Comments of the

World Shipping Council

Submitted to

U.S. Customs and Border Protection
Department of Homeland Security

In the matter of

Request for Information

on

Reducing Regulation and Controlling Regulatory Costs

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USCBP-2017-0035

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The World Shipping Council (WSC) is a non-profit trade association that represents 20 liner shipping1 companies that carry over 90% of U.S. international containerized trade. WSC’s member companies operate more than 5,000 ocean-going liner vessels -- mostly containerships -- of which approximately 1,500 vessels make more than 27,000 calls at ports in the United States each year.

WSC respectfully files these comments with U.S. Customs and Border Protection (CBP) in response to the Federal Register notice published on September 12, 2017 (82 Fed. Reg. 42751), which invites suggestions on specific regulations or paperwork requirements that could be altered or eliminated to reduce burdens while still allowing CBP to perform its missions.

1. Modernizing the Regulations Governing Ocean Containerized Export Shipments

WSC commends CBP for building out the “Automated Commercial Environment” (ACE) system to modernize and facilitate electronic submission and handling of manifest, commodity and other trade data for U.S. imports and exports. ACE not only contains functionality that has or will soon replace antiquated paper-filing processes, but has also assimilated other government trade systems and databases to establish a legitimate “single window” for the submission, collection, processing, sharing and storage of U.S. import and export related trade data on behalf of almost 50 U.S. participating government agencies (PGAs).

As part of the ACE integration, the U.S. Census Bureau’s legacy “Automated Export System” (AES), which is used to electronically collect U.S. exporters’ “electronic export information” (EEI) filings (which replaced paper “shipper’s export declarations” and contain details on the commodities being exported), was integrated into ACE several years ago. The integration of AES and the associated exporter EEI filings into ACE provides an opportunity to modernize the current regulatory requirements governing ocean containerized export shipments, as those requirements were put in place at a time when export transactions were mostly paper-based and were overseen by two agencies, using two isolated and limited IT platforms.

Implementing CBP’s stated goals of automating the export manifest process and establishing advance export manifest filing timelines will require changes to both CBP and Census regulations. To assist with this regulatory change process, WSC has reviewed the current CBP and Census regulatory requirements governing export ocean containerized shipments and offers the below recommendations regarding how those requirements could be modified to improve the efficiency of the export process, enhance monitoring of export transactions, and eliminate burdensome and no-longer-necessary regulatory requirements.

WSC also encourages CBP and Census to jointly develop “strawman” proposals that contain the agencies’ preliminary thinking on changes to the export regulations governing each

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1 Liner vessels operate on fixed schedules among pre-determined ports. WSC’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.
transportation mode and U.S. exporters that may be needed to automate the export manifest process and implement advance export manifest filing. These “strawman” proposals could then be shared with the regulated communities for feedback and comments that CBP and Census could use in the development of a joint proposed rulemaking.

A. **Advance Filing Deadline for Ocean Containerized Export Manifests**

CBP officials have for several years advised the industry that CBP intends to amend the export manifest regulations to require “advance” (i.e. prior to departure) electronic submission of export manifests for all transportation modes and that the filing deadlines would be mode-specific. This is a sensible objective given that CBP already requires carriers to file advance electronic import manifest data and many U.S. trading partners already require information about containerized import shipments from the U.S. before those shipments are loaded onto the carrier’s vessel in the U.S. port.

Should CBP decide to adopt advance export manifest filing deadlines, we recommend that the filing deadline for containerized ocean shipments be “no later than 24 hours prior to loading U.S. export cargo on the vessel at the U.S. port.” This deadline would mirror CBP's deadline for filing import ocean manifests for containerized shipments under the “24 Hour Rule” (19 CFR 4.7) and would align with other foreign electronic information filing deadlines for U.S. ocean containerized export shipments bound for Europe, China, Japan and other locations.

B. **Linking Ocean Export Master and House Bills of Lading**

CBP officials have informed industry that they intend to amend the CBP regulations to require the filing of export bills of lading in the ACE ocean export manifest system at the “master” and at the “house” bill of lading levels when a “non-vessel operating common carrier” (NVOCC) is involved in the shipment. This is a logical approach given the fact that CBP has long required both “vessel operating common carriers” (VOCCs) and NVOCCs to file their respective bills of lading in ACE for U.S. import shipments.

We recommend that CBP employ in the ACE export manifest system the same functionality used in the ACE import manifest system to link VOCC “master” bills of lading with associated NVOCC “house” bills of lading. The following is a brief description of how this linking functionality works: When a VOCC issues a “straight” bill of lading (sometimes also referred to as a “simple” bill of lading) to its shipper customer, the VOCC files that bill of lading in ACE using a “straight” bill of lading type. When a NVOCC arranges with a VOCC to transport a shipment, the VOCC issues a “master” bill of lading to the NVOCC, and the NVOCC in turn issues a “house” bill of lading to its shipper customer. In this scenario, the VOCC must file its bill of lading in ACE using a “master” bill of lading type, and the NVOCC must file its bill of lading in ACE using a “house” bill of lading type. The NVOCC must also include in its “house” bill of lading filing to ACE the associated VOCC’s “master” bill of lading number. This enables CBP to link every “house” bill of lading in ACE to its associated “master” bill of lading in ACE.
This functionality has provided CBP, since the “24 Hour Rule” was implemented 15 years ago, with visibility of the manifest details at the lowest bill of lading level for import shipments and has enabled CBP to electronically link the “house” bills with the “master” bill. Implementing this same functionality for U.S. export shipments would facilitate more thorough risk assessments and would enable CBP to inquire about or issue holds on shipments at the lowest bill of lading level, which is more efficient than placing an entire “master” bill on hold due to questions about only one of the associated “house” bills of lading.

C. Linking U.S. Exporter Filings to Export Bills of Lading and Handling Export Shipments Exempt from Filing Requirements

Today, for ocean export shipments, U.S. exporters are required by regulation to submit their EEI filings in ACE and then present the ACE-generated confirmation number (or the exemption legend for cargo exempt from advance EEI-filing requirements) to the exporting ocean carrier no later than 24 hours prior to loading cargo on the vessel at the U.S. port where the cargo is laden. The U.S. exporter’s EEI filing deadline thus already aligns with the “24 hours prior to loading” deadline that CBP has mentioned as its planned “advance” filing deadline for ocean containerized export manifests.

1) Linking U.S Exporter Filings to Export Bills of Lading

The submission of the exporter’s EEI filing into ACE provides the ability to easily link that filing to the exporting VOCC and NVOCC filings (when applicable), which are also in ACE. Linking the U.S. exporter’s EEI filing to the exporting VOCC or NVOCC’s manifest filing can be done simply and efficiently within ACE by having the U.S. exporter include the lowest bill of lading number of the exporting carrier in the “transportation reference number” field of the exporter’s EEI filing. Such linking would facilitate elimination of the existing inefficient and unnecessary requirement that the U.S. exporter must provide the ACE-generated EEI filing confirmation number (called the “ITN”) to the exporting carrier, who must then provide that number back to the government in the ACE export manifest filing.

For example, for a “straight” bill of lading issued to the U.S. exporter from the VOCC (i.e. no NVOCC involved in the shipment), the U.S. exporter would include that straight bill of lading number in its EEI filing. For a “house” bill of lading issued to the U.S. exporter from an NVOCC, the U.S. exporter would include the house bill number in its EEI filing. Since the NVOCC’s house bill filing in ACE would contain the “master” bill of lading number from the VOCC, the USPPI’s EEI filing could be linked not only to the corresponding NVOCC’s house bill of lading, but also to the VOCC’s master bill of lading.

CBP has employed the linking method described above since 2009 to electronically link U.S. importer security filings (ISFs), which contain similar cargo data elements to those in a U.S. exporter’s EEI filing, to their associated import ocean bills of lading. U.S. importers are required by regulation to include in their ISF filings the import bill of lading number at the lowest bill of lading level (i.e., at the “straight” bill level if no NVOCC is involved and at the “house” bill level if
an NVOCC is involved). When the importing VOCC or NVOCC files its bill of lading in ACE and the U.S. importer files its ISF filing in ACE (with the lowest carrier bill of lading in the filing), ACE electronically links those two filings and advises each filer electronically that the other party has filed and the linkage has been established. If one of the two parties has not filed the required filing by the filing deadline, CBP is immediately aware of this and may address the situation by sending a notification to the non-filing party, by placing the shipment on “hold”, and/or by issuing the non-filing party a penalty.

To facilitate the above-described linking for U.S. export shipments, VOCCs and NVOCCs will need to provide their bill of lading numbers, at the lowest bill of lading level, to their U.S. exporter customers early enough so the U.S. exporter can include the lowest bill of lading number in the EEI filing. We do not expect this to present problems, because VOCCs and NVOCCs have been performing the same function for their U.S. importer customers since the CBP “10 + 2” rule was implemented in early 2009.

The ability to electronically link the U.S. exporter’s EEI filing, the VOCC’s filing, and the NVOCC’s filing (when applicable) would facilitate a level of monitoring and accountability that is not today available under the current export system, in which the exporting carrier collects the U.S. exporter’s EEI filing confirmation ITN number (which may be applicable to one or multiple export bills of lading, depending on how the EEI organized the filing) and then the carrier transmits that ITN number back to the government in the ACE export manifest filing.

We strongly urge CBP, working with Census, to adopt the method described above to link U.S. exporters’ filings to the corresponding VOCC or NVOCC bill of ladings in ACE. We understand that the functionality to allow the U.S. exporter to input the lowest VOCC or NVOCC bill number in the EEI filing and then link that filing to the corresponding VOCC or NVOCC filing already exists in the ACE export manifest system. We note, however, that the CBP pilot of the automated ocean export manifest system is currently testing the system against the current, outmoded regulatory requirements, rather than testing the more streamlined and efficient export process that is described in these comments.

CBP’s explanation for having taken this approach is that implementing the streamlined export process would require regulatory changes that may take a few years to implement. While that may be true, it is also true that much of the automated export manifest system functionality CBP is testing today in the pilot – mandating use of the ocean export manifest system by exporting carriers, requiring submission of NVOCC house bills of lading, and advancing the filing deadlines so they occur prior to exportation – would require changes to the CBP and Census regulations. We see no reason why the additional export regulatory changes suggested in these comments cannot be tested with willing VOCCs, NVOCCs and U.S. exporters in the CBP ocean export pilot. Indeed, the very purpose of a pilot is to test and evaluate approaches that may fall outside the currently defined regulations to identify new ways of doing business and to help inform future regulatory changes. WSC and its members would be pleased to assist CBP and Census in testing this streamlined export processing functionality.
2) Handling U.S. Export Shipments That Are Exempt from EEI Filing

For U.S. export shipments that are today exempt from the EEI filing requirements (e.g. low-value shipments, shipments to Canada, post-departure EEI filers, etc.), the U.S. exporter is currently required to provide the exporting carrier with the exemption legend that applies to the export shipment. Since problems are often encountered when the current lengthy and complex exemption legends are passed to the exporting carriers, CBP and Census, working with the industry, have recently developed a table containing alpha-numeric ACE exemption codes that corresponds to each exemption legend.

WSC has supported the development of the table of ACE exemption codes and proposes that CBP and Census change the regulations to require, for EEI exempt shipments, that the U.S. exporter must provide the applicable alpha-numeric exemption code to the exporting VOCC or NVOCC at the lowest bill of lading level and that the VOCC or NVOCC must include the alpha-numeric exemption code in its export bill of lading filing in ACE.

D. Elimination of Obsolete Regulatory Requirements on Ocean Carriers

Under the current regulations governing ocean export shipments, U.S. exporters must provide to the exporting ocean carrier 24 hours prior to vessel loading either the ACE-generated confirmation number (called the “ITN”) generated after the exporter completes its EEI filing, or the complete exemption legend for EEI exempt shipments. Exporting carriers must then include the ITNs or exemption legends in their ACE export manifest filings and be prepared to provide a paper list of all ITNs and exemption legends on board the exporting vessel upon request from the local CBP Port Director. Exporting ocean carriers are also prohibited from loading a given export shipment if the U.S. exporter did not provide an ITN or exemption legend to the carrier for that shipment.

While these kinds of export controls were necessary at a time when export manifests were filed in paper after vessel departure, CBP’s and Census’s data systems were isolated from one another, and electronic filing of export manifests at the lowest bill of lading level by NVOCCs did not exist, such processes are no longer necessary now that U.S. exporter filings and carrier manifests filings are being processed by the same IT system -- ACE.

Implementation of the method proposed above to link VOCC and NVOCC bills of lading to one another and to the EEI filing would take advantage of the integration of Census’s AES system into ACE and would enable CBP and Census to ensure for every export bill of lading in ACE that there is either an associated EEI filing, for shipments in which EEI is required, or an exemption code, for EEI exempt shipments. If a situation occurs in which one of the two parties – the exporting carrier (i.e. VOCC or NVOCC) or U.S. exporter – has not made its required filing by the filing deadline, CBP and Census would be immediately aware of this and would have a range of possible actions to address the situation, such as sending a notification to the non-filing party, placing the shipment on “hold”, and/or issuing the non-filing party a penalty.
With the improved visibility and accountability that would be provided by implementing methods described above to link export bills of lading to EEI filings and for addressing EEI exempt shipments, WSC suggests that CBP and Census eliminate the follow outdated requirements on ocean carriers from the regulations:

- Requiring U.S. exporters to provide government (ACE) generated confirmation numbers (ITNs) to the exporting carrier, who is then required to provide the ITNs back to the government in ACE;
- Requiring that a given export shipment may not be laden on the vessel until the carrier has received an ITN from the U.S. exporter;
- Requiring carriers to provide a paper list of all ITNs and exemption legends on board the exporting vessel upon request from the local CBP Port Director; and
- Requiring exporting carriers to include full narrative exemption legends in their export manifest filings.

2. **Form Automation for Vessel and Crew Entrance, Clearance and Departure**

CBP officials have worked with WSC and other industry organizations for several years to eliminate redundant information filings and paper transactions from the processing of arriving and departing vessels and their crews. CBP recently provided a demonstration of an ACE Portal-based system that draws in vessel, voyage, crew and cargo data that ocean carriers have already filed in the ACE ocean manifest system and the USCG’s Electronic Notice of Arrival/Departure (eNOA/D) system and only requires the carrier or its agent to submit vessel clearance or entrance related data elements that have not already been collected by CBP. This ACE Portal-based system for processing arriving and departing vessels and their crews would eliminate not only the filing of redundant data elements and the processing of paper requests for entrance, clearance, and permission to unlade, but it would facilitate for CBP full electronic processing of arriving and departing vessels in the future.

We understand that CBP is planning to make further updates to the system based on the feedback provided during the demonstration and will then work towards pilot-testing the system with carriers and agents in select U.S. ports. We encourage CBP to fully fund and complete this ACE Portal-based form automation project as soon as practicable. WSC and its members look forward to assisting CBP with the pilot testing of the new system.

3. **Electronic Seal Change Updating and Notification**

Today, when CBP officers change a container seal after inspecting an import, export or “Freight Remaining on Board” (FROB) container, there is no electronic mechanism in ACE that CBP officers can use to: 1) notify the bill of lading issuing container operator of the new seal number and 2) directly update the relevant bill of lading record in ACE with the new seal number. CBP reporting of seal changes to ocean carriers has for the most part been performed using handwritten notes on paper that are presented sometimes to the vessel master and other times to a vessel crewmember or someone at the marine terminal. And while some CBP officers input
seal changes into ACE in a “1M” narrative comment, those comments do not generate a
notification to the carrier that the seal has been changed and do not update the seal record in
ACE.

Even when the seal changes do get reported to the container operator, the fact that there
is no official CBP documentation of the seal change often causes the container to be denied entry
at the foreign discharge port or delayed once it is unloaded from the vessel. Although CBP
officials have tried to address this issue by publishing a standardized letter that local CBP ports
are supposed to use to notify container operators that the seal on one of their containers has
been changed due to a CBP or other government agency inspection, uptake of the standardized
letter has been very limited and is a time-consuming paper-based process.

The most appropriate and efficient solution to this problem would be for CBP to
implement functionality in ACE that allows the CBP officer that changed the seal to update the
affected ocean carrier bill of lading record in ACE with the new seal number and then transmit
an official EDI notification to the container operator that the seal has been changed for the
affected container. We encourage CBP to implement changes to ACE as soon as practicable to
facilitate standardized electronic notification of seal changes to the bill of lading issuing container
operator and updating of the affected ACE record with the new seal number.

4. Downtime Processing Procedures

The ACE platform sustained a multi-day outage in August 2017 and a less severe outage
in mid-November. In both situations, CBP was forced to activate downtime processing
procedures to facilitate submission and processing of manifests, entry filings and other critical
transactions. To date, CBP has delegated management of downtime processing procedures to
the local CBP ports that are responsible for screening, inspecting and clearing cargo before it is
entered into the U.S. or before it is exported to a foreign destination. The reliance on local
downtime processing procedures creates difficulties for the industry as it requires carriers,
importers, exporters and brokers that move and/or process cargo all over the United States to
comply with procedures that may be different in each U.S. port. This creates confusion about
what procedures must be followed in a given location to keep U.S. import and export cargo
moving to its intended destination. With the implementation of ACE as the designated national
“single window” for collecting and processing import and export cargo trade data, development
of national downtime processing procedures to replace the current local ones must be a priority.

We understand that the Commercial Operations Advisory Committee (COAC) is currently
assisting CBP on the development of national ACE downtime processing procedures, and we fully
support that effort. We recommend that CBP and COAC, in developing national downtime
processing procedures, avoid any procedures that rely on submission of paper documentation to
CBP or other government agencies. Paper submissions are difficult and costly to produce and
deliver to local CBP ports and make it impossible for CBP or other agencies to efficiently screen
and target import or export shipments. (Note: a typical container ship manifest exceeds one
thousand printed pages in length).
A downtime processing procedure that should be evaluated is allowing carriers to submit readable .pdf copies of import and export manifests to a central CBP email address. This is the method that CBP has been employing for several years to collect ocean containerized export manifests in the CBP “Document Imaging System” (DIS) export pilot. WSC staff would be pleased to provide further assistance to CBP and COAC in the development of new national ACE downtime processing procedures.

5. Manifest Discrepancy Reporting

CBP regulations at 19 CFR 123.9 state that the master of the vessel is subject to penalties from CBP should the agency identify cases in which there are overages or shortages in the manifested quantities. In practice, CBP has employed this regulation to issue costly penalties to ocean carriers for minor differences in piece count quantities between the manifest and the entry filed by the broker on behalf of the shipper (importer). Carriers have no visibility into actual quantities in containers and must rely on the information that is provided from the shipper to generate the manifested quantities. Consequently, the carrier would have no way to know that there is a piece count difference with the customs entry until the entry has been filed and the carrier has been notified. Even if the carrier becomes aware of a difference between the quantities on the manifest and entry, it can be difficult for the carrier to obtain the correct quantity from the broker to amend the manifest because the cargo shipment has already completed the entry process.

We recommend that CBP consider options other than issuing costly penalties to ocean carriers to address minor piece count variations between the quantities on the manifest and the quantities on the Customs entry. One solution could be to provide a detailed electronic notification to the manifesting ocean carrier of the specific piece count quantity variance from the entry filing and then give the carrier a reasonable amount of time to update the associated bill of lading record. WSC staff would welcome further discussions with CBP regarding this issue and possible changes to the manifest penalty policy given the fact that carriers are not knowingly or willfully misreporting piece counts in their manifest filings.

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