



WORLD SHIPPING COUNCIL
PARTNERS IN AMERICA'S TRADE

Comments of the
World Shipping Council

Before the
Bureau of the Census

In the matter of
Mandatory Automated Export System (AES) Filing
for all Shipments Requiring
Shipper's Export Declaration Information

Docket Number:
031009254-3254-01
RIN 0607-AA38

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1. Introduction

The World Shipping Council (“the Council” or “we”) appreciates the opportunity to provide comments to the Bureau of Census (“Census Bureau” or “Census”) on its advance notice of proposed rulemaking and request for comments (“ANPRM”) for the Mandatory Automated Export System (“AES”) Filing for all Shipments Requiring Shipper’s Export Declaration (“SED”) Information (RIN 0607-AA38; *68 Fed.Reg. 60301 et seq.*).

The Council, a non-profit association of over forty international ocean carriers, was established to address public policy issues of interest and importance to the international liner shipping industry. The Council’s members include the full spectrum of ocean common carriers, from large global operators to trade-specific niche carriers, offering container, roll-on roll-off, car carrier and other international transportation services. They carry more than 93% of the United States’ imports and exports transported by the international liner shipping industry, or roughly \$500 billion worth of American foreign commerce per year.¹

The World Shipping Council and its member companies continue to support the various U.S. Government initiatives and programs for the establishment of an effective and workable security infrastructure for America’s international commerce. These initiatives and programs include the so-called “24 hour rule”; the Container Security Initiative; the deployment by governments of more non-intrusive container inspection equipment both here and at foreign loading ports so that any shipment of containerized cargo that warrants inspection can be inspected efficiently and quickly; Customs’ Trade Partnership Against Terrorism (C-TPAT) program; and the Coast Guard’s vessel and port security initiatives internationally and in domestic rulemakings. The industry has supported the creation of the Department of Homeland Security. The industry supports the governments of trading nations establishing predictable, transparent, and mutually consistent security rules governing these issues.

More recently, and of direct and immediate relevance for the subject matter of this ANPRM, the Council, in comments filed on August 22, 2003, to docket number RIN 1515-AD33, Required Advance Electronic Presentation of Cargo Information, has expressed general support for the Bureau of Customs and Border Protection’s (“CBP”) proposed rule that would require export cargo information to be filed by the U.S. Principal Party of Interest (USPPI) or its agent prior to departure of the vessel from the U.S. port of loading.²

In the continued effort to work closely with the government in establishing an effective and workable security infrastructure for America’s international commerce, the Council submits the following brief comments on the ANPRM. We do so out of a desire to ensure that the various government initiatives are coordinated and mutually supportive of the common and shared goal of enhancing the security of the nation’s international commerce. They are also premised on our support of the objectives and goals of Census’ future rulemaking, i.e. the

¹ A list of the Council’s members is attached as Appendix A.

² The Council’s submission on the CBP’s proposed rule can be accessed at www.worldshipping.org

requirement “that all persons who are required to file export information under chapter 9 of title 13 United States Code, file such information through the Automated Export System”.³

2. Usage of AES and SED Data for Risk Assessment Purposes

The purpose of the ANPRM is to announce that the Census Bureau intends “to propose a rule that would make mandatory the filing of all export shipments requiring Shipper’s Export Declaration (SED) information on the Automated Export System (AES)/*AESDirect*”.⁴

The ANPRM further explains that the authority for such a future rulemaking can be found in Pub.L. 107-228. A subsequent comment in the Supplementary Information implies that the mandatory filing requirement for SEDs through AES would be beneficial to the foreign trade statistics collection by Census’ Foreign Trade Division.⁵

We believe that it would be useful and appropriate to recognize that the future notice of proposed rulemaking (NPRM) is also part of a broader set of objectives, and specifically a component of the government’s security initiatives and policies.

Thus, we believe it would be appropriate for the future NPRM to explain the reasons for and purposes behind the recently enacted statutory authority to require the mandatory filing of SEDs through AES, which are enhancing the nation’s export control programs as part of the government’s efforts to prevent the use of international cargoes for illicit purposes by terrorists and by entities and institutions associated with and supportive of terrorist purposes.

Essentially, the advance Trade Act export filing requirements proposed by CBP would establish an export-filing requirement on the U.S. exporter or USPPI, who would be required to file a Shipper’s Export Declaration (SED) directly to the government via the AES system, *once the announced future rulemaking promulgated by the Census Bureau takes effect*. The proposed Trade Act rules would also require that the USPPI or its authorized agent must transmit and verify system acceptance of export vessel cargo information no later than 24 hours prior to vessel departure. The USPPI or authorized agent must also furnish to the outbound carrier for annotation on the carrier’s outward manifest: a proof of electronic filing citation (which is a confirmation number, the Internal Transaction Number (ITN), that is generated by AES and indicates that the USPPI has completed filing of the SED), low-risk exporter citation (the so-called “Option 4” filing citation) or exemption statement from the exporter indicating a declaration is not required for that shipment.

Specifically regarding the ocean carrier’s responsibilities under the proposed Trade Act rules and once the future rulemaking by Census has taken effect, the carrier may not load export

³ Public Law 107-228, Section 1404 (b).

⁴ *68 Fed. Reg. 60301*. *AESDirect* is the Census Bureau’s Internet-based system for filing SED information on the AES. Like the ANPRM, further references to the AES cover both the AES and *AESDirect*.

⁵ *68 Fed.Reg. 60302*. (“Because the changes discussed above will result in a major revision of the Foreign Trade Statistics Regulations, we plan to use this as an opportunity to improve the regulations’ clarity and readability. It is possible that we could make some additional changes to the rules as part of this process”).

cargo without first receiving from the USPPI or its authorized agent, either the electronic filing citation number (ITN) or an appropriate exemption statement. Carriers would also need to collect and include in their manifest filing the electronic filing citation or appropriate exemption statement.

As can be seen from this brief description of the intent, purpose and scope of the CBP's proposed Trade Act rules for export cargoes, the announced future rulemaking by Census Bureau is not only of importance to U.S. exporters and the ocean carriers that transport America's exports, but to the pre-screening system for export shipments prior to vessel departure.

As stated at the outset of these brief comments, we support the CBP's proposed Trade Act rules for export cargoes. We also support the Census Bureau making mandatory the filing of all export shipments requiring SEDs through the AES. We do so because we agree with the government's objective of conducting risk-based pre-screening of export cargoes prior to departure using the advance AES filings as the facilitator for such risk assessments.

For these reasons, we would respectfully encourage the Census Bureau to include such a discussion in the future NPRM.

3. Export Filing Exemption

Considering that the NPRM will have an important role for the government's pre-screenings of export cargoes, we believe that the NPRM, when it is published, should contain a coherent analysis and proposal regarding what, if any, export shipments should have an exemption from filing SEDs.

For example, as we noted in our comments to Customs in its Trade Act rulemaking, the government should make a security determination if it is appropriate to continue the exemption for goods valued at \$ 2,500 or less. There are other, non-security related issues regarding whether retention of the \$ 2,500 SED exemption should be continued. For example, CBP and Census have both acknowledged that this exemption has been abused by some exporters seeking to avoid filing SEDs. Furthermore, this exemption has created gaps in the trade statistics collected by the Foreign Trade Division of Census.

We also strongly recommend that this issue be fully reviewed with other government agencies before the NPRM is published, in order to ensure that the security and export control requirements of the government are properly considered.

In this regard, we believe interagency coordination is also important to ensure that there are not concerns from our foreign trading partners about the potential lack of reciprocity in the government's regulations of export shipments when compared to the requirements pertaining to import shipments into the United States. In the regulation of international commerce, governments often place considerable importance on the principle of reciprocity, or the equivalent treatment of trade that is originating in or destined for a particular country. This is not

an ironclad rule of equality, but it is common principle that is often carefully considered and applied. The United States traditionally has been a proponent of this principle.

For compliance with requirements regarding the advanced electronic filing of inbound cargo information, the government has established regulations that require advance documentation of all containerized import cargo regardless of value and regardless of the shipper's identity. In fact, these regulations even cover foreign-to-foreign commerce where there is no U.S. importer if the vessel calls at a U.S. port.

Exempting export shipments from having to comply with the advance filing of shipment information through AES should be done only after a thorough inter-agency review of security, export control, and international comity requirements.

4. Conclusion

The Council and its member companies appreciate the opportunity to submit these comments on Census' ANPRM. We do so out of our desire to assist the government in building and further developing a comprehensive, meaningful and viable security infrastructure, which through the implementation of a multi-layered cargo security screening and risk assessment system can protect the international commerce of this nation and its trading partners from exploitation by terrorists and other illicit groups and interests.

Pre-screening of export cargoes is an integral part of such a security infrastructure. Advance filing of SEDs through AES is, as explained in CBP's proposed Trade Act rules for export cargoes, a prerequisite for such pre-screenings to be conducted prior to vessel departure. This determination and its implications should be appropriately reflected in the announced future rulemaking.