

News

January 9, 2009

Cortney O'Toole Morgan  
[comorgan@barnesrichardson.com](mailto:comorgan@barnesrichardson.com)  
(212) 725-0200

**Increased Penalties for Violations of Census' Foreign Trade Regulations Begins Feb. 1**

Effective February 1, 2009, U.S. Customs and Border Protection (CBP) may assess civil penalties of up to \$10,000 against any party failing to file export information required by the Foreign Trade Regulations (FTR) through the Automated Export System or *AESDirect*. As previously reported, on June 2, 2008, the Census Bureau (Census) published a final rule amending the FTR to require mandatory filing of export information through the Automated Export System or *AESDirect* for all shipments where the export information is required by the FTR. Pursuant to the FTR, civil penalties may be assessed against any culpable party with respect to the export transaction for the failure to file or the delayed filing of export information in AES, the filing of false or misleading information in AES, and other violations of the FTR. These parties include the U.S. Principal Party in Interest (USPPI), the Foreign Principal Party in Interest (FPPI), freight forwarders, authorized agents (e.g., brokers and other parties to the export transaction) and carriers

In Census' final rule, the authority to issue civil penalties to enforce the FTR was delegated to U.S. Customs and Border Protection (CBP). CBP has now posted to its website penalty mitigation guidelines for violations of the FTR. In

order to provide the public with advance notice of the penalty mitigation guidelines, CBP has delayed issuing penalties for FTR violations until February 1, 2009.

CBP's new guidelines address the imposition and mitigation of penalties for the following: (1) failure to file export information in AES, (2) late filing of the export information in AES, (3) failure to file all the necessary information in AES, the filing of incorrect information in AES or the failure to comply with some other requirement of the FTR, and (4) failure of the exporting carrier to provide certain documentation or information to CBP. Mitigating factors include: voluntary self-disclosures, clear documentary evidence that remedial measures have been taken to prevent future violations and the existence of a systematic export compliance effort. Aggravating factors include: the presence of several violations in the same export transaction, circumstances suggesting the intentional nature of the violation, a high number of violations in the preceding three-year period, a pattern of disregard for responsibilities under the U.S. export laws and regulations, and the lack of a systematic export compliance program.

The guidelines further allow CBP to take alternative action to the assessment of

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penalties for first-time violations of the FTR. This includes, but is not limited to, educating and informing the parties involved in the export transaction of the applicable U.S. export laws and regulations, or issuing a warning letter.

For additional information or questions concerning these mitigation guidelines or Foreign Trade Regulations, please contact a Barnes/Richardson attorney.

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