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News Story

Source: American Shipper - California Pacific Connection
Date Posted: 1/23/2008 1:11:10 PM

Compromise reached on mandatory AES rule

The U.S. Census Bureau and Department of Homeland Security finally have resolved their 30-month standoff over proposed rules requiring electronic filing of export documentation, according to a Census official.

The proposed rules for mandatory use of the agency's Automated Export System will be published soon in the *Federal Register*, Jerome Greenwell, trade ombudsman in the Foreign Trade Division, told members of the American Association of Exporters and Importers at the winter conference in Newport Beach, Calif.

Census was prepared in 2005 to issue a notice of proposed rulemaking updating the foreign trade regulations, but DHS blocked the effort after failing to gain approval to share export transaction data with foreign governments as part of antiterrorism cooperation. Census jealously guards Census data at the transaction level to protect the privacy of companies that submit confidential information to the government. DHS also raised security concerns about Census continuing to allow post-departure filing of export documents by approved companies. It wanted Census to either eliminate post-departure filing in AES, technically known as Option 4, or substantially increase the requirements for accepting new companies in the program. DHS also did not want existing post-departure filers simply grandfathered into the mandatory program.

The Foreign Trade Division uses data from AES to help calculate the country's trade statistics. CBP uses AES data to target illicit exports before they leave the country.

Most shippers' export declarations must be filed prior to export. Under post-departure rules, approved exporters and freight forwarders can process export declarations up to 10 calendar days after departure of the goods. About 2,300 exporters gained post-departure filing privileges before Census placed a freeze on accepting new applicants to the program.

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Greenwell said the two agencies have concurred on a final copy of the AES regulations and the document is undergoing final review. He declined to provide any details about the compromise, other than to say it will closely resemble the original version of the 2005 proposal.

"I think it's gonna happen a lot sooner than later," he said.

Manufacturers and other shippers at AAELI were concerned that Census may have traded the elimination of Option 4 to break the logjam on issuing the AES rule as ordered by Congress back in 2003.

Exporters like post-departure filing because not all the information needed for the declaration -- such as the exact final price, what inventory the items were taken from, the country of origin of components -- is immediately available at departure.

The program's biggest advantage is that companies don't have to hold back shipments because the SED data is not available or accurate, said Ikue Duncan, an international compliance manager for Toyota Motor Sales USA. That means exporters can ship products concurrently while complying with the regulations. Post-departure filing also saves administrative costs because companies can consolidate work instead of sending export data shipment by shipment, she said.

"We hope with this proposed regulation this program will continue," she said.

Greenwell suggested that companies might no longer need Option 4 in today's trade environment because high-tech communications between shippers and freight forwarders are much better than they were several years ago and allow for accurate transmission of information.

"The transfer of information is almost instantaneous today as opposed to 2005," he said.

"Don't read into that there there's not going to be Option 4," he added.

Census may feel that exporters can file sooner because the data is now available. But trade consultant Beth Peterson said there are still difficulties obtaining data despite the use of enhanced technologies.

Large multinationals, for example, may have different systems for organizing country of origin, value and classification data in different regions of the world but have to figure out which system to dip into for that information. The systems, she said on the sidelines of the conference, were built to provide that information in time for post-departure, not pre-departure, filing.

And frequently freight forwarders or express carriers such as FedEx don't provide routing information required on the SED, such as the bill of lading number and the carrier information, until the next day, she explained.

Companies without Option 4 privileges sometimes discover that shipments are delayed because their freight forwarder is backed up with paperwork and didn't file on their behalf in time. Self-filers tend

to have less a problem because they have control of the situation, said the president of San Francisco-based Beth Peterson Enterprises.

“Post departure filing is a big perk for the trade,” she said.

Peterson also noted that post-departure filing could be a benefit offered to shippers if CBP ever creates an export component for the Customs-Trade Partnership Against Terrorism to facilitate trade between countries with trusted shipper security programs.

The new AES regulations will require exporters to file SEDs a certain number of hours prior to departure, depending on mode. The time frames are 24 hours prior to lading for vessel shipments, four hours before wheels up for air shipments (with exceptions for nearby countries), two hours for rail and one hour for truck (or 30 minutes for pre-certified secure carriers).

The rule will go into effect 30 days after it is published in the *Federal Register* and be implemented within 90 days.

Greenwell said Census will put notices on its Web site, do a couple of town hall meetings and produce a video to advertise the new changes to the foreign trade regulations. — **Eric Kulisch**

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