

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, Office of Information Security, and CBP; 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 received a security accreditation from CBP, and the AESDirect system 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, and that the Census Bureau would be issuing rules, and allowing the public to comment, on this subject.

As authorized by section 1252(b) of Pub. L. 106-113, the Census Bureau is amending 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 is amending 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.

The Census Bureau is amending the FTSR to specify how electronic export information is identified on the manifest by mode of transportation and defining the carrier's responsibilities. In addition to amending regulations to provide for the mandatory filing via the AES, this rule amends §§ 30.63 (14)-(21) to collect additional data through the AES to meet the State Department's requirements and will assist the Department of State to implement the Congressional requirement in section 38(i) of the Arms Export Control Act, Title 22 U.S.C.,

section 2778(i) for U.S. persons to provide to the Department of State a report containing all shipment information of items controlled under the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120-130. Finally, this rule adds 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 is making to the FTSR is the removal of AES Filing Option 3. Option 3 allowed the filer to provide partial predeparture information and complete information five (5) working days from the date of exportation. The Census Bureau identified four (4) specific reasons for eliminating Option 3. Option 3 has shown to be underutilized by the AES filers. Of the 734,916 total average AES shipment transactions collected per month, Option 3 filings averaged only 28,739 or 3.9 percent. Additionally, of the 5,000 plus AES filers, only 53 filers used Option 3 and of those, only seven (7) used Option 3 exclusively. The data collected were often incomplete and inaccurate because of missing postdeparture filings. Lastly, Option 3 has shown to be a burden by requiring filers to transmit twice for one shipment.

The Census Bureau published a proposed rulemaking and request for comments in the **Federal Register** on October 9, 2002 (67 FR 62911). As previously noted, the Census Bureau also published a program notice on the subject (66 FR 39006) on July 26, 2001. A summary of comments received from the export trade community and the Census Bureau's responses to the comments are presented in this rule. The effective date of this rule is August 18, 2003. The Census Bureau will implement provisions of this rule on October 18, 2003. This will allow all affected entities sufficient time to come into compliance with this rule.

Response to Comments

The Census Bureau received 14 letters commenting on the Notice of Proposed Rulemaking (NPR) published in the **Federal Register** on October 9, 2002 (67 FR 62911). Nine of the letters contained comments on two or more issues. The Census Bureau sent letters to all commentors addressing their concerns. After consideration of the comments received, the Census Bureau revised certain provisions in the final rule to address the concerns of the commentors and to clarify the requirements of the

rule. The major concerns were as follows:

1. *Clarify the future status of postdeparture filing utilizing AES Option 4 or another form of postdeparture reporting.* There is concern among commentors that the Census Bureau will discontinue allowing postdeparture filing for data on export transactions reported through the AES. This is not the case. The Census Bureau does not intend to eliminate Option 4 postdeparture filing. We intend to eliminate only Option 3 filing, a hybrid pre- and postdeparture filing procedure. For reasons given in the NPR, AES Option 3 is underutilized by AES filers, and its use has resulted in incomplete and inaccurate data filing. Only seven (7) companies, representing less than four (4) percent of monthly export trade data transactions, used Option 3 exclusively to file data on export shipments. By requiring filers to transmit partial predeparture information initially and complete information after exportation, Option 3 has been a burden to AES filers.

Other commentors are in favor of eliminating Option 3 filing only if the Census Bureau makes a commitment to maintaining Option 4 or some form of postdeparture filing. Several commentors requested that the Census Bureau, in its final decision, emphasize the importance of retaining Option 4 filing in light of various governmental initiatives that are intended to capture information on export shipments as early as possible.

The Census Bureau supports postdeparture filing through AES because it recognizes that some trade community business practices may preclude predeparture filings. AES Option 4 filing considers the trade community's business practices and also provides for an approval process that ensures that only the most compliant companies are approved. While it is possible that Option 4 filing may undergo modifications due to current or future Census Bureau or other government agency initiatives, the Census Bureau will continue to work closely with its counterparts in other agencies to make available to the exporting community some form of postdeparture filing. In the case of ITAR controlled exports, the Department of State has determined that because of law enforcement as well as national security concerns, it will no longer authorize the use of AES Option 4.

2. *Amend the proposed rule to address time and place for presenting the exemption statements to carriers.* Commentors are concerned that USPPIs and authorized freight forwarders may