



WORLD SHIPPING COUNCIL
PARTNERS IN TRADE

Comments of the

World Shipping Council

Submitted to the

Bureau of the Census

In the matter of

Foreign Trade Regulations (FTR): Mandatory Automated Export System Filing for All Shipments Requiring Shipper's Export Declaration Information: Proposed Substantive Changes and Corrections

Docket Number:

100318153-0154-01

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The World Shipping Council (WSC), a non-profit trade association representing twenty-nine liner shipping¹ companies that carry over 90% of U.S. international containerized trade, files these comments to the Bureau of the Census in response to the notice of proposed rulemaking (NPRM) published on January 21, 2011, 76 Fed. Reg. 4002, which invites public comment on proposed amendments to the Foreign Trade Regulations (FTR).

We appreciate Census' efforts to work with the regulated trade community on its proposal to modify and correct certain aspects of the current FTR, which were finalized in June of 2008. While most of the changes in the proposed rule relate to the mandatory filing of electronic export information (EEI) by U.S. Principal Parties in Interest (USPPI) for U.S. export cargo, some proposed changes address requirements for ocean carriers (and other modes) as parties to the export transaction. We respectfully offer the following comments on the NPRM.

1. Deadline for Filing Paper Export Manifest: 30.47(a)

The NPRM proposes changing the deadline for the submission of paper export manifests for carriers under bond from 4 *business* days to 4 *calendar* days after clearance or departure of the carrier. No explanation is provided for why Census is advocating this significant change to existing business practices.

For a vessel that departs the United States on a Friday, this rule change would shift the deadline from the following Thursday to Tuesday. These extra days are important because export manifest filing remains a manual, paper process that requires, among other things, the collection of shipping instructions from the USPPI, issuance and printing of the export bills of lading, and mailing of the export manifest (by courier) to the CBP Port Director in the port of export.² We recommend that the NPRM not modify the deadline for submission of the paper export manifest, so long as the U.S. government continues to use a paper export manifest filing process. If and when the government automates the export manifest process, a more expedited process could be more easily considered.

2. Exclusions From Filing Electronic Export Information (EEI): 30.2(d)

The NPRM proposes that transactions that are excluded from EEI filing no longer require annotation of the appropriate exclusion/exemption legend on the bill of lading, air waybill,

¹ Liner vessels operate on fixed schedules among pre-determined ports. The Council's member lines operate containerships, roll-on/roll-off, and car carrier vessels. A list of the Council's members may be found at www.worldshipping.org.

² This would be especially true when dealing with the multiple three day weekends resulting from federal holidays falling on Friday or Monday.

export shipping instructions or other commercial loading documents. Section 30.3(c)(3)(i) then states that the exporting carrier “must not load or move cargo unless the required documentation, from the USPPI or authorized agent, contains the required AES proof of filing, post-departure, downtime or exemption citations” (emphasis added). Section 30.7(b) goes on to explain that the “proof of filing citation will identify that the export information has been accepted as transmitted. The post-departure filing citation, AES downtime filing citation, or exemption legends will identify that no filing is required prior to export.”

The above described regulations could set up a situation in which 1) certain excluded USPPIs would not be required to provide a proof of filing citation or exemption/exclusion legend to the exporting carrier, and 2) the exporting carrier would be prohibited from loading cargo that does not contain a proof of filing citation or exemption/exclusion legend. Because the exporting carrier would have no way to know whether a given USPPI’s export shipment is “excluded”, and it is not the carrier’s responsibility to make such determinations, the exporting carrier would not load “excluded” cargo because it would not be accompanied with a proof of filing citation or exemption/exclusion legend provided by the USPPI. This regulatory “catch 22” could be easily resolved by amending the NPRM to require USPPIs to continue to provide “exclusion legends” (as they do today), proof of filing citations or exemption legends to the exporting carrier no later than 24 hours prior to vessel loading.

3. Mandatory Reporting of Equipment (i.e. Container) Number: 30.6(a) 22

This section states that for containerized vessel cargo, the USPPI must report the container number. While we understand that Census and its partner agency CBP have an interest in knowing what container number(s) are associated with a given EEI transaction, we believe this data element should remain optional and could be provided by the USPPI when it becomes available.

If this data element were mandatory, Census officials have stated that the AES system would not generate an ITN number if no container number were provided in the EEI filing. Exporting ocean carriers, pursuant to Census regulations, will not load export cargo for which the carrier has not received an ITN number (or exemption legend) by the EEI filing deadline of 24 hours prior to the loading of the exporting vessel (or earlier depending on the individual carrier’s pre-loading documentation cutoff). This means that USPPIs would need to obtain the container number and file the associated EEI filing no later than 24 hours prior to vessel loading. There are situations, however, in which it would not be possible for the USPPI to include the container number in its EEI filing by this deadline.

For example, export shipments of perishable food commodities are often shipped in refrigerated containers that are not stuffed by the USPPI until after the EEI filing deadline (i.e. less than 24 hours prior to vessel loading) to reduce spoilage of the cargo. Non-Vessel Operating Common Carriers (NVOCCs) also may consolidate multiple “less-than-container-load” (LCL) shipments into individual containers just before these consolidated containers are presented to the exporting carrier for loading on the exporting vessel. In both of these examples, the USPPIs would need to file their EEI filings early enough to present the ITN to the exporting carriers – so the cargo will be loaded – but would miss that deadline if they were required to include the container number in the EEI filings.

We recommend that Census make the container number for ocean shipments an optional data element that could be provided by the USPPI when it becomes available. In situations when it is not available by the EEI filing deadline, the USPPI could go ahead and file the EEI filing, and then amend it later with the container number when that information becomes known to the USPPI.

4. Mandatory Reporting of Seal Number: 30.6(a) 23

This section would mandate the inclusion in the EEI filing of the security seal number placed on the equipment or container. There is no U.S. regulatory requirement that security seals be affixed to all U.S. export containers and some cargo, like waste paper, may be shipped without a seal. Further, as with the above discussion about container numbers, seal numbers may not be known until late in the process. Accordingly, the NPRM should be amended to make this an optional data element that the USPPI should report in the EEI filing in cases where a security seal has been affixed to the container.

5. Split Shipments: 30.1(c) and 30.28

The NPRM proposes to revise the definition of split shipments so the split shipment requirements which currently apply only to air shipments would apply to all modes. The NPRM defines a split shipment as a shipment covered by a single EEI transmission booked for export on one conveyance, but divided by the exporting carrier at the port of export where the manifest is filed and sent on two or more conveyances of the same carrier on the same day. Section 30.28 (b) states that all manifests with the notation “Split Shipment” (i.e. each portion of the original shipment that was split and exported in the same day) will have identical ITNs – the ITN generated from the original EEI filing.

Our interpretation of Section 30.28 (b) of the NPRM is that the “split shipment” requirements would not apply to an export cargo shipment that was split, for one reason or another, and the pieces of which are exported on two different days. Our understanding, based on discussions with Census officials, is that shipments that are split and exported on two different days would be treated as two shipments by the Census regulations and each shipment would need to be accompanied by its own ITN number. Please confirm that the above understanding is correct.

6. Carrier Notifications to CBP and USPPI: 30.3(c)(3)(iv)

This section states that a carrier must immediately notify the CBP Port Director in the port of export when a carrier identifies that a portion of the goods covered by a single EEI transaction has not been exported. The carrier must also notify the USPPI or authorized agent of these changes so the USPPI can electronically transmit the corrections, cancellations or amendments to the EEI in AES. While we have no objection to the requirement that the carrier notify the USPPI so the EEI can be amended where necessary, we see no practical reason why an *immediate* notification would need to be made to the CBP Port Director, particularly given the fact that the carrier is not required to file a complete export manifest until four business days after departure. Under current procedures, if a portion of a shipment is not exported, the exporting carrier simply ensures that an accurate export manifest is presented the CBP Port Director four business days after the vessel has departed.

7. Conclusion

The World Shipping Council appreciates the opportunity to provide comments to Census on its proposed amendments to various provisions in the Foreign Trade Regulations. We do so in order to assist the government in establishing efficient regulatory systems that provide U.S. agencies with the information they need without frustrating the flow of U.S. international trade.

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