

NAAACS

National Association of Aircraft & Communication Suppliers, Inc.

4301 Connecticut Avenue, N.W. Suite 453, Washington, D.C. 20008

www.naaacs.com

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WHAT YOU SHOULD KNOW ABOUT THE DEPARTMENT OF STATE'S NEW REQUIREMENT FOR THE ELECTRONIC FILING OF SHIPPER'S EXPORT DECLARATIONS (SED'S)

This newsletter is provided to the members of the National Association of Aircraft & Communication Suppliers ("NAAACS") to provide guidance concerning the filing of Shipper's Export Declarations ("SEDs"). Generally, you must file an SED whenever you export a defense article. This is true whether you are required to also obtain an export license or whether you ship the item without a license based on a licensing exemption. The timing of this newsletter coincides with new rules that require you to file your SEDs electronically.

Pursuant to Public Law 106-113, Congress mandated that all SED forms (Form 7525-V, Form 7525-V-Alt or Automated Export System record) must be filed electronically with the government for exports of U.S. Munitions List ("USML") and Commerce Control List ("CCL") items.

In implementing this requirement, the Department of State has made it mandatory as of October 18, 2003 that all SEDs required under the International Traffic in Arms Regulation ("ITAR") must be electronically filed on the Automated Export System ("AES")¹. The AES is now the Department of State's primary means of collecting data on exports of all hardware. To ensure a smooth transition from paper to electronic reporting, the Department of State allowed exporters to file both electronic and paper copy until December 18, 2003.

The ITAR has recently been amended to reflect the new requirement and the SED electronic form has been changed to include blocks or fields that are specifically for Department of State use. The electronic SED form will require:

- Your Directorate of Defense Trade Control ("DDTC") registration number of the authorized exporter,
- Identification of Significant Military Equipment ("SME"), if any,
- Certification as required by the ITAR that all parties in the transaction are eligible to export,
- Identification of the USML category for the article,
- Identification of the quantity of the article(s), and
- Identification of any ITAR exemption.

Additional fields to the SED electronic form may be added in the future.

An exporter who fails to file an SED is in violation of the ITAR and subject to fines and penalties. The items being exported are usually seized by the Bureau of Customs and Border Protection until an SED is correctly filed. This process to release the items can take months and significantly delay your shipment. Furthermore, the

exporter will be liable for not only the fines associated with violating the ITAR, but also the storage fees that result from the seizure and detainment of the items. Therefore, in order to avoid lost profits from the delay in shipment and the costs of paying fines and any storage fees, it is imperative that you timely and accurately file the required SEDs.

WHAT IS THE PURPOSE OF AN SED?

The SED is a statement that tells the U.S. Government that a transaction has occurred. It is a form completed by the exporter or a forwarding agent that provides relevant information regarding the particular export. In 2000 the SED regulations were changed when the Foreign Trade Statistics Regulations ("FTSR") and the Export Administration Regulations ("EAR") were amended. These changes made it clear that the SED serves two purposes. First, it is used by the Bureau of Census to collect trade data that is used for statistical information and second, it is used as an export control document by other agencies such as the Department of State and the Department of Commerce. See EAR, 15 C.F.R. 758.1(a) (2004). Both the Department of Commerce and the Department of State require SEDs for different categories of exports.²

WHEN DOES THE DEPARTMENT OF COMMERCE REQUIRE AN SED?

The Department of Commerce requires an SED for all exports to Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria no matter the value of the export item; all exports subject to the EAR that require a license (regardless of value or destination); all exports of commodities and mass market software when the value exceeds \$2,500; and for all exports of items that will be shipped through Canada to a third destination "where the export would require an SED or AES record or license if shipped directly to the final destination from the United States." 15 C.F.R. 758.1(b) (2004).

WHEN DOES THE DEPARTMENT OF STATE REQUIRE AN SED IN THE ELECTRONIC FORM?

The Department of State requires that SEDs be completed via the AES for all exports of defense articles that are hardware. Under the newly amended ITAR, the Department of State requires that "any export, as defined in this subchapter, of a defense article controlled by this subchapter, to include defense articles transiting the United States, requires the electronic reporting of export information. The reporting of the export information shall be to the Bureau of Customs

¹AES is operated by the Bureau of Census, Foreign Trade Division ("FTD") and the Bureau of Customs and Border Protection ("CBP").

²Generally, the export of defense articles is governed by the State Department's DDTC while the export of commercial or dual-use items is governed by the Department of Commerce.

and Border Protection using the Automated Export System ("AES") or directly to the Directorate of Defense Trade Controls." 22 C.F.R. 123.22 (as amended Oct. 27, 2003).

The new regulations require that SEDs be filed electronically for defense hardware that is exported, this includes all exports of hardware that require an export license as well as those exports that may be exempt from licensing³ such as:

- Temporary Import license exemption (ITAR 123.4)
- Canadian exemption (ITAR 126.5)
- Exemptions of general applicability (ITAR 123.16)
- Shipments by or for United States Government agencies (ITAR 126.4)
- Exports under the Foreign Military Sales Program (ITAR 126.6)

WHAT IF YOU ARE EXPORTING TECHNICAL DATA OR DEFENSE SERVICES?

While all exports of hardware, regardless of the type of approval (e.g., license, agreement, or exemption) now require filing of the export information using AES, exports of technical data and defense services made using a license, agreement or exemption should be electronically reported directly to DDTC.

HELPFUL LINKS REGARDING SED REGULATIONS AND REQUIREMENTS:

Directorate of Defense Trade Controls (Department of State)
<http://www.pmdtc.org/>

U.S. Customs Service Export Link
<http://www.cbp.gov/xp/cgov/export/>

Bureau of Industry and Security
www.bis.doc.gov

All SEDs completed for hardware are filed solely through the AES, but the export of data and defense services must be directly reported to DDTC. The deadline for electronically reporting technical data and defense services to DDTC was originally set for January 18, 2004, but has now been postponed to a future unknown date. At a future date, the Department of State will also be expanding its reporting requirements for technical data and defense services. Until the Department of State sets a new deadline for the electronic reporting of technical data and defense services, they are asking that exporters continue to use the current paper filings. For more information on the electronic reporting of technical data and defense services visit <http://pmdtc.org/aes.htm>.

HOW DO I FILE AN ELECTRONIC SED?

The AES is the vehicle used to file an electronic SED. You can connect with AES by visiting <http://www.aesdirect.gov/> or using an in-house application that conforms with the AES technical documentation. For more information on the in-house applications visit <http://pmdtc.org/aes.htm>.

³We remind you that in order to use one of the licensing exemptions, you must be registered with the DDTC. Companies that are suspended or debarred from licensing are also prohibited from using the exemptions or from filing an SED.

Census Bureau, Foreign Trade Statistics
<http://www.census.gov/foreign-trade/www/>

For the guidance on the "correct way to fill out a Shipper's Export Declaration" visit <http://www.census.gov/foreign-trade/www/correct.way.html>. Note however that these materials were last updated in February 2001 and the new Department of State regulations are not included in this document.

JOINING THE NAACS

The NAACS is an organization of approximately 120 small businesses representing a broad spectrum of the aviation community. NAACS members include: spare parts distributors who supply aircraft and electronic parts to the U.S. and friendly foreign military services; operators who use military surplus aircraft in industrial and commercial lifting operations and logging; aviation repair stations and facilities who install military surplus parts; and companies approved by the Department of Defense ("DOD") and the FAA to manufacture parts for installation in military

and commercial aircraft. The common trait shared by our members is that they rely on military surplus aircraft parts. Many of them routinely purchase military surplus parts directly from DOD's Defense Reutilization and Marketing Service and its private contractor Government Liquidation. For Membership Information, Contact Ed Wilk, Membership Chair at (210) 924-5561 (phone), (210) 924-4901 (fax) or John J. Fausti, Executive Director at (202) 237-0505 (phone) or (202) 237-7566 (fax) or visit www.naacs.com.

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