be reported with every shipment. If neither EIN or SSN is available for the USPPI, as in the case of a foreign entity being shown as the USPPI as defined in § 30.7(d), the border crossing number, passport number, or any other number assigned by Customs is required to be reported. (See § 30.7(d)(2) for a detailed description of the EIN.)

(b) * * *

(11) *Transportation Reference Number.* Report the Transportation Reference Number as follows:

(i) *Vessel Shipments.* Report the booking number for all sea shipments. The booking number is the reservation number assigned by the carrier to hold space on the vessel for cargo being exported.

(ii) *Air Shipments.* Report the master air way bill number for all air shipments. The air waybill number is the reservation number assigned by the carrier to hold space on the airplane for cargo being exported.

(iii) *Rail Shipments.* Report the bill of lading (BOL) number for all rail shipments. The BOL number is the reservation number assigned by the carrier to hold space on the rail car for cargo being exported.

(iv) *Truck Shipments.* Report the Freight or Pro Bill number for all truck shipments. The Freight or Pro Bill number is the number assigned by the carrier to hold space on the truck for cargo being exported. The Freight or Pro Bill number correlates to a bill of lading number, air waybill number or Trip number for multi-modal shipments.

* * * * *

(13) *Filing option indicator.* Report the 1-character filing option that indicates Option 2 or 4 filing.

(14) *Office of Defense Trade Controls (ODTC) Registration Number.* The number assigned by ODTC to persons who are required to register per Part 122 of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130), that has an authorization from ODTC (license or exemption) to export the article.

(15) *ODTC Significant Military Equipment (SME) Indicator.* A term used to designate articles on the United States Munitions List for which special export controls are warranted because of their capacity for substantial military utility or capability. See section 120.7 of the International Traffic in Arms Regulations (ITAR) 22 CFR parts 120–130, for a definition of SME and Section 121.1 for items designated as SME articles.

(16) *ODTC Eligible Party Certification Indicator.* Certification by the U.S. exporter that the exporter is an eligible party to participate in defense trade. See ITAR 22 CFR, § 120.1(c). This certification is required only when an exemption is claimed.

(17) *ODTC USML Category Code.* The United States Munitions List category of the article being exported (22 CFR part 121).

(18) *ODTC Unit of Measure (ULM).* This unit of measure is the ULM covering the article being shipped as described on the export authorization or declared under an ITAR exemption.

(19) *ODTC Quantity.* This quantity is for the article being shipped. The quantity is the total number of units that corresponds to the ODTC Unit of Measure Code.

(20) *ODTC Exemption Number.* The exemption number is the specific citation from the Code of Federal Regulations (22 CFR parts 120—130) that exempts the shipment from the requirements for a license or other written authorization from ODTC.

(21) *ODTC Export License Line Number.* The line number of the State Department export license that corresponds to the article being exported.

(c) *Seal Number.* Optional. Report the security seal number of the seal placed on the equipment.

14. Revise § 30.65 to read as follows:

§ 30.65 Annotating the proper exemption legends for shipments transmitted electronically.

(a) Items identified on the U.S. Munitions List (USML), must meet the predeparture reporting requirements identified in the ITAR (22 CFR Parts 120–130) for the State Department requirements concerning AES exemption legends and time and place of filing.

(b) For shipments other than USML, the U.S. principal party in interest or the authorized agent is responsible for annotating the proper exemption legend on the bill of lading, air waybill, or other commercial loading document for presentation to the carrier prior to export. The carrier is responsible for providing the proper exemption legend to the Customs Port Director at the port of exportation as stated in § 30.21 of this Part. The exemption legend will identify that the shipment information has been accepted as transmitted and electronically filed using the AES. The exemption legend must appear on the bill of lading, air waybill, or other commercial loading documentation and the manifest and must be clearly visible and include either of the following:

(1) For shipments other than USML, the exemption legend will include the statement, ''NO SED REQUIRED—AES,'' followed by the filer's identification number and a unique shipment reference number referred to as the ''XTN'' or the returned confirmation number provided by AES when the transmission is accepted, referred to as the ''ITN.'' Items on the USML must meet the pre-departure reporting requirements in the ITAR (22 CFR parts 102–130).

(2) For U.S. principal parties in interest who have been approved to participate in Filing Option 4, the exemption statement, ''NO SED REQUIRED—AES4,'' followed by the U.S. principal party's in interest employer identification number followed by the filer's identification number if other than the U.S. principal party in interest files the data.

15. Revise § 30.66 to read as follows:

§ 30.66 Support, documentation and record keeping requirements.

(a) *Support. ASKAES@census.gov* is an online service that allows electronic filers to seek assistance pertaining to AES. AES*Direct* is supported by a help desk available twelve (12) hours a day, seven (7) days a week.

(b) *Documentation.* Filers using the AES*Direct* are able to print out from the AES*Direct* a validated record of the filer's submission. Filers using AES are able to print records containing date of submission and a unique identification number for each AES record submitted. The Census Bureau will maintain an electronic file of data sent through AES to ensure that an individual is able to receive from the system, a validated record of the submission. The U.S. principal party in interest or the authorized agent of the U.S. principal party in interest or foreign principal party in interest may request a copy of the electronic record submitted as provided for in § 30.91 of this part.

(c) *Recordkeeping.* All parties to the export transaction (owners and operators of the exporting carriers and U.S. principal party and/or the authorized agents) must retain documents or records pertaining to the shipment for five (5) years from the date of export. Customs, the Census Bureau, and other participating agencies may require that these documents be produced at any time within the 5-year time period for inspection or copying. These records may be retained in an elected format, including electronic or hard copy as provided in the applicable agency's regulations. Acceptance of the documents by Customs or the Census Bureau does not relieve the U.S. principal party in interest or the authorized agent from providing complete and accurate information after the fact. The Department of State or other regulatory agencies may have additional record keeping requirements for exports.

16. Amend Appendix A as follows:

a. Add an introductory paragraph;

b. Revise items A.5, A.6, and A.10;

c. Remove item A.6(i) and redesignate items A.6(ii) and A.6(iii) as A.6(i) and A.6(ii), respectively;

d. Revise paragraphs B and C;

e. Add paragraph D.

The additions and revisions read as follows:

Appendix A to Part 30-Format For Letter of Intent, Automated Export System (AES)

The first requirement for participation in AES is a Letter of Intent. The Letter of Intent is a written statement of a company's desire to participate in AES. It must set forth a commitment to develop, maintain, and adhere to Customs and Census performance requirements and operations standards. Once the letter of intent is received, a U.S. Customs Client Representative and U.S. Census Bureau Client Representative will be assigned to the company. Census will forward additional information to prepare the company for participation in AES.

A. Letters of Intent should be on company letterhead and must include:

* * * * *

5. Computer Site Location Address, City, State, Postal Code (Where transmissions will be initiated)

6. Type of Business—U.S. Principal Party in Interest, Freight Forwarder/Broker, Carrier, NVOCC, Port Authority, Software Vendor, Service Center, etc. (Indicate all that apply)

(i) Freight Forwarders/Brokers, indicate the number of U.S. principal parties in interest for whom you file export information (SEDs)

(ii) U.S. Principal Parties in Interest, indicate whether you are applying for AES Option 2 or Option 4

* * *

10. Filer Code—EIN, SSN or SCAC (Indicate all that apply)

* * * * *

B. The following self-certification statement, signed by an officer of the company, must be included in your letter of intent: ''We (COMPANY NAME) certify that all statements made and all information provided herein are true and correct. I understand that civil and criminal penalties, including forfeiture and sale, may be imposed for making false or fraudulent statements herein, failing to provide the requested information or for violation of U.S. laws on exportation (13 U.S.C. Sec. 305; 22 U.S.C. Sec. 401; 18 U.S.C. Sec. 1001; 50 U.S.C. App. 2410.''

C. The AES Option 4 privilege allows a U.S. principal party in interest to send no data prior to exportation and complete data within 10 working days after exportation. Participants will be reviewed by several government agencies prior to acceptance into the Option 4 program.

D. Send AES or Option 4 Letter of Intent to : Chief, Foreign Trade Division, U.S. Census Bureau, Washington, DC 20233. Or, the copy can be faxed to : 301–457–1159.

Appendix B To Part 30—Required Pre-Departure Data Elements For Filing Option 3

17. [Removed] Remove and reserve Appendix B.

Dated: October 4, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

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FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 154, 161, 250 and 284

[Docket No. PL02–9–000]

Notice of Public Conference

September 26, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of public conference.

SUMMARY: On February 9, 2000, the Commission issued Order No. 636, amending its regulations in response to growing development of more competitive markets for natural gas and the transportation of natural gas (65 FR 10156, February 25, 2000). The Commission is holding a public conference to engage industry members and the public in a dialogue about policy issues facing the natural gas industry today and the Commission's regulation of the industry of the future.

DATES: *Requests to participate:* October 15, 2002. *Conference date:* October 25, 2002.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth P. Niehaus, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, (202) 502–6398, *kenneth.niehaus@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. The Federal Energy Regulatory Commission (FERC) will hold a conference on October 25, 2002, to engage industry members and the public in a dialogue about policy issues facing the natural gas industry today and the Commission's regulation of the industry for the future. The Commission expects a wide ranging discussion that will help the Commission establish its regulatory goals for an industry that anticipates long term growth to reach 30-Tcf annually. The Commission anticipates exploring issues concerning: (1) Supply and demand; (2) the application of the Commission's open access polices to liquefied natural gas (LNG) import facilities; (3) the Commission's Outer Continental Shelf (OCS) gathering policy; and (4) the flexibility pipelines need to serve historical load as well as new demand. In addition, the Commission will provide an opportunity for market participants and other interested persons to raise issues and make policy recommendations for Commission consideration.