

the NPRM proposed, and most of the minority in favor of the proposal indicated that it did not go far enough and recommended ways to improve it.

Comments in Favor of the Proposed Amendment

Eight of the 60 commenters favored adoption of the amendment proposed in the NPRM. These commenters include organizations representing customs brokers, freight forwarders, NVOCCs, importers, exporters, and/or retailers, and one organization representing producers and marketers of distilled spirits. All of these commenters favored adoption of the proposal, claiming that it would protect from disclosure what they consider commercially sensitive business confidential information submitted in accordance with the "24-hour rule." These commenters contended that release of this information will harm their competitive posture, expose their and their customers' shipments to a greater risk of theft, and pose a terrorist security threat to the nation. They pointed out that their information was not subject to disclosure prior to promulgation of the "24-hour rule" and contended that the "24-hour rule's" implementation, which they do not oppose, should not impose this negative impact on their businesses.

Despite their support for the proposed amendment, most of these commenters indicated their dissatisfaction with the particulars of the proposal and recommended several ways to improve it, variously including:

(1) dropping the documentation requirement (power of attorney and/or letter of authorization) applicable to the additional parties that could request confidentiality under the proposed regulation, on the grounds it is time consuming and onerous for importers/consignees to produce it and for the additional parties (NVOCCs and ocean carriers) to manage and submit it (many commenters, both for and against, were unsure whether the proposed regulation, which requires that the importer/consignee designate the NVOCC or ocean carrier as its attorney-in-fact, requires a power of attorney);

(2) allowing the additional parties filing confidentiality requests under the proposed regulation to retain the required documentation in their records rather than submit it with the confidentiality request;

(3) adding a general exclusion from the disclosure requirement for any information relative to FROB (Freight Remaining on Board) merchandise;

(4) allowing all NVOCCs to request confidentiality, whether or not they are licensed or registered with the Federal

Maritime Commission or they have the capacity to file information electronically;

(5) providing that a general grant of confidentiality apply to all information submitted by NVOCCs and ocean carriers under the "24-hour rule," not just importer/consignee identification information; and

(6) improving the process by reducing the incidence of erroneous disclosures and eliminating the biennial filing requirement.

Comments in Opposition to the Proposed Amendment

Fifty-two of the 60 commenters opposed adoption of the amendment proposed in the NPRM. These commenters include: U.S. manufacturers, producers, and importers; a publisher of trade information; a United States Attorney, Department of Justice; ocean carriers and shipping companies; market researchers and consultants; trade associations; port authorities; local and regional economic and business development organizations; offshore suppliers; and a U.S. Congressman. From their comments, several significant reasons for opposition to the proposed amendment emerged. Because of the number of individual comments opposing the proposal, they are consolidated and presented below according to subject.

The Proposed Amendment Goes Beyond the Terms of the Statute and Is Contrary to Congressional Policy

Many of the commenters opposing the proposed amendment contended that:

(1) The proposed expansion of the parties authorized to request confidentiality under the regulation strains the language of the statute and the intent of Congress and (2) this expansion would wrongly upset the "freedom of information—confidentiality balance" provided for under section 1431.

These commenters stated that allowing additional parties to request confidentiality under the regulation would lead to the filing of more requests and a corresponding reduction of available information. Also, according to these commenters, most or perhaps all of these additional requests would be authorized by importers or consignees who otherwise would not make the request of their own volition; instead, the NVOCCs and ocean carriers allowed to request confidentiality under the proposed regulation would seek authorization, for their own reasons, from their importer and consignee clients to file the confidentiality

requests. Thus, these commenters stated, access to information would be blocked, to the detriment of those who rely on that information, while the purpose of section 1431—excluding from disclosure the identities of importers and consignees for *their* protection—would not be served.

The Proposed Amendment Is Not Necessary

Many commenters contended that there is no need to amend the regulation. This contention has two parts. The first asserts that there is no need to amend the regulation because the "disclosure-confidentiality process" that is now in place under the statute and the regulation works well for both the trade community that utilizes the information and the importers and consignees who may request confidentiality if they so desire. These commenters repeatedly stated that the current law strikes the right balance between freedom of information and confidentiality. In this regard, these commenters pointed out that the NPRM did not identify a single problem, difficulty, or impediment facing importers or consignees under the current system that might warrant a fix to further the intent of the law.

The second part of the contention questioned the NVOCC community's claim to need protection from harm that would result from disclosure of the manifest information for which it now seeks to request confidentiality. These commenters pointed out that, for many years, under the current system, ocean carriers have not suffered harm requiring remedy despite the fact that they have not had the right to request confidentiality on behalf of their importer or consignee clients. They thus questioned the contention that a level of harm requiring remedy would result upon the release of that same manifest information submitted by NVOCCs authorized to file confidentiality requests under the proposed amendment.

The Proposed Amendment Harms Those Entities That Utilize Publicly Available Trade Information

Many commenters in opposition cited the broad extent of the harm that the proposed amendment would inflict on those many elements of the trade and related communities that utilize the disclosed manifest information for a wide variety of reasons. A long list of users of and uses for the information emerged from the comments. Some of the users are: Trade associations and other advocates for U.S. manufacturers/producers, importers, and exporters;