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Export Transaction Recordkeeping Responsibilities

Too many exporters believe that the extent of their recordkeeping requirement consists of the group of documents returned to them by their foreign freight forwarder, usually accompanied by the forwarder's invoice for services rendered. In fact, this group of documents, though necessary, is only a small portion of what an exporter may be required to retain, produce and present to a government auditor or investigator.

Exporter recordkeeping requirements are established by the agencies of the U.S. Government that exercise regulatory control over the export of goods from the U.S. The principal agency is the Bureau of Industry and Security (BIS) because they regulate the export of dual-use goods. Not to get too technical, suffice it to say that if a commodity, technology or software is not primarily or exclusively a military one, is not a special nuclear material or a controlled drug then it falls within the purview of the BIS. The recordkeeping requirements spelled out in Part 762 of the Export Administration Regulations (15 CFR §730-774) apply to all exports of all things that fall under the jurisdiction of BIS; not just exports that require an export license.

In addition, the Foreign Trade Division of the Census Bureau has set out recordkeeping requirements in its Foreign Trade Regulations (15 CFR Part 30). These requirements, not substantially different from those of BIS, go towards supporting what an exporter has declared when and Automated Export System (AES) record has been filed electronically.

The most common question raised by exporters is "exactly what records do I need to maintain and for how long?" The second part of the question is easy to answer. Records must be maintained for a period of five years from the date the document was initiated/signed.

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Export Transaction Recordkeeping Responsibilities (continued)

Exactly which documents? The detailed answer can vary from exporter to exporter but, in general, the documents are the books and records of the company that are maintained in the ordinary course of business. Think of it this way, if a government agent walked into your office with a print out from an AES filing and told you to “prove what you told to the government about this export”, what would you do?

You might start at Purchasing to prove we received a real order from a foreign customer. The P.O. reflects a product, quantity, and price. Next you might go to Accounting to prove that you were paid by the very customer, for the product and quantity shown on the shipping documents, and that all this is comports to the P.O. You next might go to Inventory and prove that there was a material movement of the exact quantity of the exact product to the Shipping Department in advance of preparing the shipping documents. Then you might go to the Logistics Department to prove that arrangements were made and transport was concluded to get this particular shipment from your facility to the foreign freight forwarder who prepared the international shipping documents.

How might you do this in your company? Maybe you would need to visit with Engineering to review the product specifications in light of the Schedule B classification provided through AES or the declaration that it is EAR99 and no license is required for the export. How about Manufacturing? If the normal business records show that you haven't manufactured any for the past six months then how on earth did you just export 5,000 of them?

In other words, the exporter has provided “proof” of not only what was exported from the U.S. but also that information conveyed to the government via AES. The shipment documents prepared by the exporter and/or its freight forwarder are merely a summary of the international transaction. The recordkeeping requirements established by various regulatory agencies of the U.S. seek to generate, when asked for, the proof of what a bill of lading, a commercial invoice, a packing list, an AES filing, or any other shipment related documents said about an export shipment.

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