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BEFORE THE
U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

PROPOSED RULE: MANDATORY AUTOMATED EXPORT SYSTEM FILING FOR ALL SHIPMENTS REQUIRING SHIPPER'S EXPORT DECLARATION INFORMATION

Comments by UPS
April 8, 2005

Communication with respect to this document should be addressed to:

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MANDATORY AUTOMATED EXPORT SYSTEM FILING
FOR ALL SHIPMENTS REQUIRING SHIPPER'S
EXPORT DECLARATION INFORMATION

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UPS is filing these comments in response to the U.S. Department of Commerce, Bureau of the Census (Census) proposed rule requiring mandatory Automated Export System (AES) filing for all shipments requiring Shipper's Export Declaration information. This proposed rule was published in the Federal Register February 17, 2005 (Volume 70, Number 32), pages 8200-8227.

UPS is the world's largest package delivery and supply chain services company, offering the most extensive range of options for synchronizing the movement of goods, information and funds. UPS serves more than 200 countries and territories, and employs approximately 370,000 people worldwide. We deliver approximately 13.4 million packages and documents each day.

UPS supports Census' efforts to work with the trade community to develop rules on the mandatory AES filing for all shipments requiring Shipper's Export Declaration information which helps facilitate international trade.

UPS recognizes the key roles that timely and accurate AES filings play in the compilation of statistical trade reporting data as well as in the enforcement of regulations aimed at restricting sensitive exports controlled by U.S. government regulatory bodies. UPS has thus implemented several training programs aimed at improving its adherence to the regulations covering the electronic submission of Shipper's Export Declaration information.

In consideration of the effects that full mandatory AES reporting may have on the time-sensitive nature of our business, UPS respectfully submits the following comments on certain provisions of the proposed regulations.



Proof of Filing Citations and Exemption Legends

Census specifies that the required filing citations and exemption legends must be indicated on either the bill of lading, air waybill, or other commercial loading documents *attached* to the manifest. UPS contends that the outbound manifest is by definition a commercial loading document (usually the primary one) and since UPS already incorporates the printing of the necessary filing citations and exemption legends right on the face of the outbound manifest, requests that the re-wording of these sections to read: "...on either the bill of lading, air waybill, outbound manifest or attached to any other commercial loading document."

This minor modification would ensure that there is no confusion between these sections and Census' own definition (as shown on page 8205's Subpart A, section 30.1 – Purpose and definitions) which describes the *Manifest* as follows:

> A document listing and describing the cargo contents of a carrier, container, or warehouse. Carriers required to file manifests with the CBP Port Director must **include** a proof of filing citation, AES downtime filing citation, post departure filing citation, or exemption legend for all cargo being transported.

AES Downtime

The proposed regulations stipulate that in the event that a participant's (proprietary) Automated Export System becomes unavailable, the filer is to delay the export of the shipments or find an alternative filing method. Currently, only exports of licensed commodities are not permissible during AES downtimes. By UPS' estimates, less than 0.25% of all its exports (i.e. 1 in 400 shipments) are controlled by either a license or license exemption.

To change this regulation to constrain forwarders to delay thousands of exports during even the briefest of AES downtime periods -- instead of just the relatively few licensable exports -- would not only have a severe impact on a forwarder's usual business pace but also deal a potentially crippling blow to the routine flow of all outbound commerce. Because of this huge effect, UPS strongly requests that Census/CBP does not change the Downtime requirements for shipments of non-controlled commodities as originally stipulated in the AESTIR.

UPS, at this time, has no issue with the current policy that bars the exporting of licensable items during these infrequent downtime periods but simply questions Census' (or CBP's) un-stated justifications for proposing the prohibition of the release of the huge number of low-risk, non-licensable commodities as well.

Currently, UPS schedules the required, routine maintenance of its AES reporting modules around the lightest-volume timeframes of its entire work week, namely the off-peak hours of Sundays when the number of new export shipments being processed is extremely negligible. Likewise, our system stability is monitored 24/7 with the most up-to-date technology by a dedicated staff to ensure that the impact of any unexpected downtime is also minimized.

Despite these safeguards, no modern computerized system is immune from temporary failure – neither AES filers's nor even the government's own AES. If the government AES is allowed a "downtime" consideration, then why shouldn't the individual AES filers have one as well? To suggest that an AES filer with a proprietary reporting scheme try to "find an alternative filing method" during unexpected downtimes would be extraordinarily burdensome. And even though UPS would likely deem its use infeasible, the proposed discontinuation of the paper Shipper's Export Declaration would nevertheless remove the one most logical alternative filing option.



AES Downtime (continued)

Even considering the use of the government's AES*Direct* method as an alternative would prove unwieldy because:

1) of the additional training and authorization required for its use
2) although AES*Direct*'s general terminology closely mirrors UPS' proprietary system, the AES*Direct* input screens are still substantially different
3) entry would be confusing to users not routinely familiar with *AESDirect*'s operation and could thus lead to inaccurate filings

UPS has made a preliminary evaluation of the necessary re-writing of its AES reporting schemes to allow for -- in the event of a failure -- the instantaneous substitution of the proposed mandatory AESDOWN filing citations and determined that this requirement would be extremely difficult to accomplish, especially considering all of the factors of programming for an unknown event.

"Split Shipments" by Air

This proposal would substantially impact the UPS core and airline units since it mandates that the (air) carrier is responsible for annotating its outbound manifests with the piece count details of any shipment being split over multiple flights.

The nature of UPS' airline business is no different from any other carrier's. The factors which ultimately govern the final loading of cargo shipments onboard any aircraft are numerous and sometimes highly unpredictable. The technical "art" of achieving productive, yet safe aircraft weight-and-balance within our typically fast-paced and deadline-driven work environment is exceedingly complex. Cargo type, containerized loads, required fuel quantity and of course, eleventh-hour weather considerations all contribute to the many literally last-minute decisions on the possible off-loading or splitting of shipments.

The timing of the presumably *advance* reporting of split shipment details (there is no mention in the proposal whether revised manifests with "splits" could be annotated and presented *post*-departure) would be very taxing to carrier operations. The time-frames between a carrier's final loading close-out and their aircraft's actual departure are often tightly compressed and the reporting of "splits" on a strict pre-departure basis would thus impose excessive requirements on its operations. UPS is also unaware of any purpose that this proposal would serve as an enforcement tool for the government.



USPPI Request for EEI

Section 30.3(c) (2) (iv) stipulates that "Upon request, [the authorized agent's responsibilities will include], providing the USPPI with a copy of the export information filed in the manner prescribed by the USPPI."

UPS has two concerns with this proposal:

1. That the regulations do not specify the required, or even minimum EEI to be provided to the USPPI
2. That the USPPI *alone* can dictate the manner and/or format in which the EEI is provided by the authorized agent

UPS thereby requests a clearly stated and minimally acceptable EEI dataset definition and a rewording of this section to reflect that the agent's responsibility for providing the USPPI with a copy of the export information filed is to be in a "mutually agreeable format."

Conclusion

UPS respectfully submits these comments to the U.S. Census Bureau. Thank you for your consideration regarding this matter. If additional information is required, please contact either Pierre Clement or Janet Shearn.