§ 30.4, NI.

EFFECTIVE DATE NOTE: At 78 FR 16376, Mar. 14, 2013, §30.4 was amended by revising paragraphs (a)(6) and (8); redesignating paragraphs (a)(9) and (10) as paragraphs (a)(10) and (11); adding new paragraph (a)(12); revising paragraph (b)(1) and paragraph (b)(2) introductory text; redesignating paragraph (b)(3) as (b)(4); adding a new paragraph (b)(3); revising newly redesignated paragraph (b)(4); adding paragraph (b)(5); and revising paragraph (c), effective Jan. 8, 2014. At 78 FR 67928, Nov. 13, 2013, the effective date was delayed until Apr. 9, 2014. For the convenience of the user, the added and revised text is set forth as follows:

§ 30.4 Electronic Export Information filing procedures, deadlines, and certification statements.

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(a) * * *

(6) Shipments where complete outbound manifests are required prior to clearing vessels going directly to the countries identified in U.S. Customs and Border Protection regulations 19 CFR 4.75(c) and aircraft going directly or indirectly to those countries. (See U.S. Customs and Border Protection regulation 19 CFR 122.74(b)(2)).

* * * * *

(8) Shipments that require a license from the BIS and exports listed under BIS’s grounds for denial of postdeparture filing status (see 15 CFR 756.2);

(b) * * *

(1) For USML shipments, refer to the ITAR (22 CFR 122.23(b)(1)) for specific requirements concerning predeparture filing time frames. In addition, if a filer is unable to acquire an ITN because the AES or AESDirect is not operating, the filer shall not export until the AES is operating and an ITN is acquired. The downtime filing citation is not to be used when the filer’s system is down or experiencing delays.

(2) For non-USML shipments, except shipments between the United States and Puerto Rico, file the EEI and provide the ITN as follows: (See §30.4(b)(3), for filing timeframes for shipments between the United States and Puerto Rico):

* * * * *

(3) For shipments between the United States and Puerto Rico, the AES proof of filing citation, postdeparture filing citation, or exemption citation must be presented to the carrier by the time the shipment arrives at the port of unloading.

(4) For non-USML shipments when the AES or AESDirect is unavailable, use the following instructions:

(A) For USML shipments, refer to the ITAR (22 CFR 122.23(b)(1)) for specific requirements concerning predeparture filing time frames. In addition, if a filer is unable to acquire an ITN because the AES or AESDirect is not operating, the filer shall not export until the AES is operating and an ITN is acquired. The downtime filing citation is not to be used when the filer’s system is down or experiencing delays.

(B) Report the EEI at the first opportunity AES or AESDirect is available.

(c) EEI transmitted postdeparture. Postdeparture filing is only available for approved USPPIs and provides for the electronic filing of the data elements required by §30.6 no later than five (5) calendar days after the date of exportation. For USPPIs approved for postdeparture filing, all shipments (other than those for which predeparture filing is specifically required), by all methods of transportation, may be exported with the filing citation to the CBP at least 72 hours prior to export. The filer must also provide the carrier with the filing citation as required by paragraph (b) of this section.

§ 30.5 Electronic Export Information filing application and certification processes and standards.

Prior to filing EEI, the USPPI or the authorized agent must be certified to file through the AES. A service center shall be certified to transmit electronically to the AES. The USPPI, authorized agent, or service center may use a software package designed by a certified vendor to file EEI through the AES. Once an authorized agent has successfully completed the certification process, any USPPI using that agent does not have to be certified. The certified authorized agent shall have a properly executed power of attorney or written authorization from the USPPI or FPPI, and be physically located in the United States to file EEI through
the AES. The USPPI or authorized agent that utilizes a certified software vendor or service center shall complete certification testing. Service centers may only transmit export information; they may not prepare and file export information unless they have authorization from the USPPI in the form of a power of attorney or written authorization, thus making them authorized agents. The USPPI seeking approval for postdeparture filing privileges shall be approved before they or their authorized agent may file on a postdeparture basis.

(a) AES application process—(1) AES Participation Application. The USPPI or authorized agent who chooses to file through the AES and seek approval for postdeparture filing privileges, must submit a complete on-line LOI at http://www.census.gov/aes.

(2) AESDirect registration. The USPPI or authorized agent who chooses to file through AESDirect shall also complete the online AESDirect registration form at http://www.aesdirect.gov. After submitting the registration, an AESDirect filing account is created for the filing company. The person designated as the account administrator is responsible for activating the account and completing the certification process as discussed in paragraph (b)(2) of this section.

(b) Certification process—(1) AES certification process. The USPPI or authorized agent shall perform an initial two-part communication test to ascertain whether its system is capable of both transmitting data to, and receiving data from, the AES. The USPPI or authorized agent shall demonstrate specific system application capabilities. The capability to correctly handle these system applications is the prerequisite to certification for participation in the AES. The USPPI or authorized agent shall successfully transmit the AES certification test. CBP’s and/or Census Bureau’s client representatives provide assistance during certification testing. These representatives make the sole determination as to whether or not the USPPI or authorized agent qualifies for certification. Upon successful completion of certification testing, the USPPI’s or authorized agent’s status is moved from testing mode to operational status. The AES filers may be required to repeat the certification testing process at any time. The Census Bureau will provide the AES filer with a certification notice after the USPPI or authorized agent has been approved for operational status. The certification notice will include:

(i) The date that filers may begin transmitting data;
(ii) Reporting instructions; and
(iii) Examples of the required AES proof of filing citations, postdeparture filing citations, AES downtime filing citation, and exemption legends.

(2) AESDirect certification process. To become certified for AESDirect, filers shall demonstrate knowledge of this part and the ability to successfully transmit EEI. Upon successful completion of the certification testing, notification by e-mail will be sent to the account administrator when an account is fully activated for filing via AESDirect. Certified filers should print and retain the page congratulating the filer on passing the test.

(c) Postdeparture filing approval process. The USPPI may apply for postdeparture filing privileges by submitting a postdeparture filing application at http://www.census.gov/aes. An authorized agent may not apply on behalf of a USPPI. The Census Bureau will distribute the LOI to CBP and the other federal government partnership agencies participating in the AES postdeparture filing review process. Failure to meet the standards of the Census Bureau, CBP or any of the partnership agencies is reason for denial of the AES applicant for postdeparture filing privileges. Each partnership agency will develop its own internal postdeparture filing acceptance standards, and each agency will notify the Census Bureau of the USPPI’s success or failure to meet that agency’s acceptance standards. Any partnership agency may require additional information from USPPI’s that are applying for postdeparture filing. The Census Bureau will notify the USPPI of the decision to either deny or approve their application for postdeparture filing privileges within thirty (30) calendar days of receipt of the postdeparture filing application by the Census Bureau, or if
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a decision cannot be reached at that
time, the USPPI will be notified of an
extension for a final decision as soon as
possible after the thirty (30) calendar
days.

(1) Grounds for denial of postdeparture filing status. The Census Bureau may
deny a USPPI's application for postdeparture filing privileges for any
of the following reasons:

(i) There is no history of filing for
the USPPI through the AES.

(ii) The USPPI's volume of EEI re-
ported through the AES does not war-
rant participation in postdeparture fil-
ing.

(iii) The USPPI or its authorized
agent has failed to submit EEI through
the AES in a timely and accurate man-
ner.

(iv) The USPPI has a history of non-
compliance with the Census Bureau ex-
port regulations contained in this part.

(v) The USPPI has been indicted,
convicted, or is currently under inves-
tigation for a felony involving a viola-
tion of federal export laws or regula-
tions and the Census Bureau has evi-
dence of probable cause supporting
such violation, or the USPPI is in vio-
lation of Census Bureau export regula-
tions contained in this part.

(vi) The USPPI has made or caused
to be made in the LOI a false or mis-
leading statement or omission with re-
spect to material fact.

(vii) The USPPI would pose a signifi-
cant threat to national security inter-
ests such that its participation in
postdeparture filing should be denied.

(viii) The USPPI has multiple viola-
tions of either the EAR (15 CFR 730
through 774) or the ITAR (22 CFR 120
through 130) within the last three (3)
years.

(2) Notice of denial. A USPPI denied
postdeparture filing privileges by other
agencies shall contact those agencies
regarding the specific reason(s) for
nonselection and for their appeal pro-
cedures. A USPPI denied postdeparture filing status by the Census Bureau will
be provided with a specific reason for
nonselection and a Census Bureau point of contact in an electronic notifi-
cation letter. A USPPI may appeal the
Census Bureau's nonselection decision by following the appeal procedure and
reapplication procedure provided in
paragraph (c)(5) of this section.

(3) Revocation of postdeparture filing privileges—(i) Revocation by the Census Bureau. The Census Bureau may revoke
postdeparture filing privileges of an ap-
proved USPPI for the following rea-
sons:

(A) The USPPI's volume of EEI re-
ported in the AES does not warrant
continued participation in
postdeparture filing;

(B) The USPPI or its authorized
agent has failed to submit EEI through
the AES in a timely and accurate man-
ner;

(C) The USPPI has made or caused
to be made in the LOI a false or mis-
leading statement or omission with re-
spect to material fact;

(D) The USPPI submitting the LOI
has been indicted, convicted, or is cur-
rently under investigation for a felony
involving a violation of federal export
laws or regulations and the Census Bu-
reau has evidence of probable cause
supporting such violation, or the AES
applicant is in violation of export rules
and regulations contained in this part;

(E) The USPPI has failed to comply
with existing export regulations or has
failed to pay any outstanding penalties
assessed in connection with such non-
compliance; or

(F) The USPPI would pose a signifi-
cant threat to national security inter-
ests such that its continued participa-
tion in postdeparture filing should be
terminated.

(ii) Revocation by other agencies. Any
of the other agencies may revoke a
USPPI's postdeparture filing privileges
with respect to transactions subject to
the jurisdiction of that agency. When
doing so, the agency shall notify both
the Census Bureau and the USPPI
whose authorization is being revoked.

(4) Notice of revocation. Approved
postdeparture filing USPPIs whose
postdeparture filing privileges have
been revoked by other agencies shall
contact those agencies for their spe-
cific revocation and appeal procedures.
When the Census Bureau makes a de-
termination to revoke an approved
USPPI's postdeparture filing privi-
leges, the USPPI will be notified elec-
tronically of the reason(s) for the deci-
sion. In most cases, the revocation
shall become effective when the USPPI has either exhausted all appeal procedures, or thirty (30) calendar days after receipt of the notice of revocation, if no appeal is filed. However, in cases judged to affect national security, revocations shall become effective immediately upon notification.

5) Appeal procedure. Any USPPI whose request for postdeparture filing privileges has been denied by the Census Bureau or whose postdeparture filing privileges have been revoked by the Census Bureau may appeal the decision by filing an appeal within thirty (30) calendar days of receipt of the notice of decision. Appeals should be addressed to the Chief, Foreign Trade Division, U.S. Census Bureau, Washington, DC 20233–6700. The Census Bureau will issue a written decision to the USPPI within thirty (30) calendar days from the date of receipt of the appeal by the Census Bureau. If a written decision is not issued within thirty (30) calendar days, the Census Bureau will forward to the USPPI a notice of extension within that time period. The USPPI will be provided with the reasons for the extension of this time period and an expected date of decision. The USPPIs who have had their postdeparture filing status denied or revoked may not reapply for this privilege for one year following written notification of the denial or revocation.

(d) Electronic Export Information filing standards. The data elements required for filing EEI are contained in §30.6. When filing EEI, the USPPI or authorized agent shall comply with the data transmission procedures determined by CBP and the Census Bureau and shall agree to stay in complete compliance with all export rules and regulations in this part. Failure of the USPPI or the authorized agent of either the USPPI or FPPI to comply with these requirements constitutes a violation of the regulations in this part, and renders such principal party or the authorized agent subject to the penalties provided for in Subpart H of this part. In the case of AESDirect, when submitting a registration form to AESDirect, the registering company is certifying that it will be in compliance with all applicable export rules and regulations. This includes complying with the following security requirements:

1) AESDirect user names, administrator codes, and passwords are to be kept secure by the account administrator and not disclosed to any unauthorized user or any persons outside the registered company.

2) Registered companies are responsible for those persons having access to the user name, administrator code, and password. If an employee with direct access to the user name, administrator code, and password leaves the company or otherwise is no longer an authorized user, the company shall immediately change the password and administrator code in the system to ensure the integrity and confidentiality of Title 13 data.

3) Antivirus software shall be installed and set to run automatically on all computers that access AESDirect. All AESDirect 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, but not less than every thirty (30) days, to ensure the elimination of any virus contamination. If the registered company’s computer system is infected with a virus, the company shall contact the Census Bureau’s Foreign Trade Division Computer Security Officer and refrain from using AESDirect until it is virus free. Failure to comply with these requirements will result in immediate loss of privilege to use AESDirect 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 AESDirect are virus free.

(e) Monitoring the filing of EEI. The USPPI’s or the authorized agent’s AES filings will be monitored and reviewed for quality, timeliness, and coverage. The Census Bureau will provide performance reports to USPPIs and authorized agents who file EEI. The Census Bureau will take appropriate action to correct specific situations where the USPPI or authorized agent fails to maintain acceptable levels of data quality, timeliness, or coverage.
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(f) Support. The Census Bureau provides online services that allow the USPPI and the authorized agent to seek assistance pertaining to AES and this part. For AES assistance, filers may send an e-mail to ASKAES@census.gov and for FTR assistance, filers may send an e-mail to FTDREGS@census.gov. AESDirect is supported by a help desk available twelve (12) hours a day from 7 a.m. to 7 p.m. EST, seven (7) days a week. Filers can obtain contact information from the Web site http://www.aesdirect.gov.

EFFECTIVE DATE NOTE: At 78 FR 16376, Mar. 14, 2013, § 30.5 was amended by revising paragraph (c) introductory text, adding paragraphs (c)(1)(ix) and (c)(3)(i)(G), and revising paragraphs (d)(1) and (2), effective Jan. 8, 2013. At 78 FR 67928, Nov. 13, 2013, the effective date was delayed until Apr. 5, 2014. For the convenience of the user, the added and revised text is set forth as follows:

§ 30.5 Electronic Export Information filing application and certification processes and standards.

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(c) Postdeparture filing approval process. Postdeparture filing is a privilege granted to approved USPPIs for their EEI to be filed up to five (5) calendar days after the date of export. The USPPI or its authorized agent may not transmit EEI postdeparture for certain types of shipments that are identified in §30.4(a). The USPPI may apply for postdeparture filing privileges by submitting a postdeparture filing application at www.census.gov/aes. An authorized agent may not apply on behalf of a USPPI. The Census Bureau will distribute the applications submitted by USPPI’s who are applying for postdeparture to the CBP and the other federal government partnership agencies for their review and approval. Failure to meet the standards of the Census Bureau, CBP or any of the partnership agencies is reason for denial of the AES applicant for postdeparture filing privileges. Each partnership agency will develop its own internal postdeparture filing acceptance standards, and each agency will notify the Census Bureau of the USPPI’s success or failure to meet that agency’s acceptance standards. Any partnership agency may require additional information from USPPIs that are applying for postdeparture filing. The Census Bureau will notify the USPPI of the decision to either deny or approve its application for postdeparture filing privileges within ninety (90) calendar days of receipt of the postdeparture filing application by the Census Bureau.

* * * * *

(ix) The USPPI fails to demonstrate the ability to meet the AES predeparture filing requirements.

* * * * *

(i) * * * *

(1) AESDirect user names and passwords are to be kept secure by the account administrator and not disclosed to any unauthorized user or any persons outside the registered company.

(2) Registered companies are responsible for those persons having a user name and password. If an employee with a user name and password leaves the company or otherwise is no longer an authorized user, the company shall immediately deactivate that username in the system to ensure the integrity and confidentiality of Title 13 data.

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§ 30.6 Electronic Export Information data elements.

The information specified in this section is required for shipments transmitted to the AES. The data elements identified as “mandatory” shall be reported for each transaction. The data elements identified as “optional” may be reported at the discretion of the USPPI or the authorized agent.

(a) Mandatory data elements are as follows:

(1) USPPI and USPPI identification. The name, address, identification, and contact information of the USPPI shall be reported to the AES as follows:

(i) Name of the USPPI. In all export transactions, the name listed in the USPPI field in the EEI shall be the USPPI in the transaction. (See §30.1 for the definition of the USPPI and §30.3 for details on the USPPI’s reporting responsibilities.)