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04/18/2005 04:35 PM

To "'c.harvey.monk.jr@census.gov'"
<c.harvey.monk.jr@census.gov>
cc
bcc
Subject NCITD Comments re: RIN 0607-AA38

Dear Mr. Monk:

On behalf of NCITD, I submit to you our association's comments pertaining to the proposed Census regulation published on February 17, 2005.

For your convenience, I have included the letter in the body of this e-mail and have attached a pdf version of the document as well.

If you have any questions regarding our submission, please do not hesitate to contact us via our Executive Director, Mary Fromyer at mfromyer@ibgc.com or 202-872-9280.

Thank you for your consideration of our comments.

Sincerely-
NCITD Secretariat

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April 18, 2005

Mr. C. Harvey Monk, Jr.
Chief
Foreign Trade Division
U.S. Census Bureau
Suitland, MD 20233

Subject: Proposed Census regulation published February 17, 2005 (RIN 0607-AA38)

Dear Mr. Monk:

The National Council on International Trade Development (NCITD) is a nonprofit membership organization supported by American industry. The council is dedicated to providing direct expertise on a wide range of international trade topics. Our work encompasses the full breath of export and import regulations.

Many of the changes contained in the proposed Census regulation on the mandatory use of the Automated Export System (AES) are consistent with current industry practices. The requirements bring to the forefront many of the advanced compliance processes that trade should implement in their export clearance procedures. NCITD supports the implementation of many of the updates, including electronic filing of all transactions and the elimination of paper Shipper's Export Declarations (SEDs).

We would like to provide comments on several areas of the proposed regulations that we believe need additional clarification to assist exporters and filers. Additional guidance is needed so that exporters and filers will be cognizant of their roles and responsibilities in export transactions and thus avoid any fines and penalties.

License information (§30.3)

The proposed regulation (§30. 3(e) (1) (x)) states that the U.S. Principal Party in Interest (USPPI) would be required to provide licensing details to the agent. In a routed transaction, however, the USPPI would not obtain the license and is only required to provide certain licensing details to the U.S. order party. The USPPI should not, therefore, be responsible for providing the license details for filing the EEI.

Downtime (§30.4):

We support the creation of the new "downtime" statement that must appear on the shipping documents along with the stated position of holding of licensed cargo until the Electronic Export Information (EEI) record has been filed into the AES system. We feel, however, that the stated policy, when a filer's system cannot transmit records that all shipment must be held, is not a reasonable stance for unlicensed cargo. This new policy impedes the normal flow of goods that do not have any security or shipping risks. Communication failures can occur from time to time in today's highly technical telecommunication world. The ability to quickly solve the problem can be challenging at times. We recommend, therefore, that the filer be required to notify by phone or e-mail the Bureau of Customs and Border Protection (CBP) and/or Census of their communication problems with their system and allow the new downtime policy to be placed into effect by noting the shipping documents with the XTN number or addition of the new downtime statement. This event would be recorded with the government, and the filer has the full responsibility to ensure 100 percent accurate filing of all records into AES once their communication systems have been recovered.

Document retention (§30.10)

Under §30.10 (b) (Retaining Electronic Export Information), we ask for clarification of the retention of information /documentation of the USPPI and the filer of the information provisions. We ask that the regulation clearly state what information/documentation the

USPPI must keep for electronic retention of the records. In this section, the proposed regulation allows the USPPI or the Foreign Principal Party in Interest (FPPI) to request a copy of the electronic record as provided for in subpart G. This subpart, however, does not provide the stated guidance for electronic retrieval of records.

Corrections to Previously filed data

We ask that Census consider adding a voluntary disclosure process for the USPPI and filers who correct information. The procedure should be consistent with present Bureau of Industry and Security (BIS) procedures for voluntary disclosures. This process would allow the USPPI or the filer to update previously filed information. With the increased penalties provisions for violations of the regulations, we feel that a program is required that encourages firms to update their records within a designated time without any of the penalties provisions. Such a procedure will contribute to your goal of accurate trade statistics.

NCITD is committed to continued collaboration with Census to ensure the necessities of the export shipping and AES processes are met in a fashion that serves the collective good of all parties. We welcome any opportunity to meet with you to further this dialogue and look forward to your comments on the areas that have been mentioned in this letter.

Respectfully submitted,

Michael J. Ford
Chairman,
National Council on International Trade Development