

**Advisory Committee on Commercial Operations to
Customs and Border Protection and Related Functions (COAC)
Subcommittee on Exports
Status Report
July 2015**

Background:

The Export subcommittee (“subcommittee”) was established on March 6, 2013, during the 13th term of the Commercial Operations Advisory Committee (COAC), with its objectives and scope consistent with the official charter of COAC. The 14th term COAC, at its first quarterly meeting on April 24, 2015, determined that the Exports subcommittee would continue its work during the 14th term.

COAC: Heidi Bray, Member and Elizabeth Merritt, Member

CBP: Michael Denning, Advisor, Cargo and Conveyance Security, Office of Field Operations
Deborah Augustin, Acting Executive Director, ACE Business Office, Office of
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14th Term Subcommittee Update – July 2015:

The Export Subcommittee’s 2015 commodity and manifest work is organized and proceeding as follows:

Option 4 Work Group

- The Option 4 Work Group was established to assist CBP in developing an enhanced model for the continuation of post departure filing of export information. The work group has provided a proposal that addresses CBP’s security screening concerns and allows for the continuation of post departure filing.
 - The Option 4 proposal is based off of CBP’s concept of Management by Account and would require, among other criteria, all current and future Option 4 filers to undergo a vetting process in order to be approved for continuation in the program. It also provides for predictive information that will allow CBP to confirm that export manifest data is consistent with the Option 4 filer’s business model as outlined in the air carrier’s “progressive filing model.”
- CBP responded to the Option 4 proposal with a “discussion paper” that identifies their goals for exports and potential strategies for meeting these goals. While the work group was pleased to have this discussion paper, it did not identify which data elements CBP needs in order to successfully target export shipments. We feel this information is critical in moving forward with the development of Option 4 and advanced e-manifest, and to ensure that any policy and process changes do not impede legitimate exports.
- Based on the above, the Option 4 work group will be putting forth the following for the COAC’s consideration as a recommendation:

- *As CBP moves towards implementation of advanced e-manifest and the ability to accommodate Option 4 and Census requirements, COAC recommends that CBP engage with Census to ensure that any policy and process changes do not unjustifiably impede legitimate exports. To this end, CBP in conjunction with Census, should begin by clearly identifying the export data it needs for security screening and export regulatory purposes, as well as when and why they are needed. Once those parameters are defined, CBP and Census should consult closely and collaboratively with Option 4 filers and their partner carriers to determine whether they can make all or part of those data elements available. If some, or all, of the data cannot be provided in line with above, CBP should investigate alternatives (e.g., usage of account-based management and predictive data) that address legitimate CBP security screening and Census regulatory control needs, without negatively impacting exports and their significant contribution to the U.S. economy.*

Manifest Work Group

- A single work group to address all modes of transport has been established in order to provide a more unified, “multi-modal” analysis of issues and development of recommendations. The work group will focus both on the pain points and areas of opportunities that have already been identified for each mode of transport individually, as well as those specifically applicable to transfers of cargo between modes, in order to ensure COAC recommendations take full advantage of the multi-modal potential provided by the ACE system.
- The manifest work group has begun discussion of the recently-issued FRN regarding an ACE Export Manifest for Air Cargo Test, and initial written commentary has been delivered to CBP. The work group was very pleased with the inclusion of freight forwarders in the pilot, who are critical to the early delivery of electronic data for risk assessment. At the same time, significant concerns were raised by the following components of the FRN:
 - No provision for progressive filing was provided, including no division of the data elements list and timeline requirements by their “shipment data” versus “transport data” characteristics, and no delineation of what data should be provided by forwarders versus carriers.
 - The timeline contemplated by CBP and put forth in the FRN is not achievable in the air cargo environment, nor was it discussed in advance with the trade via the COAC mechanism.
 - Data elements;
 - New export data elements not currently required on Form 7509 were introduced without advance trade discussion to determine feasibility or impact.
 - Mandatory elements that are not applicable to the air environment or that cannot be provided in the allowable message formats were included.
- Based on the above, the manifest work group is contemplating putting forth the following topics for the COAC’s consideration as recommendations:

- With regard to the FRN for an ACE Export Manifest for Air Cargo Test. In developing guidelines and SOPs for the practical conduct of the air automated export pilot, CBP should ensure that the concerns of the trade as set forth in commentary by the COAC Export Subcommittee are addressed, in particular regarding timelines, data elements, procedures for managing holds, and the enabling of a test of the progressive filing model.
- With regard to the publication of the FRNs for ACE export manifest tests for ocean, rail, and truck. The determination of 1) proper timelines for electronic data submission and 2) the set of data elements that must be transmitted at a given time is fundamental to developing an automated export regime that is maximally efficient and minimally deleterious to export operations and the flow of legitimate trade. CBP should ensure that the timelines and data elements contained within the FRNs announcing pilots for the ocean, rail and truck modes have been thoroughly vetted with the trade, and that trade concerns with regard to feasibility and negative impact have been mitigated to the full extent possible.
- With regard to the process for drafting, approving and publishing FRNs and NPRMs. The transformation that CBP is undertaking to move export processing from paper to electronic, and from individual silos to a one-government at the border, single-window approach, requires a paradigm shift with regard to how export reporting can and should work and significant associated regulatory change. Incremental, piecemeal approaches to the regulatory reform process and excessively long delivery timelines for associated FRNs and NPRMs are incompatible with what must be accomplished over the next 2-4 years. To better facilitate CBP's trade transformation strategy with regard to exports, the OR&R legal team should become an integral player in the substantive discussions taking place in the work groups of the COAC Export Subcommittee. Further, CBP should apply more command attention to ensure the process for publishing critical FRNs and NPRMs is streamlined and accelerated.

Subcommittee 13th Term Accomplishments:

- Given the statement of work, past subcommittee findings, and pending export regulatory changes, the Export Subcommittee began with the basics of export process mapping for each unique export type, producing an Education Package that identified pain points, areas of opportunity and potential solutions.
- Engaging a variety of members across the government and trade, a Master Principles Document was produced for One U.S. Government at the Border Cooperation for Exports. With the key concerns of the trade in mind, the document was designed to ensure the efficient management of cross border issues in a manner that reduces the cost of doing business. The principles establish a government/trade foundation upon which to build the future of data exchange, the determination of engagement expectations, and the development of a cooperative approach to achieve the appropriate risk-based strategies and standards that secure cargo movement and facilitate trade at the speed of business.
- The Export Process Work Group was established and charged with further analyzing the process flows and areas of opportunity identified in the export mapping exercise, and with providing specific recommendations for consideration by the subcommittee. The

EPWG was designed to address the 3 commodity types (licensed, non-licensed, and “Option 4”) and the 4 modes of transport (air, ocean, rail and truck) mapped in the 2013-14 exercise.

- The licensed commodity sub-group completed its work and delivered 18 specific recommendations (all approved) during the 13th Term final COAC Quarterly Meeting on February 11th, 2015.
- The air manifest sub-group began its work during the 13th Term, delivering one recommendation (approved) regarding freight forwarder participation in the electronic export manifest pilot during the 13th term COAC quarterly meeting on October 7, 2014, and will deliver additional recommendations during the 14th term.