

Mandatory Electronic Filing of Export Information.

SUPPLEMENTARY INFORMATION: The Automated Export Systems (AES) is the electronic equivalent of filing with the U.S. Bureau of Customs and Border Protection a paper Form No. 7525V, Shipper's Export Declaration (SED). This electronic filing of export information is mandatory for export of USML articles, unless a written exception is granted by the Department of State. Implementation of the electronic filing of the export information using the AES system for shipments of USML articles is mandatory on October 18, 2003. To ensure a seamless transition from paper to electronic reporting, the exporter, or an agent acting on the exporter's behalf, shall, until December 18, 2003, also file with the Bureau of Customs and Border Protection a paper copy of the AES document.

However, there are circumstances (e.g., oral, visual, or electronic transmissions of technical data and defense services) when exports subject to the controls of the ITAR are made and the transfer is not monitored by the Bureau of Customs and Border Protection. The Department has determined that all technical data and defense services export information shall be provided directly to Directorate of Defense Trade Controls (DDTC), regardless of the type of ITAR authorization (e.g., license, agreement, or exemption). A copy of the notification to DDTC shall be provided by the exporter, or an agent acting on the exporter's behalf, to the Bureau of Customs and Border Protection upon request for those shipments that are exported using a U.S. Port (e.g., hand carried exports of technical data). DDTC is finalizing the system for direct electronic reporting of export data to DDTC. Such electronic reporting will be mandatory on January 18, 2004 for reporting exports against DSP-5 technical data licenses, Manufacturing License Agreements, and Technical Assistance Agreements. While AES becomes mandatory on October 18, 2003, the electronic reporting for licenses and agreements to DDTC is being delayed in order to ensure that AES is fully operational prior to implementation of the DDTC direct reporting requirement. Mandatory reporting on all exemptions is being further delayed, and will be implemented in a future **Federal Register** Notice amending Section 122.23. DDTC anticipates reporting will include the applicant's registration code, the USML category of the

technical data or defense service, license and/or exemption number, and country of ultimate and, if applicable, intermediate destination. In the interim period, reporting of the export of technical data under a Form DSP-5 and defense services under an MLA/TAA will be as follows:

1. For reporting exports of technical data that are licensed on a Form DSP-5, the applicant must self validate the initial export on the original of the DSP-5 and return the license to DDTC. Exports of additional copies of the licensed technical data (i.e., the transaction must be identical, to include the same technical data to the identical end use and end users) would be the subject of the exemption in Section 125.4.

2. The initial export of technical data and defense services using an agreement or a license shall be reported by letter to DDTC with the ATTN Line reading "Initial Export Notification for Agreement (or License) [insert agreement/license number]."

Should an instance arise when the technical data authorized by a license or agreement is to be exported using a U.S. Port, the exporter shall file the export information in accordance with Section 123.22(b)(3)(iii) of this subchapter.

Although DDTC is delaying mandating reporting of all exports using an exemption, effective January 18, 2004 all paper filing of export information for USML shipments shall cease. Also, effective on the date of this publication, use of the Department of State's Direct Shipment Validation Program and the Department of Commerce, Bureau of the Census Option 4 SED filing alternative will be discontinued for all shipments of USML articles.

The Proliferation Prevention Enhancement Act of 1999, Public Law 106-113, Appendix G, and Section 38(i) of the Arms Export Control Act (AECA) mandate reporting from U.S. exporters of export shipment data. In particular, the law requires the Department of State to collect electronically all Shipper's Export Declaration (SED) data on exports of USML articles. The Department of Homeland Security, Bureau of Customs and Border Protection and the Department of Commerce, Bureau of Census have implemented a process for the electronic filing of the Form 7525V, Shipper's Export Declaration (SED), using a system known as the Automated Export System (AES). The AES shall serve as the Department of State's primary collection of data on exports of defense articles. To provide the required information, the AES has been enhanced to add additional information

requirements, to include (a) DDTC registration number of the authorized exporter; (b) identification of Significant Military Equipment (SME) as defined in section 120.7 of the ITAR; (c) a certification that all parties in the transaction are eligible in accordance with the ITAR (i.e., section 120.1, paragraphs (c) and (d)); (d) identification of the USML Category (section 121.1 of the ITAR) of the item being shipped; (e) additional fields to report the DDTC quantity and unit of measure as described on the license or exemption; and (f) a field for identification of the ITAR exemption authorizing the export. Further changes to the AES are being considered, such as identification of the article being exported against the line item of the article authorized on the export license.

Also, the AES requires the use of external and internal transaction numbers to track the transaction. The External Transaction Number (XTN) is generated at the time of the AES filing by the DDTC registered applicant/exporter, or an agent acting on the filer's behalf. The Internal Transaction Number (ITN) is generated by the AES and returned to the filer electronically once the submitted information has been verified for accuracy and completeness and accepted by the AES. When an AES submission is rejected by the Bureau of Customs and Border Protection (e.g., Customs is unable to validate the XTN in its system or the exporter does not receive an ITN), it will be considered as not having met the regulatory requirements of the ITAR and export may not be made. Future changes to the regulations may be required to expand the use of the ITN in the AES in order to make obvious that the SED was correctly filed through the AES, to include a requirement for the ITN on the bill of lading, air waybill, or other loading documents. Any additional AES requirements affecting export of USML articles will be the subject of a Department of State **Federal Register** Notice.

A new definition has been added to Part 120 of the ITAR. A new § 120.30 now defines the AES as the electronic filing of the export information. Part 120 is also amended in § 120.28, paragraph (b) to reflect the new name of the Department of Commerce component formerly known as the Bureau of Export Administration. The Bureau is now known as the Bureau of Industry and Security (BIS). Also, while not the subject of an amendment in this publication, exporters are advised that any reference in the ITAR that currently reads "U.S. Customs", refers to the activities of the Bureau of Customs and