

## EEI FILINGS GUIDE

The Foreign Trade Regulations (FTR) found at Title 15, Part 30 of the Code of Federal Regulations (CFR) are implemented by the U.S. Census Bureau (Census). The FTR connects multiple U.S. agencies and echoes several export control regulations, including the: 1) U.S. Department of Commerce (Commerce), Export Administration Regulations (EAR) requirements to file export information; 2) U.S. Customs and Border Protection (CBP) requirements for electronic submission of cargo information on exports; 3) U.S. Department of State (State), requirements to file export information for items on the U.S. Munitions List (USML) of the International Traffic in Arms Regulations (ITAR); and 4) Other federal agencies (*e.g.*, Drug Enforcement Agency (DEA), U.S. Nuclear Regulatory Commission, etc.).

Notably, the FTR establishes the “mandate” for reporting all U.S. export information via the Electronic Export Information (EEI) in the Automated Export System (AES). The FTR requires that the United States Principal Party In Interest (USPPI), the USPPI’s authorized agent, or the authorized U.S. agent of the Foreign Principal Party In Interest file an EEI through AES for all exports of physical goods. In short, an EEI filing includes multiple data elements that provide the U.S. Government agencies with details about the exported items, including names and addresses of the parties, destination, export classification, and licensing authorizations, etc. See our ***EEI Filing Checklist*** for more details about all the mandatory and conditional data elements prescribed in the FTR.

The EEI filings are confidential information, and per FTR § 30.60(a) they shall not be disclosed to anyone by any company officials/employees other than to the USPPI or the authorized agent of the USPPI. The FTR does provide some exemptions for the EEI filing requirement. Census does not have its own enforcement branch, so it relies on CBP and the Bureau of Industry and Security (BIS), Office of Export Enforcement to enforce penalties for FTR violations.

### **Why care about EEI filings?**

Overall, the EEI filings are used by multiple U.S. federal agencies for official purposes, including to monitor compliance with export laws and regulations; threat assessment analysis; export compliance audits; and law enforcement investigation and prosecution. Additionally, Census is responsible for collecting, compiling, and publishing export trade statistics for the United States and this is primarily accomplished via the data reported in the EEI filings submitted in AES. Having comprehensive and updated procedures for EEI filings can prevent audits and questions from U.S. export control agencies and minimizes the risk of potential violations and civil/criminal penalties. Not to mention, companies can run AES export reports, which are generated from the EEI filings submitted to internally monitor and audit export compliance procedures.

### **Penalties Under the FTR and Export Regulations**

The FTR sets civil and criminal penalties for violations, including the failure to file or submission of false or misleading information. The civil penalties for failing to submit required AES filings, late filings (past 10 days) or false information submitted may include a fine up to \$10,000 for each violation. The criminal

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penalties for “knowing” violations, can be a fine up to \$10,000 or imprisonment up to five years, or both, for *each* violation.

Further, if incorrect information or data discrepancies exist in the EEI filings submitted, U.S. federal agencies may be inclined to further inquire. Consequently, there is a risk that potential export violations under the FTR, ITAR, EAR, and other export control regulations may be discovered, without the protection of a Voluntary Disclosure. This puts a company at a significant risk for possible export enforcement actions. The failure to file or submission of false or misleading information via AES filings may not only result in violations under the FTR, but may also constitute export violations under the ITAR, EAR, and other export control regulations. The penalties for export violations under these regulations are significantly higher than the penalties assessed under the FTR. Under the ITAR and EAR, criminal penalties can include a monetary fine up to \$1,000,000 per violation, or up to 20 years’ imprisonment, or both. And civil/administrative penalties under the ITAR and EAR, may include a monetary fine ranging from \$300,000 to over \$1,000,000 per violation, and can also result in debarment, revocation of export licenses, or general denial of export privileges. Note that the monetary penalty amounts are subject to inflation adjustments.

### **When is an EEI filing required?**

#### *FTR EEI Filing Requirements*

Generally, FTR § 30.2(a) requires that an EEI filing be filed through AES for all exports of physical goods, to foreign countries or areas, including Foreign Trade Zones (FTZs) located therein from any of the following: 1) the United States (including the 50 states and the District of Columbia); 2) Puerto Rico; 3) FTZs in the United States or Puerto Rico; and 4) the U.S. Virgin Islands. Importantly, an EEI filing is required for non-licensable items valued over \$2,500. On the other hand, as discussed below, the FTR requires EEI filings for exports of certain licensable and controlled items, regardless of value.

Per the FTR § 30.2(a)(1)(iv), *regardless of value*, an EEI must be filed for items:

1. Requiring a Commerce, BIS license or requiring reporting under EAR § 758.1(b).
2. Requiring a State, Directorate of Defense Trade Controls (DDTC) license under the ITAR.
3. Subject to the ITAR, but exempt from license requirements, except as noted by the ITAR.
4. Requiring an export permit/license by other government agencies (*e.g.*, DEA, U.S. Nuclear Regulatory Commission, etc.).
5. Rough diamonds (classified under 6-digit Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7102.10, 7102.21, and 7102.31).
6. Used self-propelled vehicles (defined in 19 C.F.R. § 192.1 of the CBP regulations unless an exception applies).
7. Destined for a country listed in Country Group E:1 or E:2 as set forth in Supplement No. 1 to 15 C.F.R. part 740 (includes Cuba, Iran, North Korea, Sudan, and Syria), unless such shipment is eligible for an exemption in FTR § 30.37(y) and does not require a license by BIS or any other Federal Government Agency.<sup>1</sup>

#### *EAR EEI Filing Requirements*

The EAR also has certain EEI filing requirements, including a new requirement under the modified EAR Military End Use/User rule, effective on June 29, and September 27, 2020.

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<sup>1</sup> See Note to Paragraph (a)(1)(iv) in 15 C.F.R. § 30.2 and § 30.16(d).

EAR § 758.1(b) requires an EEI to be filed for all exports:

1. Of items subject to the EAR and destined to a country in Country Group E:1 or E:2, regardless of value.
2. Subject to the EAR that require an export license, regardless of value or destination.
3. Of 9x515 or “600 series” items, in paragraphs .a through .x 9x515 or “600 series” Export Control Classification Number (ECCN), regardless of value or destination, including exports to Canada.
4. Under license exception Strategic Trade Authorization (STA).
5. Of commodities and mass market of software subject to the EAR when the value of such items classified under a single Schedule B Number (or HTS) is over \$2,500, except as exempted by the FTR and referenced in EAR § 758.1(c).
6. Of items subject to the EAR that will be transshipped through Canada to a third destination, where the export would require an EEI or license if shipped directly to the final destination from the United States.
7. Of items under authorization Validated End-User (VEU).
8. Of tangible items subject to the EAR where parties to the transaction are listed on the Unverified List, regardless of value or destination.
9. Except for exports authorized under License Exception Baggage (BAG) (EAR § 740.14), of items controlled under ECCNs 0A501.a or .b; shotguns with a barrel length less than 18 inches controlled under ECCN 0A502; or ammunition controlled under ECCN 0A505 except for .c; regardless of value or destination, including exports to Canada.
10. For all exports of items on the Commerce Control List (CCL) to the People’s Republic of China (China), Russia, or Venezuela, regardless of value, unless the export may be made under the License Exception Governments and International Organizations (GOV). This EEI filing requirement was recently added to the EAR and discussed below.

#### *New EAR EEI Filing Requirement*

On April 28, 2020, Commerce issued two final rules and a proposed rule, effective on June 29, and September 27, 2020, amending the EAR to significantly expand the license requirements on exports, reexports, and transfers (in-country) of items intended for military end use or military end users in China, Russia, or Venezuela. Importantly, the EAR revisions add an EEI filing requirement for exports to China, Russia, or Venezuela.

EAR § 758.1 was revised to include new subparagraph (b)(10), requiring EEI filings for tangible items listed on the CCL destined to China, Russia, or Venezuela regardless of the value of the shipment, unless the shipment is eligible for License Exception GOV (see EAR § 740.11). In addition, § 758.1(g)(3) was revised to note that even if no license is required to ship an item to those three destinations, the EEI filing must include the correct ECCN regardless of reason for control. In other words, for an item destined to China, Russia, or Venezuela, the ECCN is now required even if only controlled for anti-terrorism (AT). The new EEI filing requirement only applies to items included on the CCL, therefore it does not apply to EAR99 items. But EAR99 items will continue to require an EEI filing if a license is required (*e.g.*, shipments to a restricted end-use or end-user), or if the shipment value exceeds the \$2,500 threshold.

Prior to the amendments of EAR § 758.1, exporters were generally exempt from filing an EEI for shipments valued under \$2,500 (unless an export license is required) and from entering the ECCN in the EEI when the reason for control is only AT.

## **EEI Filing Exemptions/Exceptions**

As explained below, both the FTR and EAR have exemptions/exceptions that remove the EEI filing requirement for qualified shipments. For the most part, the exemptions/exception pursuant to the FTR and EAR are very similar but there are some key differences.

### *FTR EEI Filing Exemptions*

The FTR has exclusions (see 15 C.F.R. § 30.2(d)) and exemptions (see 15 C.F.R. §§ 30.35-30.40; Subpart D of part 30) for the EEI filing requirement. Overall, the exclusions at § 30.2(d) relate to goods shipped to U.S. Government related entities, territories, or U.S. persons under U.S. jurisdiction, or electronic transmissions and intangible transfers. See 15 C.F.R. § 30.2(d) for more details. The FTR provides several exemptions in Subpart D of part 30, the two most common exemptions are explained below.

#### *Canada Exemption*

Pursuant to the FTR § 30.36, shipments that originate in the United States and the country of ultimate destination is Canada are exempt from the EEI filing requirement (hereinafter “the § 30.36 Canada Exemption”). The § 30.36 Canada Exemption does not apply to shipments that are exported from the United States to Canada, but ultimately destined to third countries. Additionally, this exemption does not apply when an EEI filing requirement is triggered under some provisions of FTR § 30.2(a)(1)(iv) (see discussion above), specifically relating to items: 1) requiring licenses or reporting under the ITAR or EAR; or 2) subject to the ITAR, but exempt from licensing requirements; or 3) rough diamonds; or 4) used self-propelled vehicles.

#### *Low Value Exemption, \$2,500 or Less*

FTR § 30.37(a) exempts from the EEI filing requirement shipments from one USPPI to one consignee on a single exporting conveyance, valued at \$2,500 or less per Schedule B Number or HTSUS (hereinafter “the § 30.37(a) Exemption”). The § 30.37(a) Exemption applies to individual Schedule B Number or HTS code regardless of the total shipment value.

For example, when a shipment includes two items classified under two different Schedule B Numbers; Item A with Schedule B No. 1 is valued at \$500 and Item B with Schedule B No. 2 is valued at \$3,000. In this example, the § 30.37(a) Exemption only applies to Item A; Item B must be reported on the EEI filing. In another example, the shipment includes three items classified under the same Schedule B Number; the total value is \$2,000; and the items are not subject to licenses by government agencies or require an EEI filing by any U.S. export laws and regulations. In the second example, the § 30.37(a) Exemption applies, and no EEI filing is required, but as described below there are notation requirements that apply.

As a reminder, as a result of the revisions to EAR § 758.1 discussed above, the § 30.37(a) Exemption can no longer be used for items on the CCL that are valued at \$2,500 or less and destined to China, Russia, or Venezuela. Effective June 29 and September 27, 2020, an EEI filing is required for all exports of items on the CCL, regardless of value, unless License Exception GOV applies.

### *EAR EEI Filing Exceptions*

The FTR has exemptions (see 15 C.F.R. §§ 30.35-30.40; Subpart D of part 30) for the EEI filing requirement that overlap with certain EAR license exceptions. At times, the FTR exemption is narrower than the EAR license exception, therefore it is advised that before using the FTR exemption, the

respective EAR license exception is thoroughly reviewed. There may be certain export clearance requirements that are prescribed in the EAR that are not included in the FTR exemptions enumerated in Subpart D of part 30. The following is a list of the FTR exemptions that relate to EAR license exceptions, as set out in EAR § 758.1(c). See the noted FTR section for EEI filing exemption details.

1. License Exception BAG, as set forth in EAR § 740.14. See FTR § 30.37(x).
2. License Exception Gift Parcels and Humanitarian Donations (GFT), as set forth in EAR § 740.12. See FTR § 30.37(h).
3. License Exception Aircraft and Vessels (AVS), as set forth in EAR § 740.15. See FTR § 30.37(o), (y)(5).
4. License Exception GOV, as set forth in EAR § 740.11. See FTR §§ 30.39 and 30.40.
5. License Exception Technology and Software Under Restriction (TSR), as set forth in EAR § 740.6. See FTR § 30.37(f).
6. License Exception Temporary Imports, Exports, and Reexports (TMP) “tools of trade,” as set forth in EAR § 740.9(a)(1). See FTR § 30.37(b).

### **Data Reporting Requirements for Exemptions**

When an EEI filing exemption is used, there are specific data reporting requirements set out in the FTR and EAR.

#### *FTR Notation*

Pursuant to FTR § 30.35, when an exemption from the EEI filing requirement is used, certain export documents must include a legend/notation describing the basis for the exemption. The notation must be included on the first page of the bill of lading, air waybill, or another commercial loading document, and on the carrier’s outbound manifest. Appendix B of part 30, provides the AES Filing Citation, Exemption and Exclusion Legends. For example, when using the § 30.37(a) Exemption, the required legend/notations is “NOEEI §30.37(a).”

#### *EAR Data Reporting*

Like the FTR § 30.35 notation requirement, EAR § 758.1(d) also includes specific data reporting requirements. Pursuant to the EAR, when an EEI filing exemption applies, the export authority (license exception or No License Required (NLR)) of all items must be noted on the loading document (*e.g.*, bill of lading, air waybill, etc.).

In sum, the FTR and the EAR require that when an EEI filing exemption is used, the loading document include both the exemption legend and export authority.

### **EAR Export Control Data Reporting Requirements in EEI Filings**

EAR § 758.1(g) requires certain export control information to be included in the EEI filings; it closely parallels some of the FTR mandatory and conditional data elements. Pursuant to EAR § 758.1(g), for each item on the EEI filing the following export control information must be reported: 1) License Authority (*e.g.*, license number, License Exception symbol, or NLR designator); 2) ECCN (when required); and 3) Item Description (stated in CCL terms and providing enough detail to permit verification of the applicable Schedule B Number).

In short, EAR § 758.1(g)(1) - (3) requires certain export control information for exporting under a license, license exception, and for NLR shipments. When exporting items under a BIS License (EAR § 758.1(g)(1)), the following must be reported on the EEI filing:

1. License Code corresponding to the license (*e.g.*, C30)
2. License Number
3. ECCN
4. Item Description *identical* to the item description on the license (and enough detail to permit Schedule B Number verification)
5. License Value (not required by the EAR, but it is conditional data element under the FTR)

For exports subject to an EAR License Exception (EAR § 758.1(g)(2)), or NLR Exports (EAR § 758.1(g)(3)), the following must be reported on the EEI filing:

1. ECCN
2. License Exception Code (*e.g.*, C35, C36, C37, C33 [for NLR]) corresponding to the EAR License Exception
3. License Exception Symbol (*e.g.*, LVS, GBS, CIV, NLR, etc.) for the license exception used (automatically populated in AES, after selecting the license exception code)

Lastly, due to the recent revisions of EAR § 758.1, pursuant to new § 758.1(g)(3), the ECCN is required for items exported under the NLR provisions that are destined to China, Russia, or Venezuela, regardless of the reason for control. Previously, the ECCN was not required when AT was the only reason for control, but this is no longer the case.