

4 Insider Secrets of AES Filing

DISCLAIMER - The Automated Export System (AES) is being amended almost daily. The following reflects the current (as of 10/13/03) state of AES. You'd be wise to do your own research before relying on this document.

EAR99 Items and the October 18, 2003 Deadline

The regulations and the Federal Register Notices specifically say that all items on the Commerce Control List (CCL) and the US Munitions List must be filed via AES by October 18, 2003. This raises the question: Do EAR99 items have to be filed via AES by this deadline? EAR99 is the generic "all other" category for items not classified elsewhere in the CCL. Technically, the EAR99 is on the CCL. However, the answer is that, no, EAR99 items do not have to be filed via AES by October 18. This, the Census Bureau promises, will change in 2004 when new regulations will be issued. Then, all exported items will need to be filed via AES, including EAR99 items.

Options, Options, What Options?

You would think from the talk about how many "options" you have in AES filing, you could really pick and choose what fits your company's needs. Remember the diner menu from "My Cousin Vinny?" It listed one item: breakfast. Same thing with AES. Originally, Census gave you four options:

- Option 1 – Keep filing paper SEDs.
- Option 2 - File through AES before you ship.
- Option 3 - File some information electronically, then ship, and then supplement the information via AES.
- Option 4 – Ship now, file your SED information via AES within ten days.

Here's the truth: Option 1 will no longer be available (except EAR99 items, see discussion above) starting October 18, 2003. Sometime next year, paper filing will be eliminated completely. Option 3 was eliminated a year or so ago because it was too much of a headache for CBP and Census to administer and not enough companies signed up. Option 4, while not officially eliminated, won't be available, if at all, until the final regulations are issued next year. In a nutshell, you really have all of one option to choose from: Option 2 - file through AES before exporting.

Letter of Intent – Do you Need One?

The regulations say that you need to file a letter of intent (LOI) to use AES. Most filers don't need to submit a LOI, especially if you're filing through AESDirect (the free AES filing system available on the internet). Option 4 (see above) may require a letter of intent, but that option is not currently available (see discussion above).

What About AES Licensing?

Just a few weeks back, the Census Bureau was promising to require stiff certification requirements for companies using AES. Among other things, companies would have to take forty hours of certification training in ITAR, EAR, USML, etc. and filers would have to pass security and background checks. The problem is that there is apparently little statutory authority for Census to require licensing. This doesn't mean that there won't be an appeal to Congress to get the necessary authority, but for now, licensing looks iffy. What looks certain are increased penalties for violators. Count on that.