

**Commercial Customs Operations Advisory Committee
(COAC)**

Secure Trade Lanes Subcommittee

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COAC

**COMMERCIAL CUSTOMS OPERATIONS
ADVISORY COMMITTEE**

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EMWG White Paper – Export Operations for the 21st Century

PURPOSE:

The intent of this white paper is to lay out a strategy and roadmap for the next phase of the export process. This paper incorporates findings and recommendations from the export working groups of COAC 13, 14, and 15. It will demonstrate where data actually originates, who “owns” that data, who needs it, and how it should be used for export enforcement and statistics. The paper also demonstrates how both the trade community and the federal government will benefit in process efficiency for all modes of transportation for legitimate trade. This document is meant to be a living document that will evolve as processes and needs change.

GOALS:

Exports are critical to the U.S. economy, adding to the country’s economic security. As economic security is national security, the Export Modernization Working Group (EMWG) and the Government have committed to taking all possible steps to improve the facilitation of exports in recognition of the enormous contribution exports make to the nation’s economic security. To that end, we are committed to developing a secure and flexible export clearance process that leverages the capabilities and best practices of the different modes of transportation and the extant business models within them.

The future export strategy must deliver effective enforcement and compliance, improved trade statistics, predictable facilitation of legitimate trade, a highly efficient clearance process, as well as rapid and streamlined communication between all government agencies involved in export clearance and all relevant export trade partners. *(Refer to Appendix 5)* It will achieve these goals through development of export processes that:

- Eliminates current redundancy among government agency requirements;
- Assigns accountability for accurate and timely submission of each required data element to the most appropriate party;

- Ensures enforcement for the accuracy of the data is placed on the responsible data owner;
- Preserves and expand the use of Post-Departure Filing (PDF);
- Optimizes the timing and methods of electronic commodity and transportation data submissions;
- Rationalizes the export inspection regime in line with the progressive filing of data; and
- Emphasizes an enforcement and compliance program with a more targeted penalty approach focusing on the most egregious violations.

BACKGROUND OF EXPORT PROCESSES INCLUDING THE ROLES AND RESPONSIBILITIES OF THE PARTIES INVOLVED:

(Refer to Appendix 5 – Roles and Responsibilities of the Parties Involved)

A Brief History of the AES:

Since 1941, the Census Bureau has been collecting and compiling import and export information as a part of the foreign trade statistics program. The Census Bureau has maintained regulation, known as the Foreign Trade Statics Regulations through 2002 and the Foreign Trade Regulations (FTR) from 2002 to the present. These regulations contain the legal definitions and requirements for reporting export information, including Shipper's Export Declarations (now known as Electronic Export Information or EEI.)

Exports are critical to the U.S. Economy, adding to the country's Economic and Financial Security. **Economic Security is National Security.**

Prior to 2000, Customs regulated very few exports, mainly alcoholic beverages and self-propelled vehicles. Exporters or their freight forwarders submitted paper Shipper Export Declarations, form 7525-V, (SED) to the carrier for each export. An electronic system called the Automated Export Reporting Program (AERP) approved exporters or their freight forwarders to send SED information monthly from the prior month by the 10th of the following month, instead of transactionally. This procedure provided filers the time to make sure all data was complete and accurate as the data was submitted well after the shipment departed.

Additionally, carriers submitted a paper manifest attached with SED's to CBP prior to the fourth day after departure.

In 1995, Customs and the Census Bureau developed a new system called the Automated Export System (AES) which would later eliminate the paper SED (in 2008) and AERP (in 2000). AES was fully deployed by 1997 to all ports of export in all modes of transportation, which allowed the USPPI and/or authorized agent to submit the export information electronically. Because the set-up of a company's system to AES was costly and burdensome for small to medium sized companies at the time, the Census Bureau developed a free Internet-based filing program in 1999 called AESDirect.

When the AES program started, a shipper or their freight forwarder could submit the XTN (external transaction number – which was the filer's reference number) or ITN (internal transaction number – the number assigned to the transmission by AES), which would be included on the bill of lading or air waybill instructions to the carrier. Carriers were required to confirm the presence of an XTN or ITN on the shipper's documentation prior to export. Later, only an ITN or AES exclusion/exemption code was acceptable for reporting to the carrier.

Additionally, when the AES was created, the filer has to include an "option" related to the filing status for an AES transmission, which indicated how the data was submitted and when. The available options were:

Option 1: Filing of the paper SED.

Option 2: Commodity information is submitted to AES by the USPPI or authorized agent prior to departure.

Option 3: Either the USPPI or authorized agent transmitted the required 14 data elements prior to the export, with the complete AES data required to be submitted within five days of the shipment date. Option 3 proved unworkable as filers were inconsistent in submitting the remainder of the AES data and this option was later eliminated.

Option 4: Approved USPPIs or its freight forwarder transmitted the data within 10 working days after the date of exportation (later changed to five days). The shipper had to be approved by the Census Bureau to qualify for this option.

CBP realized the value of receiving export data prior to the departure of the shipment for control and enforcement purposes. In 2002, when Department of Homeland Security (DHS) was created and the Trade Act of 2002 was signed, a moratorium on additions to the Option 4 (post-departure) filing program went into effect that eliminated any new companies from applying to the program and denying current approved companies the ability to add USPPI IDs to their profiles. Companies already approved were grandfathered and could continue the post-departure EEI submissions. At this time only options 2 and 4 exist and these options have been renamed pre-departure and post-departure filing, respectively.

Later in 2003, the Security Assistance Act was implemented mandating filing of items on the State Department, Directorate of Defense Trade Controls' (DDTC) U.S. Munitions List (USML) and the Commerce Department Bureau of Industry and Security's (BIS) Commercial Control List (CCL). During this time U.S. Customs and Border Protection (CBP) published regulations on Required Advance Electronic Presentation of Cargo Information, as a result of the Trade Act of 2002. In Section 343 of the Trade Act of 2002, it required Mandatory Advanced Electronic Information for Cargo and other Improved Customs Reporting Procedures; for sea carriers it was defined as 24 hours prior to loading of cargo to the vessel. Additionally, in 2003, mandatory filing of raw and rough-cut diamonds was put in place.

The Census Bureau sets the regulations related to the collection of export information; however, the Secretary of Commerce has delegated enforcement authority of the FTR to the Department of Commerce, BIS, Office of Export Enforcement and the DHS's CBP and the Bureau of Immigration and Customs Enforcement (ICE). Prior to 2003, there were fines and penalties in place; however, too many filers continued to not file complete, accurate and timely data. To remedy this, in 2003, the Census Bureau, with concurrence from the appropriate agencies, implemented the \$10,000 penalty structure into the FTR. As one could expect this created new opportunities for the government and at the same time created some new problems for exporters. (*refer to Appendix 3*)

In 2008, the Census Bureau published critical amendments to the FTR. One of these amendments to the FTR resulted in AES becoming mandatory for all export filings. This rendered paper SEDs obsolete and were no longer accepted. The FTR amendments also introduced the term Electronic Export Information (EEI). Additionally, the 2008 amendments to the FTR included filing time frames, the Vessel Transportation Module, which was later

removed, the creation of Subpart H to the FTR: penalties, enforcement, and the structure of Voluntary Self-Disclosure.

Finally, in 2014 Executive Order (EO) 13659 was issued, which had the goal of creating a “Single Window” to allow the trade community to submit export and import information in one place. The Census Bureau, CBP, and other partnering government agencies (PGAs) would then have access to the relevant import and export information submitted in this one location. As a result of this EO, the Automated Commercial Environment (ACE) was created and the Census Bureau’s AESDirect migrated into ACE in 2015. In 2016, the legacy AESDirect was deactivated, and AES within ACE is what presently exists.

Today, CBP has more visibility of the data through ACE and can interdict and enforce exports before they depart the U.S. BIS and DDTC have interfaces with AES so that export control requirements of both agencies are met by the USPPs and highly sensitive exports are monitored and enforced for national security purposes. PGAs with a legal authority to the export data are accessing data through the ACE portal to support their missions.

Currently, there has been a focus for improvement of statistics, more visibility of data for enforcement and compliance reasons, and the Electronic Export Manifest (EEM) tests.

In 2017 CBP published Federal Register Notices announcing ACE Export Manifest tests for Air, Rail, and Vessel modes of transportation. The purpose of the notice was to gain trade participation and list the required data elements. The initial tests resulted in a small number of carriers in each mode agreeing to participate in the pilot program, intermittently over the past five years. In 2020, an active rail test was deployed including one rail carrier on exports moving from Port Huron, MI. The collection of statistics and enforcement operations has been evaluated monthly by both CBP and the Census Bureau.

OPPORTUNITIES FOR IMPROVEMENT:

- Although CBP has primarily limited penalties to the untimely filing of the EEI and inaccurate Transportation Data Elements there have been instances of cargo holds related to EEI in AES that have inhibited legitimate trade. There has also been an increase in penalties for AES filers (primarily freight forwarders) for incorrect data

reported based on information obtained from third parties, such as carriers who are moving the cargo from the U.S. This has resulted in a financial and process burden. The process of assessing these penalties has been anecdotally referred to by the trade community as the issuing of “parking tickets”.

- Additionally, since 2002, exporters have not been able to apply to become Post-Departure (Option-4) filers.
- The EMWG of COAC 15, along with the previous Export Working Groups of COAC 13 and 14, have worked to analyze and prove concepts to meet the statutory and security requirements of CBP and the other U.S. Government Agencies, while at the same time, facilitating legitimate export shipments.

STRATEGIES FOR THE MODERNIZATION OF EXPORT PROCESSES:

COAC 13 and 14:

COAC established the Subcommittee on Exports in July 2012 during the 12th term of the COAC. The work of the Export Subcommittee in the 13th and 14th terms focused on the improvement of export enforcement and the enhancement of export facilitation in support of the priorities and strategies of the President’s National Export Initiative.

During the 13th term, two major work products were delivered that formed the basis for the recommendations promulgated throughout the 13th and 14th terms: A Master Principles document advocating for a one U.S. Government approach to exports, and the COAC Export Mapping Education Package (“Education Package”). *(Refer to Appendix 2) (Refer to Appendix 6)* The Education Package – developed by the large and diverse Export Mapping Work Group – featured process maps for each export type (licensed, non-licensed, and Option 4) and each mode of transport (air, ocean, rail and truck) in which current pain points and opportunities for improvement were noted, and initial trade solutions were set forth. Following completion of the Education Package, an Export Process Work Group was established to flesh out ideas for improvement and begin the elaboration of comprehensive recommendations to modernize and streamline the export process, thereby enhancing both security and

facilitation. Finally, the Export Subcommittee developed and conducted export surveys in 2013 and 2014; following analysis of the results, reports were drafted and delivered to CBP.

During the 13th term, the Export Subcommittee delivered a total of 25 recommendations.

In the 14th term, the Export Subcommittee continued this work, dividing it along a “commodity/manifest” line into two groups to further elaborate optimal export processing:

- The Post-Departure Filing Working Group (PDFWG), focused on the development of an improved post-departure filing program that would both meet the export targeting needs of CBP and preserve much-needed supply chain flexibility for exporters, allowing them to be competitive in the global marketplace.
- The Electronic Export Manifest focused on the development of efficient and automated export manifest systems for all modes of transport that would not unduly burden U.S. exporters or the carriers that serve them. *(Refer to Appendix 4)*

The two groups worked closely together throughout the term to explore the spaces where the interaction between electronic manifesting and AES could support both the new PDF program and the streamlining of data provision throughout the export transaction.

The PDFWG elaborated a new proposed post-departure filing program integrated with the advance electronic manifesting programs and demonstrated its fitness via the completion of a desktop exercise focused on air and ocean exports with the participation of multiple trade community and government stakeholders. *(Refer to Appendix 3)* Work continued with the development of a detailed plan for implementing a PDF pilot in conjunction with the air and ocean electronic export manifest pilots, and the further elaboration of the solution for additional industries and modes of transport.

The EMWG included representatives from all modes of transport and exporters – including carriers, forwarders, and shippers – and from CBP and the Census Bureau. It sought to elaborate comprehensive advice and recommendations to ensure that the new automated export manifest system would modernize and streamline export risk assessment and border crossing processes and reduce, where possible, burdens on US exporters and the carriers that serve them.

The EMWG delivered commentary to CBP on the Federal Register notices for automated export manifest pilots in the air and ocean modes of transport, and throughout the 14th term, close contact was maintained with pilot participants to identify issues for further work. In its truck and rail manifest work, the EMWG coordinated closely with the North American Single Window Working Group of COAC's One U.S. Government at the Border Subcommittee to promote opportunities for harmonization with Canada and Mexico.

The centerpiece of the EMWGs work was the elaboration of the progressive filing model of data transmission, first outlined in the 13th COAC's Export Mapping Education Package. In this model, shipment information is decoupled from transportation information and the paper export manifest of today is deconstructed into its constituent components of house bill, master bill and conveyance information. In this manner, progressive filing makes possible the earliest possible transmission to CBP of the house bill data that is most critical to risk assessment. Master bill and conveyance information are added to the shipment's ACE manifest record later in time, as each piece of information becomes available. The model allows the linkage of AES information to manifest information at the lowest level – the house bill – and at the earliest time to further facilitate risk targeting. Progressive filing further allows data to be provided to CBP in line with the Trade Act of 2002's directive that data be provided by the party in the best position to do so, with master bill and conveyance data provided by the carrier, and house bills provided by the house bill creator, often a forwarder, NVOCC, or Indirect Air Carrier. Finally, because it enables early risk assessment, progressive filing allows early shipment interception and inspection, at a point in the supply chain before shipments have been consolidated, moved to the port of export, containerized, and/or loaded.

The Export Subcommittee's 14th term work under the post departure filing and export manifest working groups resulted in the delivery of 10 COAC recommendations.

During this same period, a "Proof in Concept" was initiated at the Port of Long Beach. The purpose was to determine what steps could be taken that would allow CBP the opportunity to examine individual Less than Containerload (LCL) cargo being targeted through pre-departure data prior to cargo being consolidated into a container. Until that time, cargo was not being targeted until after the container was loaded and on dock, causing the entire container to be pulled for exam so the suspect cargo could be pulled. For "innocent" cargo this resulted in delays, very high cost, lost business, and sometimes damage to the cargo in

the unloading / reloading process. Lessons learned from this “Proof in Concept” have influenced the decisions being made to advance Electronic Export Manifest (EEM). Some examples are as follows: 1) Value of early examination was confirmed as it accomplished the initial goal of not pulling consolidated containers late in the process; and 2) Information being collected by vessel carriers and NVOCC “Master Loaders” was insufficient for effective CBP targeting (i.e. rarely including actual shipper/consignee information and usually including very general commodity descriptions). The lesson learned supports the progressive-filing model concept where actual data gathered from the correct parties was needed as part of EEM.

COAC 15:

The EMWG of COAC 15 has conducted an extensive analysis of export data elements, defining the data element owner and which government agency requires it. *(Refer to Appendix 1)* This work will assist policy makers in both Government and the trade community to recognize necessary data, duplicate data, and who possesses the most accurate and timely data.

Data Elements: Analysis of the source and the true owner of the data

The EMWG analyzed each data element that is submitted in the EEI and the Manifest by the carrier. *(Ref: Appendix 1)* The group analyzed each data element, defining who currently submits it and which entity has the most accurate information. The group started by listing out all data elements on the EEI, Air Manifest, Ocean Manifest, and Rail Manifest. (Note: Truck manifest should fall in place once its process is completed by CBP, who is working with border countries: Canada and Mexico.) EMWG compared the data elements on the EEI and different manifests to confirm whether each data element was the same exact data and noted whether the data is known by a different name. The comparison then defines (1) if the data is necessary to any government entity; and (2) which entity has the most accurate data. It is important to note the working group included COAC members, trade community members, CBP, the Census Bureau, and BIS, ensuring all entities with a part in either submitting or receiving the data were represented.

The following data elements currently required by CBP to meet their Trade Act responsibilities to collect predeparture data are submitted both as part of the EEI and the manifest. Through the analysis, it was determined the owner of the data would possess the most accurate data. Therefore, the data elements listed below should be supplied by the carrier and come from the Manifest versus the EEI.

1. Date of Export (Appendix 1, Item #5 on log)
2. Method of Transportation (Appendix 1, Item #9 on log)
3. Conveyance Name/ Carrier (Appendix 1, Item #10 on log)
4. Carrier Identification (Appendix 1, Item #11 on log)
5. Port of Export (Appendix 1, Item #12 on log)
6. Foreign Port of Unlading (Appendix 1, Item #41 on log)

These data element requirements should shift from being the responsibility of the EEI filer to the manifest filer. Currently, the party filing the EEI would be obtaining these details (if possible) from the carrier and then passing them through the EEI transmission. It would make more sense to receive the data from the carrier via the manifest, allowing Government entities to obtain the most accurate details from the party that owns the data. In fact, in 2020 and 2021 rail manifest data was used to compare the accuracy of data collected from the EEI filer. It was found the manifest data was far more accurate than the collected data from the EEI. For instance, the SCAC code differs some of the time, which can complicate CBP's ability to carry out its mission. When any of these details is given incorrectly, or not at all by the carrier, the filer of the EEI is subject to fines from CBP, because it is currently the responsibility of the EEI filer. These fines are impairments to exporters and their filers in two ways:

First is additional time requirements currently burdening the exporter. The exporter currently must obtain the data elements, file the data elements, check with the carrier for final details, and submit the final data received via EEI.

Second is the cost of time and money anytime a fine is issued by CBP. When a fine is issued, it is currently issued in the amount of US\$14,362.00. The party receiving

the fine then must take the time to write a protest letter and submit it along with all back-up paperwork proving the data that was given. CBP usually mitigates the fine to an amount of \$500 or more, which is still quite a large ultimate fine even when it was proved that the information received was merely passed on from the carrier. The EEI filer is being penalized for the bad data coming from the carrier. As well, from CBP's side the amount of the mitigated fine supersedes the costs incurred by CBP to process the penalty.

When exporters and their filers are burdened by these time and financial requirements, it reduces these entities' profitability, and impacts our national economic security. Furthermore, it wastes CBP's time and resources pursuing minor offenses that should be spent on more serious issues.

Changing the responsibility for these six data elements from the EEI to the manifest would meet the requirements of the Census Bureau and BIS, as well as CBP's. The work completed by the EMWG has established an excellent foundation for taking the next steps toward full modernization.

Post-Departure Filing and reopening:

In the current environment when a pre-departure filer uses its post-departure status, CBP does not receive any information that would be on the EEI prior to departure. CBP therefore has no visibility into what is being shipped, who is shipping, from where it is being shipped or to where it is being shipped.

Therefore, the post-departure process should be modernized as follows:

First, the USPPI would apply to be a post-departure filer. Within the application the following data elements would be required:

1. USPPI's Name (Appendix 1, Log #1)
2. USPPI's Address (Appendix 1, Log # 2)
3. USPPI's ID number (Appendix 1, Log #3)
4. USPPI's Contact Information (Appendix 1, Log #4)

5. A list of the following:
 - A. Countries of Ultimate Destination shipped to (Appendix 1, Log # 8)
 - B. Ultimate Consignees in each of the countries listed (Appendix 1, Log #6)
 - C. Intermediate Consignees (Appendix 1, Log #39)
 - D. Verification if each of the consignees is related or not related party to the USPPI (Appendix 1, Log #13)
 - E. What the Ultimate Consignee type is (Appendix 1, Log #31)
 - F. Additional PGA Data Required data Required Indicator (Appendix 1, Log #32)
 - G. Method of transportation used for each consignee (Appendix 1, Log # 9)
 - H. Ports of export used for each consignee (Appendix 1, Log #12)
 - I. Foreign Port of Unlading for each Consignee (Appendix 1, Log #41)
 - J. Commodity description (Appendix 1, Log #16) and Classification number (Appendix 1, Log #15) shipped to each Consignee
 - K. Hazardous Material Indicator for each commodity (Appendix 1, Log #24)
 - L. License Code or exemption code per Consignee / Commodity combination (Appendix 1, Log #26)
 - M. Export License Number/CFR citation/KPC number (Appendix 1, Log #42)
 - N. Department of State requirements. Directorate of Defense Trade Controls registration number (Appendix 1, Log #53)
 - O. Kimberley Process Certificate (Appendix 1, Log #54)
 - P. PGA ID and Corresponding Data required for that PGA (Appendix 1, Log #56)
 - Q. ECCN (Export Control Classification Number) (Appendix 1, Log #43)

Second, the Census Bureau and CBP, along with other PGAs, would then authorize each USPPI allowance to ship under post-departure status as follows:

1. To all consignees on the application
2. For all commodities on the application
3. For all countries on the application
4. For any combination

Third, once the exporter has been given post-departure status, they can request to add the following:

1. Consignees
2. Commodities
3. Countries

Also, it may be determined that shipments that are licensed or have high-risk qualities will not be approved on a post-departure basis.

When the Census Bureau and CBP receive the application for post-departure status, they can use all discretion in authorizing each USPPI's application as to what can be shipped and reported as post-departure. Upon approval, the USPPI would receive a post-departure code, which could be the USPPI's EIN number, to use that would link to the details on the account. When the USPPI files an EEI, the Post Departure filing citation that includes the USPPI's EIN would be given to the carrier. The transportation company would then submit this number for manifest purposes. These details along with the advanced manifest information would give CBP all the information needed to make further processing decisions.

The group analyzed what data would be sent in Advanced-Manifest (reference COAC 14) which would be as follows:

All Manifest

1. Date of Export (Appendix 1, Log #5)
2. Ultimate Consignee (Appendix 1, Log #6)
3. Conveyance Name/Carrier Name (Appendix 1, Log #10)
4. Carrier ID (Appendix 1, Log #11)
5. Port of Export (Appendix 1, Log #12)
6. Inbond Code (Appendix 1, Log #25)
7. Transportation reference number (TRN) Appendix 1, (Log #51)
8. Waybill Type (M=Master; H=House; S=Sub) (Appendix 1, Log #65)
9. Number of pieces (Appendix 1, Log #66)
10. Number of House Bills Appendix 1, (Log #67)
11. Shipper Name (Appendix 1, Log #68)
12. Shipper's Address (Appendix 1, Log #69)
13. Split-Shipment Indicator (Appendix 1, Log #70)
14. Hazmat Indicator (Appendix 1, Log #71)
15. ITN number (Appendix 1, Log #76)
16. Portion of the Split-Shipment (Appendix 1, Log #77)

Additionally, in the Ocean Manifest

1. Nationality of Ship (Appendix 1, Log #72)
2. Name of Master (Appendix 1, Log #73)
3. Marks and Numbers (Appendix 1, Log #74)
4. Notify Party Name and Address (Appendix 1, Log #75)
5. Chemical Abstract Service (CAS) Registry (Appendix 1, Log #78)

6. Date of Vessel Arrival (Appendix 1, Log #79)
7. Seal Number (Appendix 1, Log #57)
8. Equipment Number (Appendix 1, Log #58)

Additionally, in the Rail Manifest

1. Marks and Numbers (Appendix 1, Log #74)
2. Notify Party Name and Address (Appendix 1, Log #75)
3. Manifest Number (Appendix 1, Log #80)
4. Railcar Order (Appendix 1, Log #81)
5. Car Locater Message (Appendix 1, Log #82)
6. Location (where rail carrier takes possession of cargo or empty railcar) (Appendix 1, Log #83)
7. Equipment Type (Appendix 1, Log #84)
8. Empty Indicator Appendix 1, (Log #85)
9. Only going to Mexico (Appendix 1, Log #86)
10. Equipment Number (Appendix 1, Log #58)

Additionally, in the Air Manifest

1. 7509 Page number (Appendix 1, Log #61)
2. 7509 Marks of Nationality and Registration (AEM2) (Appendix 1, Log #62)
3. 7509 Consolidator (AEM 7) (Appendix 1, Log #63)
4. 7509 De-Consolidator (AEM 7) (Appendix 1, Log #64)

The following EEI data would not be submitted prior to shipment in a Post-Departure environment, but this information is not considered important to CBP's risk assessment process for the cargo. Between the information on the USPPI's post-departure profile and the advanced manifest information, CBP should have adequate data to determine the risk of the shipment.

1. US State of Origin (Appendix 1, Log #7)
2. Related Party Indicator (Appendix 1, Log #13)
3. Domestic or Foreign indicator (Appendix 1, Log #14)
4. Primary Unit of Measure (Appendix 1, Log #17)
5. Primary Quantity (Appendix 1, Log #18)
6. Shipping Weight (Appendix 1, Log #19)
7. Value (Appendix 1, Log #20)
8. Export Information Code (Appendix 1, Log #21)
9. Shipment Reference Number (Appendix 1, Log #22)
10. Line Number (Appendix 1, Log #23)
11. Routed-Export Transaction Indicator (Appendix 1, Log #27)
12. Shipment filing action request indicator (Appendix 1, Log #28)
13. Line-item filing action request indicator (Appendix 1, Log #29)
14. Filing Option Indicator (Appendix 1, Log #30)
15. Transmitter Field (Appendix 1, Log #33)
16. Transmitter Field (Appendix 1, Log #34)
17. Transmitter Field (Appendix 1, Log #35)
18. Transmitter Field (Appendix 1, Log #36)

19. Transmitter Field (Appendix 1, Log #37)
20. Authorized Agent and Authorized agent identification (Appendix 1, Log #38)
21. FTZ Identifier (Appendix 1, Log #40)
22. Secondary Unit of Measure (Appendix 1, Log #44)
23. Secondary quantity (Appendix 1, Log #45)
24. Entry Number (Appendix 1, Log #50)
25. To be Sold En-Route Indicator (Appendix 1, Log #55)
26. Original ITN (Appendix 1, Log #59)
27. Transmitter Field (Appendix 1, Log #60)

The post-departure shipper would then submit all EEI data within 5 calendar days after the shipment departs. This will ensure accuracy of the data for Census Bureau purposes.

This process would also allow a USPPI to have some shipments that would qualify for post-departure filing; however, higher risk shipments would not be eligible for post-departure filing. This process would have the following benefits:

1. The data would be more accurate.
2. Allows CBP to focus on the higher risk cargo.
3. The data would be verified prior to transmitting via EEI, saving time for the USPPI or designated EEI transmitter.
4. Allows BIS information and other PGA data to flow to the respective agencies.

The Desired End-State

Based on the considerable body of work completed over the last five years as outlined above, CBP, the Census Bureau, and the other PGAs, which regulate exports, and the trade community are prepared to begin development of a comprehensive approach to automating

the export manifest process. The new system must supply the tools to satisfy all Government enforcement responsibilities and also provide the trade community with a streamlined approach to submitting the required data and realizing improved trade facilitation capabilities and trade statistics. The key elements of this system are as follows:

1. A progressive filing framework that optimizes Government targeting capabilities
2. Operationally feasible deadlines for data submission
3. A mutually supportive approach to conducting inspections
4. Required Changes Foreign Trade Regulations and Customs Regulations
5. A rational approach to penalties

A. Progressive Filing Model for Exports

The Electronic Export Manifest (EEM) project must fully implement the progressive filing model, which not only clearly distinguishes between shipment information and transportation information, but bases risk assessment on shipment data to enable early-as-possible targeting. The progressive filing model embodied in the Air Cargo Advance Screening (ACAS) has been enormously successful for imports. The Electronic Export Manifest Business Process Document published by CBP in July 2019 provides the details of a progressive filing regime. Because transportation data is not part of the risk assessment, its transmission timeline can be properly set post-departure, after the carrier has had a chance to capture loading, offloading and split actions and reconcile the manifest to reflect reality.

Progressive filing enables two key national security benefits for export risk assessment:

Shipment-based targeting ensures that every shipment departing the United States is properly submitted for targeting, without risking any inadvertent non-submission of data due to manifesting irregularities that are unavoidable in fast-moving cargo operations.

The post-departure manifest information provided to CBP is complete and correct, thus serving as a trustworthy confirmation of export for CBP and a source of accurate information on transportation data elements, such as port and date of departure for the Census Bureau.

Progressive filing will facilitate CBP's ability to target and enforce in the export environment while imposing the minimum operational and financial burden on carriers. The goal of all stakeholders is a system that is maximally efficient and functional for carriers and CBP.

The submission of advance shipment-level EEM data elements enable CBP to effectively target, identify, and mitigate risks while simultaneously minimizing disruption to cargo operations, thus facilitating the movement of legitimate cargo. The submission of transportation-level EEM data elements enable CBP to confirm shipment export and to provide accurate and complete information to the Census Bureau for statistical purposes.

Participating carriers and forwarders will transmit EEM data as per the operational implementation guides CBP has published. Data to be submitted is divided into a shipment-level data set and a transportation-level data set. Participants may transmit shipment and transport data simultaneously or may utilize the progressive data filing model to transmit shipment-level data first, as early as possible, followed by a later transmission of transportation data.

B. Deadlines for Data Submission

Shipment-level EEM data elements will be transmitted as early as practicable. Carriers will strive to deliver data for the maximum number of shipments in accordance with the following deadlines:

1. Ocean: at least 24 hours prior to departure
2. Air and rail: at least two hours prior to departure
3. Truck: at least one hour prior to departure

Transportation EEM data elements also will be transmitted as early as practicable. If such data is not available by the deadlines specified for the shipment-level data, it will be submitted in accordance with current export regulations, with the option of submitting the transportation data after departure.

C. Managing Inspections

The key to the success of early targeting is that it allows shipment interception and inspection to take place prior to the final shipment consolidation at the port of export. The ideal time and location for shipment interception and inspection is as early as possible in export supply chains.

CBP will risk assess the shipment-level data. If CBP determines that a shipment requires further information or inspection, the filer of the data will receive an electronic hold message. The hold may be actioned at the port of export, or the carrier may request that CBP inspect at a port upline from the port of export where appropriate CBP personnel are available. Once CBP has resolved the hold, a release message will be generated and transmitted to the data filer. If more than one party has transmitted data for a given shipment, each party will receive response messages from CBP.

When transportation EEM data elements are transmitted prior to departure, CBP port of export personnel will also be able to generate electronic holds manually for delivery to data filers. CBP will work with carriers to bring local ports online to perform port of export electronic targeting in a If a hold is received late in the operational process, intercepting the shipment prior to departure may be difficult without significant negative operational and financial consequences. The carrier will make all reasonable efforts to stop the export and deliver it to CBP for inspection. If this is not possible, the carrier will coordinate with CBP to determine the optimum resolution of the issue, to include a rapid redelivery of the shipment. controlled manner with strict oversight.

If a hold is received late in the operational process, intercepting the shipment prior to departure may be difficult without significant negative operational and financial consequences. The carrier will make all reasonable efforts to stop the export and deliver it to CBP for inspection. If this is not possible, the carrier will coordinate with CBP to determine the optimum resolution of the issue, to include a rapid redelivery of the shipment.

D. The Census Bureau Foreign Trade Regulations (FTR) Changes

The FTR could be updated to include changes to the carrier responsibilities. This provision would be necessary to make the carrier responsible for specific transportation data elements that support the publication of the FT-900 International Trade in Goods and Services statistical release. *(Refer to Appendix 7)*

If the Census Bureau can utilize the transportation data on the EEM, the FTR could be revised to account for how corrections to the EEI are made (i.e. section 30.9). The FTR on Post Departure filing could be modified with new acceptance criteria based on decisions made by the Census Bureau, CBP, and the PGAs.

E. Export Penalties

Penalties in the export environment should be focused on preventing negligent disregard of U.S. export control laws and regulations or a consistent inability to file required data accurately and on time.

The recent rationalization of penalty issuance for certain occurrences of incorrect AES data is a welcome recognition of the operational realities impacting export data filers and the fact that penalties are inappropriate to address inconsistencies in data that is not critical to the targeting process.

CBP should issue guidance on what constitutes a clerical error in export data. Imposing holds to give filers the time to correct such errors is a more effective approach than issuing penalties. A filer voluntarily updating previously submitted information should not be subject to any penalty.

CBP personnel should not be able to issue penalties without proper training on how to do so and which regulations to apply. Applying discretion to mitigate penalties through consideration of all relevant factors should be part of this training.

USPPIs should not be penalized for data inaccuracies resulting from split shipments. EEM information can be analyzed to show the PPI is not accountable for split shipments caused by the vessel carrier.

The Government should issue guidance on voluntary prior disclosure of export violations. If an investigation has not been initiated by the Census Bureau/CBP or any other agency, CBP shall not issue a penalty on a disclosure that is acceptable to the Census Bureau.

Penalties should be appropriate to the gravity of the violation and mitigated based on the history of compliance or membership in trusted trader programs.