Comments of the

World Shipping Council

Submitted to

Office of Information and Regulatory Affairs
Office of Management and Budget

In the matter of

Request for Information

on

Maritime Regulatory Reform

Docket Number:
OMB-2018-0002

August 30, 2018
The World Shipping Council (WSC) is a non-profit trade association that represents 20 liner shipping\(^1\) companies that carry over 90% of U.S. international containerized trade. WSC’s member companies operate more than 5,000 ocean-going liner vessels, of which approximately 1,500 vessels make more than 28,000 calls at ports in the United States each year. The liner shipping industry provides American exporters and importers with door-to-door delivery service for almost any commodity to and from roughly 190 countries. In addition, liner shipping supports more than a half-million United States jobs, including shipping line employees and agents, longshore workers, truckers, warehouse and distribution center workers, freight forwarders and customs brokers, and railroads carrying containerized cargo to and from the ports.

WSC respectfully files these comments with the Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA) in response to the Federal Register notice published on May 17, 2018 (83 Fed. Reg. 22993), which invites public comment on how existing agency requirements affecting the maritime sector could be modified or repealed to increase efficiency, reduce or eliminate unnecessary or unjustified regulatory burdens, or simplify regulatory compliance while meeting statutory missions.

1. **Relief from Filing Service Contracts with the Federal Maritime Commission**

The U.S. Federal Maritime Commission recently issued a final rule granting substantial flexibility with respect to the use of non-vessel operating common carrier (NVOCC) Service Arrangements (NSAs) and NVOCC Negotiated Rate Agreements (NRAs)\(^2\). The Commission’s action, among other things, eliminated the requirement on NVOCCs to file service contracts with the Commission and to publish the “essential terms” from NVOCC service contracts.

In the Commission’s November 29, 2017 Notice of Proposed Rulemaking containing the proposed amendments to the regulations governing NVOCC NRAs and NSAs (FMC Docket No. 17-10, [https://www.fmc.gov/17-10/](https://www.fmc.gov/17-10/)), the Commission included a footnote inviting the vessel operation common carriers (VOCC) community to submit to the Commission a request for similar relief from service contract filing requirements.

WSC wishes to inform OIRA that WSC intends to soon file a request for service contract filing relief for VOCCs with the Commission. Granting the same relief to VOCCs as was recently granted to NVOCCs is not only fair, since VOCCs own and operate the ships that carry NVOCC (and direct VOCC-booked) U.S. import and export shipments, but it is also necessary to fully achieve the relief intended by the Commission’s NVOCC NRA and NSA rule.

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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](http://www.worldshipping.org).

\(^2\) [https://www.fmc.gov/expanded_flexibility_for_otis_effective_august_22_2018/?pg=2](https://www.fmc.gov/expanded_flexibility_for_otis_effective_august_22_2018/?pg=2)
More fundamentally, the requirement to file service contracts with the Federal Maritime Commission has outlived its usefulness. There is no such requirement in virtually all of the rest of the world, and service contract disputes in the United States are decided by the courts or arbitrators, not by the Commission. Moreover, the requirement that service contracts be filed before they can become effective is a barrier to the prompt implementation of commercial agreements between carriers and shippers. Removal of this outdated requirement will make contracting for ocean transportation service in U.S. import and export trades more efficient and flexible.

The most effective and efficient way to regulate ocean common carriers – VOCCs and NVOCCs – is to ensure they are subject to fair and consistent requirements. Granting service contract filing relief to VOCCs in line with the relief that will soon be granted to NVOCCs will enhance the efficiency of the ocean transportation system that carries America’s export and import cargo.

2. Modernizing Customs and Census Regulations Governing Ocean Containerized Export Shipments

U.S. Customs and Border Protection (CBP) has built 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 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).

The existence of the ACE single window means that ACE PGAs should be sharing data rather than requiring duplicative filing of the same data elements from trade participants, requiring one party to present information to the government that could be better presented from another party that has direct knowledge of the information, or retaining cumbersome and time-consuming procedures that were instituted when there was no electronic means of sharing data across government agencies.

An area in which ACE could be used to significantly reduce the regulatory burden and facilitate more efficient ways of managing data submitted to government from U.S. exporters, vessel operating common carriers (VOCCs) and non-vessel operating common carriers (NVOCCs) is export automation.

As part of 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 contain details on the shipment being exported), was integrated into ACE several years ago. The integration of AES (and its associated exporter EEI filings) into ACE provides an opportunity to streamline 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.

**Current Export Process:** Today, U.S. exporters interested in shipping goods overseas must submit an electronic EEI filing with Census for each shipment to be exported. The EEI filing contains information on the exporter, the commodities in the shipment, the destination of the shipment, and the conveyance that will be transporting the shipment. Once the EEI is filed, the U.S. exporter receives a Census-generated confirmation number called an “ITN”.

Under current regulations, the exporter must present to the exporting carrier an ITN for each shipment to be exported. (Note: The exporting carrier has no way to know how many ITNs it should expect from the exporter for a given shipment since there may be multiple ITNs per bill of lading or a single ITN covering multiple bills of lading). The exporting carrier is required to collect the ITNs from the exporter and then present them back to the U.S. government (whose IT system created the ITNs). The exporting carrier is also prohibited from loading the export cargo if no ITN has been provided for a given shipment (although as already noted, the exporting carrier cannot know whether it received the proper number of ITNs for a given export shipment, since there may be multiple ITNs in one bill of lading or a single ITN covering multiple bills of lading).

This regulatory structure may have made sense when CBP and Census did not share data and had to rely on the exporting carrier and a series of cumbersome procedural requirements to manage export shipments. However, this structure no longer makes sense now that Census’ data system and the associated EEI filings are part of CBP’s ACE system.

**Proposed Export Process:** Rather than requiring U.S. exporters to give the Census (now ACE) generated ITN numbers to the exporting carrier, which would then transmit the ITNs back to the government, ACE should instead electronically link the U.S. exporter’s EEI filing to the exporting VOCC or NVOCC bill of lading filings, which will be electronically filed in CBP’s ACE export manifest system. The way to link these filings is by having the exporting VOCC (or NVOCC, if one is involved) present its export bill of lading number to the U.S. exporter when the exporter makes the booking request with the carrier.

The U.S. exporter would then include the VOCC (or NVOCC) bill of lading number in its EEI filing (Note: There is already a data field called “transportation reference number” available in the EEI; use of this data field by U.S. exporters is today mandatory for export vessel shipments per 15 CFR 30.6(b)(14)). The EEI filing in ACE would then link up with the VOCC or NVOCC bill of lading filing in ACE because the bill of lading number would appear in both the EEI filing and the carrier bill of lading filing, completing the match and letting CBP and Census know that both filings are complete.

With this proposed EEI-bill of lading linking method, there would be no need for the carrier to collect ITN numbers from the exporter, there would be no need for the exporting carrier to transmit those ITN numbers back to the government, and there would be no need for the exporting carrier to delay loading export cargo until an ITN is received from the exporter. The
EEI-bill of lading linking method would also better meet the obligations of Section 343(a) of the 2002 Trade Act (Public Law 107-210), which states that the requirement to provide particular information shall be imposed on the party most likely to have direct knowledge of that information.

An added benefit to U.S. exporters of this method would be that the list of transportation-related data elements in the EEI filing (e.g. date of export; port of export; conveyance name; carrier ID; and foreign port of unlading) could be reduced or eliminated because those same data elements are already being provided to CBP/Census in the VOCC or NVOCC bill of lading filing, which would be linked to the EEI filing using the export bill of lading number. While the above-described EEI-bill of lading linking method would require the exporting carrier to present the export bill of lading number to its exporter customer early enough for the exporter to include the bill of lading in the EEI filing, VOCCs and NVOCCs can and will provide their exporter customers with bill of lading numbers as early as the exporters need them.

It is worth noting that the above-proposed export linking method has been in place for U.S. import ocean containerized shipments for almost ten years -- since CBP’s “10 plus 2” regulations went into effect in November 2008. Under those regulations, the U.S. importer files an electronic “importer security filing” into ACE that contains shipment information as well as the VOCC (or NVOCC, if one is involved) import bill of lading number. ACE then links that importer security filing to the VOCC or NVOCC’s electronic bill of lading to ensure that both filings are present and complete. We note that under the “10 plus 2” rule, VOCCs and NVOCCs have not had difficulty providing their import bill of lading numbers to their U.S. importer customers early enough for their importer customers to complete their importer security filings.

Proposal for 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 narrative exemption legend that applies to the export shipment. Since problems are often encountered when the 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 correspond to each exemption legend.

WSC has supported the development of the table of ACE exemption codes and proposes that CBP and Census modify the regulations for EEI exempt shipments to allow U.S. exporters to provide the alpha-numeric exemption code (instead of the full exemption legend) to the exporting VOCC (or NVOCC, if one is involved). The exporting VOCC (or NVOCC) would then be required to include the alpha-numeric exemption code in its export bill of lading filing in ACE.

Elimination of Superfluous Requirements: With the improved efficiency and accountability that would be provided by implementing the proposed methods described above to link carrier export bills of lading to exporter EEI filings and for addressing shipments exempt
from EEI requirements, the following requirements on ocean carriers and exporters could be eliminated from the CBP or Census regulations:

- Requiring U.S. exporters to provide government (ACE) generated ITN numbers to the exporting carrier;
- Requiring exporting carriers to transmit the ACE generated ITN numbers back to ACE;
- Requiring that an export shipment may not be loaded on the vessel until the carrier has received an ITN number from the U.S. exporter;
- Requiring U.S. exporters to include transportation-related data in their EEI filings; and
- Requiring exporting carriers to include full narrative exemption legends in their export manifest filings.

Implementation of the more efficient methods proposed above would facilitate a level of monitoring and accountability that is not available under the current export system. The proposed methods 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 exempted 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.

3. Process Automation for Vessel and Crew Entrance, Clearance and Departure

CBP officials have been working, in close consultation with industry for several years to eliminate redundant information filings and paper transactions from the processing of arriving and departing conveyances and their crews. As it turns out, the conveyance manifest and notice of arrival filings that are already collected into ACE contain most of the data elements needed to enter and clear a vessel, consider a permit to unload the vessel, perform an admissibility check on the crew, etc.

CBP has commendably been working to evaluate all of the current forms and data elements used in the vessel and crew arrival and departure processes and has developed a web-based interface that draws in the vessel, voyage, crew and cargo data that ocean carriers already present in ACE (from carrier advance manifest and notice of arrival filings) 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.

Full, national implementation of this CBP interface 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. This process automation work by CBP is a strong example of good government and should be fully funded so that it can be pilot-tested and implemented in all CBP ports.
4. **Addressing Navigation Safety Risks Up Front in Offshore Wind Farm Planning**

WSC has filed multiple comment submissions\(^3\) with the Department of the Interior, Bureau of Ocean Energy Management (BOEM) regarding specific wind energy development proposals off the U.S. Atlantic Coast. Having commented on several wind farm development proposals, we note that BOEM has historically invited interest from wind farm developers in large areas that pose obvious and significant navigation safety risks.

In 2016, the U.S. Coast Guard completed the Atlantic Coast Port Access Route Study (ACPARS), which contains clear recommendations and Marine Planning Guidelines to locate wind farm developments in areas that would not compromise the navigational safety of commercial vessels operating along the Atlantic Coast.

We urge BOEM to consult with the U.S. Coast Guard and apply the navigation safety recommendations in the ACPARS and the Marine Planning Guidelines at the beginning of the wind farm lease area development process instead of later in the process, which is the case today. Areas that conflict with the U.S. Coast Guard’s navigation safety recommendations, including the ACPARS’ findings and the Marine Planning Guidelines, should be eliminated from further wind farm development consideration.

Applying navigational safety exclusions at the beginning of the wind energy lease area development process (i.e. prior to publishing a call for information and nominations for a given development area) would ensure not only that navigational safety risks are identified and addressed upfront, but would also simplify and streamline the required environmental impact statement (EIS) process. Applying navigational safety exclusions upfront would also prevent wind farm developers from wasting time submitting bids for wind energy areas that must later be excluded from further consideration for navigational safety reasons.

WSC’s comments to BOEM have also consistently stressed the need for buffer zones of not less than 2 nautical miles from the edge of any high-density maritime traffic areas (including designated maritime traffic lanes such as traffic separation schemes (TSS)) to the boundary of the wind farm lease area. Buffer zones reduce the risk of collision between vessels operating in high-density maritime traffic areas and reduce the risk of allision between vessels and wind turbines sited along the edge of the maritime traffic areas. Buffer zones are essential because they provide an area of open water to which transiting ships can divert if the ship loses power or steering or suffers some other engineering casualty that forces the vessel to quickly depart the maritime traffic lane. Conditions such as high winds, reduced visibility and strong currents can also force vessels to enter a buffer zone to seek refuge from high-density maritime traffic areas.

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\(^3\) Copies of WSC’s comments to BOEM on proposed wind energy areas and to the U.S. Coast Guard on the ACPARS may be found at: [http://www.worldshipping.org/public-statements/regulatory-comments/united-states](http://www.worldshipping.org/public-statements/regulatory-comments/united-states)