

port authorities; advocates for local, state, and regional economic and business development; carriers and others involved in shipping and shipping related businesses; a publisher of trade information; a market researcher and consultant; and law enforcement entities. Some of the uses are to: identify overseas markets; locate overseas suppliers; attract and develop customers; promote increased international trade and resulting economic growth; plan port expansion and development; compete with other ports for business; compile trade information to advise/assist business and trade clients; and enforce laws concerning counterfeit trademarks and unlawful foreign competition.

These commenters asserted that allowing additional parties to request confidentiality for importers and consignees, and the corresponding reduction of available information caused by this expansion, would result in serious harm to their competitive advantage and damage or ruin their businesses. These commenters asserted that CBP should not limit its evaluation of the matter to the harm that the NVOCC community alleges it would suffer, but should also consider the negative impact the change would have on other elements of the trade community.

Operational Burdens

A few commenters objected to the proposal on grounds that it would impose additional operational burdens on all parties and would result in a more bureaucratic and less efficient system. First, the NVOCC or ocean carrier would have to contact its importer and consignee clients to solicit the authorizations, requiring a considerable effort and a major document management task. The importers and consignees would have to prepare a power of attorney (or other document for attorney-in-fact designation) and a letter of authorization for a NVOCC or ocean carrier seeking to file a confidentiality request on their behalf, something they do not have to do under the current regulation. A few commenters asked if a set of such documents would have to be prepared for each NVOCC or carrier seeking authorization and if confidentiality would then be applied on a shipment-by-shipment basis or on a NVOCC/carrier-by-NVOCC/carrier basis.

Second, the NVOCC or ocean carrier would then have to submit the request along with the authorization letter to CBP, a more onerous task than merely submitting a request in the manner the

current procedure provides. Several asked whether a power of attorney would have to be submitted with the request and authorization letter. Others asked about recordkeeping requirements.

Third, these commenters indicated that the burden on CBP also would increase significantly in verifying and tracking authorizations and requests, suggesting creation of a more bureaucratic system with a more complicated document management component. Some asked how multiple requests (from different NVOCCs or carriers) for the same importer or consignee would be handled. Even if only one request per importer or consignee were required, which is not clear under the proposed regulation, CBP would have to determine if a request had already been filed on behalf of an importer/consignee each time it received a request for an importer/consignee. Also, if requests were not accompanied by the required document(s), CBP would have to request the document(s) or send the certification back to the filer, holding acceptance and processing of the certification in abeyance. If questions were raised about the legitimacy or details of the authorization letter or the power of attorney (or other document), if required and submitted, CBP would have to make inquiries.

The Proposed Amendment Poses a Security Risk

Another reason for opposition to the proposed amendment mentioned by a few commenters was the matter of security. Some contended that curtailing the quantity of available information would harm local, state, and federal security and law enforcement interests. Some stated that the fact that the information is not disclosed until after a shipment has arrived and been processed/released does not mean that the information would lack value. Meaningful investigative information could be gleaned after the fact, revealing patterns or past conduct that could be helpful in law enforcement or anti-terrorism security initiatives. One commenter's letter included a letter from a U.S. Attorney whose access to trade information assisted his office in obtaining convictions for a smuggling related crime.

Business Practices Adjustment

Several commenters in opposition complained that altering the disclosure/confidentiality process under the regulation would require further adjustments by those involved in the import and import servicing trades. For

example, one commenter stated that changing the content of information disclosed would result in an unfavorable change to its business practices and a negative impact on its bottom line.

CBP's Determination

After reviewing the comments, and upon further consideration of the matter, CBP has determined to withdraw the proposal. It is apparent that most of those who favored the idea behind the proposed regulation nevertheless believe that the regulation, as drafted, does not go nearly far enough; however, the plain language of the statute will not allow CBP to go nearly as far as they would prefer. Those who objected to the proposed regulation believe that it went much too far and that the status quo was preferable for many reasons. Thus, because such a substantial majority of the commenters did not favor the actual proposed regulation and the comments revealed such a strong split within the trade community, CBP has decided not to engage in any rulemaking activity in this area for these reasons and the reasons explained below.

CBP agrees with those commenters who stated that adoption of the proposed amendment would result in an increase in the number of confidentiality requests made under the regulation. CBP acknowledges that most of that increase would likely result from the solicitation of importer and consignee authorizations by NVOCCs and carriers allowed to make the request under the proposed regulation. In a recent month since publication of the NPRM, although certainly premature, one quarter of the confidentiality requests CBP received were made by NVOCCs on behalf of their importer/consignee clients. If the proposed amendment were adopted, the increase in the volume of confidentiality requests would, to a corresponding extent, result in less available information for those segments of the trade community that utilize and rely on that information. This, in turn, raises a legitimate question as to whether the proposal would have a deleterious impact on the "freedom of information—confidentiality balance" that the statute provides.

Regarding the terms of the statute, because most of the additional requests would be made on behalf of importers and consignees who might not otherwise make the request of their own volition, CBP has had to consider whether the proposed amendment would serve the interests of parties not intended to be beneficiaries of the law,