

may have some impact on business practices, it should prove to be a return time that is, on balance, reasonably prompt and commercially acceptable. The preference for the XTN number is understandable, but since the XTN is generated by the USPPPI or its agent and may be annotated on the export documentation without the shipment data having been transmitted to AES, this number is, and has repeatedly been, subject to abuse, which will make its continued use, as a general proposition, wholly unacceptable.

Comment: Under the proposed regulations, the exporter could present either the ITN number, the Option 4 filing number, or an exemption statement. It was asked whether this would also comply with the statute concerning the documentation of outbound waterborne cargo (19 U.S.C. 1431a). The CBP should clarify that under Option 4 filing and for exporters that were otherwise exempt from pre-departure filing, there would also be no requirement to provide separate shipping documents to the vessel carrier under 19 U.S.C. 1431a.

CBP Response: Issues relating to section 343(b) of the Trade Act of 2002, as amended (codified at 19 U.S.C. 1431a), fall outside the scope of this rulemaking. As made clear in the proposed rule (68 FR at 43592), section 343(b), requiring proper documentation for all cargo to be exported by vessel, will be the subject of a separate publication in the **Federal Register**. To the extent legally and operationally permissible, however, the administrative implementation of the requirements of section 343(b) will be synchronized and dovetailed with these regulations under section 343(a).

Comment: One commenter asked how the carrier would know whether the AES filer was the USPPPI or its agent.

CBP Response: All the carriers need to do is ensure that the proper AES proof of filing citation (including the ITN), the low-risk exporter citation, or an exemption statement is on the shipping documents that they receive with the cargo. The carrier is not required to check the validity of the ITN or the identity of the party presenting it.

Option 4 Filing (Post Departure)

Comment: The CBP and Census should grandfather existing Option 4 holders into the "new" Option 4 to be jointly constructed by the two agencies.

CBP Response: The CBP cannot guarantee that current Option 4 USPPPIs will retain the privilege under program requirements that have yet to be finalized. The current Option 4 was conceived prior to September 11, 2001,

and it is the goal of the Bureau of Census and CBP to ensure cargo safety and seaport security while at the same time fostering the continued smooth flow of commerce. The new Option 4 will emphasize volume, repetitive low-risk commodities and compliance.

Comment: The CBP should take into account those exporters who repeatedly shipped the same low-risk commodities to related parties.

CBP Response: The CBP does take such exporters into consideration. Current Option 4 is intended for repetitive exports of low-risk commodities by compliant USPPPIs. The CBP will explore with the Bureau of Census the possibility of using related parties as a requirement or factor to determine Option 4 eligibility.

Comment: Two commenters sought assurance that any revisions to Option 4 filing would not reduce the ability for legitimate, low-risk exporters (such as exporters of agricultural commodities) to qualify for such filing if they were otherwise in compliance, even though they did not meet minimum export volume requirements. Another commenter wanted the program expanded to additional companies that faced new lead time requirements.

CBP Response: The CBP and the Bureau of Census are in the early phase of redesigning the program. While export volume will be a significant factor, there may be an appeals procedure wherein a compliant low-volume exporter can demonstrate a legitimate need for Option 4 filing under the redesigned system.

Comment: Two commenters strongly urged the continuation of Option 4 filing for C-TPAT (The Customs-Trade Partnership Against Terrorism) members with low-risk commodity exports. Also, it was thought that such exemptions (as Option 4) and programs for exports should match those provided for imports.

CBP Response: Current Option 4 filing is available to compliant exporters of low-risk commodities, regardless of C-TPAT status. The CBP does not anticipate that this will change.

Automated Export System (AES)/ Technical Issues

Comment: Under the planned redesign of AES to be developed by mid-2004, air carriers would be able to send transportation data directly to CBP. Two commenters sought guidance on how the CBP electronic data interchange would be interfaced with the airlines' systems.

CBP Response: The system enhancement projected for completion in mid-2004 is the AES Commodity

Redesign which will improve the ability of the AES to process automated Shipper's Export Declaration (SED) information. These enhancements will not enable AES to accept electronic manifest information directly from air, rail, or truck carriers, nor will the new regulations require the exporting carriers to submit such manifest data via the AES. The vessel manifest module in AES will remain optional.

Comment: Three commenters questioned how CBP would notify the carrier of high-risk cargo that was targeted for inspection/examination. It was recommended that a predetermined time should be set following which a carrier could confidently assume that no further hold status would be issued for the cargo.

CBP Response: The AES commodity module is not capable of sending electronic hold messages to carriers, so the current methods of communication by fax and/or phone will need to continue. The CBP cannot set a time frame after which a carrier could assume no further holds. Given the current design and functionality of the system, commodity records are transmitted to AES on a transaction-by-transaction basis rather than as part of a manifest, where the end of the transmission is marked. Thus, not knowing which AES commodity transaction is the last for a particular conveyance makes it impossible for CBP to provide an absolute, finite time after which no further holds will occur.

Comment: The proposed outbound cargo reporting provisions should be changed so that motor carriers would not have to transmit specific data elements to AES.

CBP Response: Carriers are not responsible for transmitting the information required by section 343(a) of the Trade Act of 2002, as amended. Section 192.14(c)(4), as proposed and as appearing in this final rule, details carrier responsibility which, as already explained, is largely limited to collecting AES proof of filing citations (ITN), Option 4 exemptions, and regular reporting exemptions (see 15 CFR 30.50–30.58). Likewise, the transmission of all automated SED commodity data (which already includes data relating to the transportation of the cargo) by the USPPPI/Agent is covered in § 192.14(c)(1) and (c)(2) in this final rule.

Comment: Two commenters were of the view that the data elements for the estimated date of exportation and the port of exportation (proposed § 192.14(c)(2)(v) and (c)(2)(vi)) would cause potential difficulty for the motor