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04/18/2005 05:14 PM

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To <c.harvey.monk.jr@census.gov>

cc <jerome.m.greenwell@census.gov>

bcc

Subject

Mr. Monk,

Attached please find the comments of the NAFTAZ, which I am forwarding on behalf of Ms. Phyllis Saathoff, NAFTAZ president.

Hard copy of this correspondence to be mailed to your office today. Thank you.

Regards,

Cynthia A. Robertson  
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Monk Census -FTZ 041805.pdf



## National Association of Foreign-Trade Zones

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April 18, 2005

U.S. Census Bureau  
Room 2049  
Federal Building 3  
Washington, D.C. 20233

Attn: Mr. Harvey Monk, Jr.  
Chief, Census Foreign Trade Division

Re: Notice of Proposed Rulemaking and Request for Comments  
Foreign Trade Regulations (FTR)  
*Federal Register* Docket Number 031009254-4355-02

Dear Mr. Monk:

The National Association of Foreign-Trade Zones ("NAFTZ") is a non-profit, trade association for individuals, public entities, and companies involved in the U.S. Foreign-Trade Zone Program. Its purpose is to promote and improve foreign-trade zones and their use. To further these goals, it often works with U.S. government regulatory and legislative bodies on the unique challenges and issues posed by foreign-trade zones. The current membership totals 810 public entities, companies, and individuals.

The NAFTZ appreciates the opportunity to provide these comments on the proposed Foreign Trade Regulations. We believe the revised procedures will positively impact foreign-trade zone operations. However, we believe several issues need to be further clarified.

1. Section 30.6 – Electronic Export Information Data Elements: While the U.S. state of origin is a *mandatory* data element required under Section 30.6(a)(4), the foreign-trade zone number is a *conditional* data element under Section 30.6(b)(3). This foreign-trade zone data element should be mandatory as well. If the product is not being removed from a foreign-trade zone, then "000," "N/A," or some other designation could be entered. We are concerned that if the foreign-trade zone field is not a mandatory data element, then goods being removed from a zone could be processed with only the state and not with the foreign-trade zone number. Consequently, Census would not be receiving the correct data on the origin. This has been a significant area of concern for paper SEDs

because foreign trade zone numbers have been frequently omitted, and it has been one of the major causes of the discrepancies in export statistics between Census and the Foreign-Trade Zones Board.

2. Section 30.52 – Foreign-Trade Zones: This section covers goods that are withdrawn from an FTZ for export, domestic consumption, or entry into a bonded warehouse. It also covers the admission of goods into FTZs on a CBPF 214. However, the language in the proposed section is not consistent with FTZ nomenclature. To properly address foreign-trade zones, we believe that it is critical for the language to be revised to reflect the correct, legal FTZ nomenclature. Goods are “admitted” into FTZs, not “entered.” 19 C.F.R. § 146.1(b). Entry of FTZ goods occurs at the time they are withdrawn from the FTZ and are “entered” into U.S. commerce. 19 C.F.R. § 146.62. Recognition of this distinction requires revision to the first and fifth sentences.

Also, the proposed Section 30.52 does not include the process for moving goods in-bond on Immediate Transportation (I.T.) entries between the U.S. and Puerto Rico. As Census filings are still to be required for shipments between the Continental U.S. and Puerto Rico, and very substantial FTZ zone-to-zone activity occurs between the U.S. and Puerto Rico, the specific process for moving goods in-bond should be clearly set forth.

3. Subpart H – Penalties: This subpart covers criminal penalties, civil penalties, and forfeitures under both criminal and civil penalties. The current regulations do not make it clear whether the forfeiture process included in Section 30.71 is handled by Census or Customs. Section 30.72(d) (“*Applicable law for delegated function*”) stipulates:

If, pursuant to Title 13, U.S.C., section 306, the Secretary delegates functions addressed in this part to another agency, the provision of law of that agency relating to penalty, assessment, remission or mitigation of such penalties, and limitations of action and compromise of claims shall apply.

The applicable agency jurisdiction and authority should be made clear. A lack of clarity will make it difficult for exporters to properly structure their activities and raise potential inefficiencies.

4. Section 30.73 – Enforcement: This section stipulates that ICE and CBP may enforce the provisions of this part and conduct investigations under this part. A mitigation process is provided in Section 30.72, but no Prior

Mr. Harvey Monk, Jr.  
April 18, 2005  
Page 3

Disclosure provision is explicitly made available. Since Customs provides a Prior Disclosure process under 19 C.F.R. § 162.74 and will potentially be enforcing or conducting investigations under the Foreign Trade Regulations, the lack of an explicit Prior Disclosure provision in Section 30.72 will create confusion concerning the availability, appropriateness, and process of prior disclosing issues that are identified. We strongly believe that a Prior Disclosure process should be explicitly included in the Foreign Trade Regulations.

The NAFTAZ has worked with the Bureau of the Census, Foreign Trade Division, for many years in good faith to address the unique issues posed by the U.S. Foreign-Trade Zone program. In order for the final regulations to provide the greatest benefit to the trade and Census, we respectfully request that the proposed regulations be revised as explained herein. Thank you for the opportunity to file these comments. We look forward to working with you in revising these regulations and our continuing relationship.

Very truly yours,



Phyllis Saathoff  
President

PS: jmh