

***CONNECT Northeast Trade &
Transportation Conference***

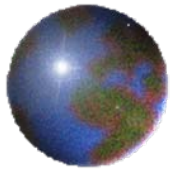
***AES & CBP Enforcement
March 18, 2009***

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New AES Penalty Guidelines

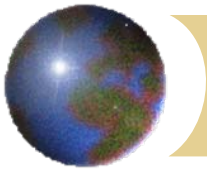
On September 30, 2008 filing AES became mandatory

Effective Date: February 1, 2009 for violations which occur after February 1, 2009.

Violations Covered: **mandatory** filing of export information through Automated Export System (AES) issued Foreign Trade Regulations (FTR) issued by Census Bureau (DOC).

Penalties: to be issued and collected by CBP.

Penalty Amount: Up to \$10,000 per violations.

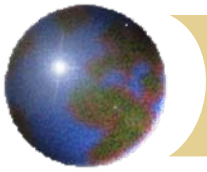


New AES Penalty Guidelines

Reasons for Assessing a Penalty:

- 1) Failure to file export information in AES,
- 2) Delay in filing export information in AES,
- 3) Other violations, including filing false or 'misleading' information in AES, and
- 4) Failure of the export carrier to provide certain documents or information to CBP.

Each of these categories has its own penalty and mitigating guidelines.



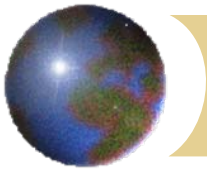
New AES Penalty Guidelines

Penalty may be assessed against any 'culpable' party which includes:

- 1) USPPI
- 2) FPPI (routed export transaction)
- 3) Freight forwarder
- 4) Authorized agents (incl. brokers and other parties to the export transaction)
- 5) Carrier

Penalties may be assessed against multiple parties in a single transaction, e.g. USPPI fails to provide carrier with AES proof of filing citation (ITN) and carrier fails to include filing citation legend on the manifest .

Penalties will be assessed against each culpable party to a transaction rather than to each violation of that transaction, e.g. USPPI provided incorrect information concerning the identity of the foreign consignee and value of the goods, in this instance only one penalty will be assessed.



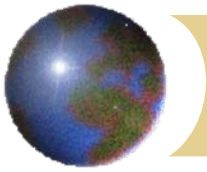
New AES Penalty Guidelines

For first time violations, CBP may use alternative action rather than assessing a penalty, e.g. education, informing violators of U.S. law, issuing 'warning' letters, etc.

Issuance of a penalty for violating the FTR does not preclude the assessment of additional penalties for other violations, e.g. trademark laws.

Mitigating guidelines based on party's history of prior violations.

Period reviewed in determining mitigation is the 3 years prior to the violation under review.



New AES Mitigation Guidelines

Violations : Failing to File

Occurs when government discovers that there is no record of AES filing by date record is required and such discovery is communicated to USPPPI, agent, carrier, etc.

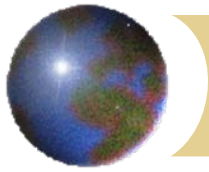
Any AES record filed after 10 days when it was required is considered a failure to file even if not discovered by the government.

1st recorded offense: \$750 - \$2,500

2nd recorded offense: \$1,000 - \$3,500

3rd recorded offense: \$1,500 - \$5,000

4th recorded offense: \$2,000 - \$10,000



New AES Mitigation Guidelines

Violations : Late Filing of Electronic Export Information (EEI)

Filed beyond due date but before the 10 days when it is considered a non-filing or before it is discovered by the government.

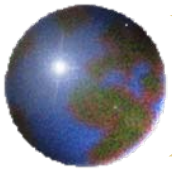
1st recorded offense: \$250 - \$1,500 (per day)

2nd recorded offense: \$500 - \$2,500 (per day)

3rd recorded offense: \$750 - \$3,500 (per day)

4th recorded offense: \$1,100 - \$10,000 (per day up to \$10,000)

Penalty Notice will be issued at \$1,100 per day (\$10,000 max). The maximum mitigated penalty is \$250.

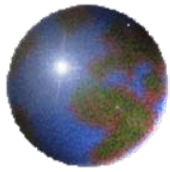


New AES Mitigation Guidelines

Violations: False or Misleading Information

Includes following actions, e.g. :

- 1) Providing incorrect value,
- 2) Provide incorrect party identity,
- 3) Failure to cite license code and number,
- 4) Failure to obtain power of attorney to submit AES submission,
- 5) Failure to correct information in AES as the changes become known to the filer,
- 6) Failure to provide carrier with proof of filing citation or exemption
- 7) Failure to retain all records relating to exports made during the prior 5-year period



New AES Mitigation Guidelines

Violations: False or Misleading Information

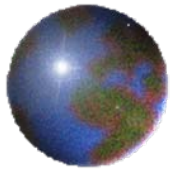
1st recorded offense: \$500 - \$2,500

2nd recorded offense: \$750 - \$3,500

3rd recorded offense: \$1,000 - \$5,000

4th recorded offense: \$2,000 - \$10,000

Maximum mitigation permitted in these circumstances is \$500.

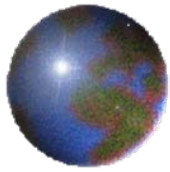


New AES Mitigation Guidelines

Violations: Carrier Penalties

Penalties may be assessed for the following violations:

- 1) Failure of carrier to adhere to export carrier requirements (Sec. 30.45)
- 2) Failure to provide USPPI or authorized agent with changes to date and port of export
- 3) Failure to report proof of filing citation or exemption legend on manifest
- 4) When filing incomplete manifest under bond, the failure to file the manifest information within proscribed time period after export (late filing)
- 5) When filing incomplete manifest under bond, the failure to provide the list of proof of filing citations or exemption legends prior to departure from the port of exit.
- 6) For carriers exempted from filing a manifest, the failure to file, upon request the proof of filing citations or exemption legends.

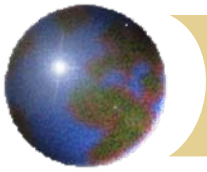


New AES Mitigation Guidelines

Violations: Carrier Penalties

1st recorded offense:	\$500 - \$2,500
2nd recorded offense:	\$750 - \$3,500
3rd recorded offense:	\$1,000 - \$5,000
4th recorded offense:	\$2,000 - \$10,000

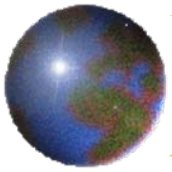
Maximum mitigated penalty is \$500.



New AES Mitigation Guidelines

Mitigating Factors

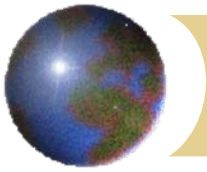
- 1) First time violation
- 2) Voluntary Self-Disclosure
- 3) Documentation to show remedial action to prevent future violations
- 4) Exceptional cooperation with government
- 5) Violation was an isolated occurrence
- 6) Party has provided substantial assistance in the investigation of another person
- 7) Party has a systematic export compliance effort.



New AES Mitigation Guidelines

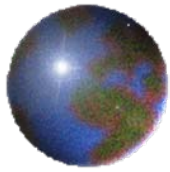
Aggravating Factors

- 1) Several violations in the same export transaction, e.g. wrong port code, value, violation of other agency regulations
- 2) Suggestions that violation was intentional
- 3) High number of prior violations during past 3 years
- 4) Prior criminal conviction for related violation, e.g. BIS violation
- 5) Party exhibits a pattern of disregard for its responsibilities under U.S. export law
- 6) Party exports as a regular part of its business but lacks systematic export compliance effort.



China's '24 Hour Rule'

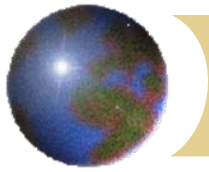
- 1) China to implement '24 Hour Advance Manifest Regulations' in early 2009.
- 2) Risk management involves cross referencing large amount of data, including from 3rd parties, with that provided as part of the Customs declaration data.
- 3) Applies to imports, exports and transshipments [except Hong Kong & Macau]
- 4) Applies to various modes of transportation, e.g. vessel, train, air, truck.
- 5) Primary responsibility rests with vessel operators which must provide PRC Customs with manifest data electronically
- 6) Other parties, e.g. NVOCC, freight forwarder, etc. may also submit data
- 7) Prior to submitting data party must register with Customs



China's '24 Hour Rule'

Importing into China

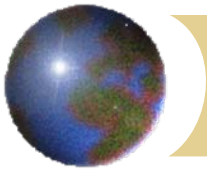
- 1) Vessel operator must advise Customs of ETA and port of entry prior to submitting manifest
- 2) Later must provide arrival notice with exact ETA and port
- 3) Manifest data must be provided electronically
- 4) Data is identified as 'main data' and 'other data'. Within both categories data is further identified as 'compulsory' or 'optional'
- 5) 'Main data' must be provided 24 hours before loading for container ships but only 24 hours before arrival for non-container ships
- 6) 'Other data' must be provided prior to arrival



China's '24 Hour Rule'

Exporting from China

- 1) Export pre-manifest: submitted for exporter's Customs cargo declaration and clearance formalities, includes both 'main' & 'other' data elements and must be submitted at least 24 hours prior to cargo loading at China port.
- 3) Export loading manifest based on Customs released data must be provided 30 minutes before loading at the port
- 4) Data divided into several categories:
 - Standard Information: e.g. carrier name
 - Basic Shipment Information: e.g. mode of transportation
 - Port & Route Information: e.g., port of loading
 - B/L Party & Information: e.g. payment terms, quantity, weight
 - Container & Cargo Related: e.g. container no., seal no.
 - Amendment
- 5) Data elements for import and export transactions are not identical.



China's '24 Hour Rule'

Mandatory Data

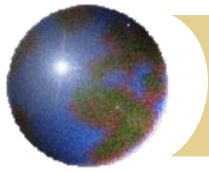
Carrier Name
Port Loading
Carrier Registration
Mode of Transport
Vessel name & Voyage
Port of Loading & Date
MBL
Payment Terms
Quantity
Weight (per commodity)
Shipper & Address
Consignee & Address
Description

Conditional Data

Carrier Agent Code
HBL
Next Calling Port
Notify Party
Container No., Size & Type

Up to 45 data elements might have to be provided (if all 'conditional' elements are included)

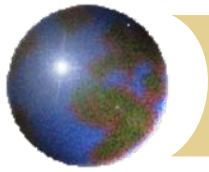
Above is partial list of data elements



China's '24 Hour Rule'

Penalties

- 1) Refusal of a vessel to enter or depart Chinese port
- 2) Certain violations may be considered in accordance with smuggling or other Customs laws which constitutes a crime
- 3) Informal indication that enforcement will be delayed 3-6 mos.



Other '24' Hour Rule Countries

- 1- US (Automated Manifest System)
- 2- Canada (Advanced Commercial Information)
- 3- EU is discussing a similar program
- 4- WTO approved Global Trade Security and Facilitation Standards