Comments of the

World Shipping Council

Submitted to

U.S. Customs and Border Protection

Department of Homeland Security

In the matter of

Notice of Proposed Rulemaking

Changes to the In-Bond Process

Docket Number: USCBP-2012-002

RIN 1515-AD81

April 23, 2012
The World Shipping Council (WSC), a non-profit trade association representing twenty-nine liner shipping companies that carry over 90% of U.S. international containerized trade, files these comments to U.S. Customs and Border Protection (CBP) in response to the notice of proposed rulemaking (NPRM) published on February 22, 2012, 77 Fed. Reg. 10622, which invites public comment on proposed amendments to the in-bond regulations. We appreciate CBP’s efforts to work with the regulated trade community on its proposal to both automate and modify certain aspects of the current in-bond process. We respectfully offer the following comments on the NPRM.

1. Elimination of Paper In-Bond Application

The NPRM proposes to require carriers and other parties authorized to file in-bond applications (CBP Form 7512) to file such applications electronically using the Automated Commercial Environment (ACE). The NPRM would also modify the list of parties that may file the electronic in-bond application to include: 1) the carrier that brings the merchandise to the origination port; 2) the carrier that is to accept the merchandise under its bond (or a carnet) for transportation to the port of destination or export; and 3) any person who has a sufficient interest in the merchandise as shown by the bill of lading or manifest, a certificate of the importing carrier, or by any other document acceptable to CBP.

**Comments:** WSC and its Member companies support CBP’s proposal to require electronic filing of in-bond applications and to use ACE as the CBP-approved EDI system for the receipt, processing, and disposition of such applications. We have no comments on CBP’s proposed modification to the list of parties that may file the electronic in-bond application.

We note that the preamble to the NPRM contains a statement that is not consistent with the regulatory text. Page 10628 of the NPRM states “Paragraph [18.1] (d)(2) ... also requires that an in-bond application be filed for each conveyance transporting the shipment” (emphasis added). This statement is not supported in the proposed regulatory text in Section 18.1 (d)(2), which simply requires that the in-bond application be submitted electronically to CBP. This statement in the preamble is also inconsistent with current and proposed electronic in-bond filing practices, in which one party initiates an in-bond movement that may later be transported on multiple different conveyances.

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1 Liner vessels operate on fixed schedules among pre-determined ports. The Council’s member lines operate containerships, roll-on/roll-off, and car carrier vessels. A list of the Council’s members may be found at [www.worldshipping.org](http://www.worldshipping.org).
2. **New Information Requirements for In-Bond Shipments**

The NPRM proposes to amend 19 CFR 18.1 to require the submission of additional data elements in the electronic in-bond application. Each of these proposed additional data elements is discussed below:

**A. Description of the merchandise:** The NPRM proposes that the six-digit Harmonized Tariff System number (HTS-6) of the merchandise must be provided, if available. If it is not available, the in-bond application must contain a detailed description “setting forth the exact nature of the merchandise with sufficient detail to enable CBP and other government agencies to determine if the merchandise is subject to a rule, regulation, law, standard or ban relating to health, safety or conservation”.

**Comments:** Today ocean carriers provide to CBP in their “24 Hour Rule” advance electronic manifests a narrative cargo description and/or the HTS-6 of the merchandise, as provided to the carrier by the shipper. When ocean carriers today file electronic in-bond applications for a given bill of lading via the Automated Manifest System (AMS), they use the cargo description and/or HTS-6 from the ocean carrier’s advance manifest.

Carriers cannot be expected to know what narrative cargo description detail CBP and other government agencies would need to determine if a particular type of merchandise is subject to one of their rules. If a cargo description is acceptable for the purpose of filing a manifest, then that description should be sufficient for an in-bond application. Because the carriers’ manifest data systems are aligned with the in-bond application filing systems, it is very important that the cargo descriptions allowed and used by carriers in their manifests continue to be accepted as the cargo descriptions that can be used in the in-bond application, and that this regulation not require some nebulous, ill-defined cargo description requirement that is more than what is provided in an acceptable cargo manifest, but not otherwise defined.

In addition to collecting the cargo description from the ocean carrier’s advance manifest, CBP now collects the HTS-6 for every shipment bound for the United States in an importer security filing (ISF), pursuant to the “10 plus 2” rule. This includes immediate exportation (IE) and transportation and exportation (T&E) shipments. For any given bill of lading number, CBP thus already has the HTS-6 cargo description from the party with the most direct knowledge about the cargo.

We therefore wish to confirm that the proposed rule is not creating some kind of new cargo description requirement for in-bond applications, and that use of the cargo description from carriers’ manifests and the HTS-6 from the associated ISF filings will satisfy CBP’s cargo description needs for the purposes of approving in-bond movements.
B. **Health, safety or conservation:** The proposed regulatory text in 18 CFR 18.1(d)(1) would require the carrier or other responsible party submitting the electronic in-bond application -- if it knows that the merchandise is subject to any health, safety or conservation rules, regulations, laws, standards, or bans -- to identify such laws or regulations and the U.S. government agency responsible for enforcing these requirements.

**Comments:** The purpose of the cargo descriptions provided in the cargo manifest and in the ISF is, among other things, to enable the government to identify which cargoes may be of interest for various legal purposes. Carriers can provide and are willing to provide CBP with whatever cargo information the shipper has provided the carrier, but carriers’ documentation personnel are not legal experts competent to make legal assessments of every U.S. regulation that may apply to a particular commodity. It would be unreasonable for CBP to expect carriers to be in a position to reliably interpret and apply thousands of U.S. regulations from dozens of U.S. government agencies regarding the treatment of various types of cargo.

We recognize that the proposed regulation would apply this requirement only where “the carrier or other responsible party submitting the in-bond application knows” this information, but this does not provide sufficient certainty for carriers because the term “knows” could be interpreted to go beyond “actual knowledge” and include “constructive knowledge” or what someone in retrospect “should have known”.

A carrier can transmit to CBP what its shipper customer has told it about the cargo, but an ocean container carrier transports tens of thousands of different types of merchandise and cannot be expected to possess subject matter expertise regarding the application of all government agencies’ trade laws, regulations and requirements to all kinds of cargo that may be transported by a containership.

The cargo descriptions being provided to the government from carriers’ manifests and the HTS-6 from the associated ISF filings should enable CBP to assess whether a particular cargo shipment may be authorized to move in-bond. If there are specific commodities for which CBP requires more than an HTS-6 cargo description to be able to make an in-bond determination, then CBP should consider publishing (and providing to carriers and shippers) a list of HTS codes for the commodities that require a higher level of specificity (e.g. HTS-10) to be provided in the in-bond application. Should CBP determine that it needs HTS-10 level data for any particular commodity being imported and transported in-bond, we would recommend that CBP make it clear whether such higher level of detail would be needed for IE and T&E movements of that commodity. Our expectation would be that IE and T&E movements would **not** need the level of detail that IT movements might need.
C. **Prohibited or restricted merchandise:** The NPRM provides that an in-bond application must identify if the goods are “prohibited or subject to entry restrictions”.

**Comments:** The U.S. government establishes and modifies restrictions on various imported goods very frequently. Certain types of automobile tires manufactured in China, or shrimp from Vietnam, for example, can have restrictions applied, modified or removed, on a frequent basis. Again, ocean carriers can be expected to file cargo descriptions complying with a defined level of detail, but they cannot be reasonably expected to maintain knowledge of all the various cargo entry restrictions that the various U.S. government agencies may establish.

As suggested in the previous comment, if CBP determines that there are specific commodities for which an HTS-6 cargo description is not sufficient to make an in-bond determination, then CBP should consider publishing a list of HTS codes for the commodities that require a higher level of specificity (e.g. HTS-10) to be provided in the in-bond application.

D. **Other identifying information:** The proposed rule would require the in-bond application to include “the visa, permit, license, entry number or other similar number or identifying information ... issued by the U.S. Government, foreign government or other issuing authority”.

**Comments:** Ocean carriers do not currently collect this information from their shipper customers, and would need to change their booking and documentation systems to provide such data. While this information may be needed when entry of the goods is made, we do not understand why this information is needed to facilitate an in-bond movement authorization. This requirement would complicate the in-bond documentation process.

If CBP retains this provision, a carrier must be allowed to provide this information on the basis of the information provided to it by the shipper, because the carrier will have no direct knowledge of such information.

E. **Ultimate Destination:** The NPRM would require the in-bond application to include the ultimate destination in the U.S. or abroad of the merchandise to be transported in-bond.

**Comments:** The carrier that files the electronic in-bond application has no way to know what a given cargo shipment’s “ultimate destination” is. The carrier can only provide CBP with information about the final destination of the cargo movement under the carrier’s contract of carriage with the shipper. What the shipper does with the cargo after the carrier has performed and completed its contract of carriage is not within the knowledge of the carrier. The proposed rule should be amended to clarify that for a
carrier filing an in-bond application the final destination of the cargo movement under the carrier’s contract of carriage with the shipper is acceptable.

F. **Container and Seal Number:** The NPRM would require submission of the container number of the container in which the merchandise is being transported and the seal number of the seal affixed to the container.

**Comments:** We note that the container number and seal number are data elements that are today filed to CBP in the carrier’s advance electronic manifest submission pursuant to the “24 Hour Rule”. Under current electronic in-bond application procedures, the ocean carrier files an EDI message that is directly tied to the bill of lading information that was provided in the advance manifest prior to vessel loading. Information associated with that bill of lading, such as the container number (or numbers if multiple containers are covered by a single bill of lading) and seal number, would thus already be present in CBP’s data system when the electronic in-bond application is filed.

The electronic in-bond application is filed against a given bill of lading, and the container number and seal number are already part of the bill of lading record. Carriers already have procedures in place to electronically amend the bill of lading data when a seal change occurs or if a container number was entered incorrectly. There is no reason why the in-bond applicant should be required to re-submit the container number and seal number in the electronic in-bond application. This would only add redundant data filing requirements in another documentation procedure, and add unnecessary cost and process to the in-bond process.

We recommend that CBP clarify the proposed rule to make it clear that 1) container and seal numbers do not need to be filed as part of the in-bond application since they have already been reported to CBP as part of the advance electronic manifest, and 2) that seal number changes do not need to be reported separately to CBP in an amended in-bond application if such changes have already been provided to CBP through a bill of lading amendment.

3. **Sealing of Containers**

The NPRM proposes to amend 19 CFR 18.4 to require the bonded carrier to ensure that containerized and carload (rail) shipments are properly sealed and that the seals remain intact until the merchandise arrives at the port of destination or port of export.

**Comments:** We request clarification of a statement in the NPRM. Section 18.4(a)(1) states, “The seals to be used and the method for sealing conveyances, compartments, or packages must meet the requirements of §§ 24.13 and 24.13a of this chapter [19 CFR].” These
two sub-sections of 19 CFR contain requirements for the use of color-coded seals used on “cars, compartments, and packages” moving in-bond.

We request CBP’s confirmation that the requirements of 19 CFR 24.13 and 24.13a do not apply to containerized ocean cargo shipments being transported in-bond that are secured with a high security seal meeting applicable ISO standards.

4. 30-Day Transit Time Between Ports

The NPRM proposes to amend 19 CFR 18.1 to require in-bond merchandise to be transported to its port of destination or export within 30 days of the date that CBP provided movement authorization to the in-bond applicant. The 30-day clock would start on the date CBP provides movement authorization to the in-bond applicant. Neither the filing of a diversion to another port nor the filing of a new in-bond application would extend the 30-day deadline. In-bond applicants may request an extension to the deadline for a given shipment by submitting a request to CBP via the approved electronic data interchange.

**Comment 1:** Section 18.1(i)(1) of the proposed rule indicates that the 30-day transit time clock would commence on the date CBP provides movement authorization to the in-bond applicant. It is common practice for ocean carriers to file in-bond applications – and receive in-bond movement authorizations from CBP – well prior to the arrival of the vessel to the port where the in-bond merchandise will be discharged from the vessel. If our understanding of the NPRM is correct, in such cases, the 30-day clock would commence prior to the arrival of the cargo to the United States, which would subject parties that file their in-bond applications early to a shorter in-bond transit time than parties that file their in-bond applications just before or upon vessel arrival.

We recommend that CBP amend the proposed rule so that the 30-day in-bond transit time clock commences when the vessel carrying the in-bond cargo arrives in the U.S. port rather than when CBP provides the in-bond movement authorization.

**Comment 2:** Section 18.1(i)(2) allows an in-bond carrier or other applicant to electronically request an extension from CBP to the 30-day in-transit time limit. We request that CBP describe how this electronic extension request is to be submitted. For example, should the in-bond applicant file a new in-bond application, file an amendment to the bill of lading listed in the original electronic in-bond application or take some other action?

**Comment 3:** Section 18.1(i)(3) allows CBP or any other government agency with jurisdiction over the merchandise to shorten the in-transit time to less than 30 days and states that notification of this would be provided in the in-bond movement authorization. Rather than simply communicating that the shipment in-transit time has been shortened in the free-form text remarks of the movement authorization, we request that CBP establish a new disposition
code that can be returned to the in-bond applicant to indicate that the shipment has been shortened. This code will ensure that the carrier will be aware of the restriction, and it can then examine any free-form text explanation of the shortened time for the details of the restriction.

5. Diversion of In-Bond Cargo

The NPRM proposes to amend 19 CFR 18.5 to require in-bond applicants to electronically request permission from CBP prior to diverting in-bond merchandise to another destination. Upon receipt of the diversion request, CBP would conduct a risk assessment of the request and then provide an electronic approval or denial back to the applicant.

Comments: While we do not oppose CBP’s proposal to require carriers and other in-bond applicants to provide electronic notification to CBP of a diversion of in-bond cargo, creating a system in which the carrier must wait for CBP’s permission to divert cargo from one port to another would likely delay such commerce, and would not improve CBP’s ability to track in-bond cargo movements. Rather than setting up a system in which carriers must wait for approval of each and every in-bond diversion request, we recommend that CBP employ a system under which carriers must electronically notify CBP of an intended diversion prior to executing the diversion, but would be allowed to execute the diversion unless CBP denied the diversion and placed the cargo on CBP hold. This would address the purpose of the regulatory objective, which is to enable CBP to identify the ultimate destination of a diverted shipment, but it would not unnecessarily impair the efficient transportation of the goods.

6. Report of Arrival

The NPRM proposes in 19 CFR 18.1 to require the carrier to electronically report to CBP the arrival of the in-bond merchandise and the physical location of the merchandise within the port of destination or the port of export. This information must be reported no more than 24 hours after arrival (Note: the current deadline for reporting arrival of in-bond merchandise is 48 hours).

Comments: The NPRM requires that the physical location of the in-bond merchandise within the port be reported in the arrival message when the goods arrive to the port of destination or the port of export. The NPRM does not, however, define what it means by “physical location of the in-bond merchandise within the port”. It is our understanding that every bonded facility to which in-bond cargo may be delivered, with the exception of land border crossings into Canada and Mexico, must have a CBP-issued Facilities Information and Resources Management System (FIRMS) code.
We recommend that CBP amend the proposed rule to require the reporting of the FIRMS code of the bonded location at which the in-bond merchandise arrived instead of the “physical location of the in-bond merchandise within the port.” For shipments that will be exported across a land border, we recommend that CBP accept an alternate location code if a FIRMS code does not exist for the location where the goods will be exported.

Second, the party that today files the in-bond application is required to report the arrival of the in-bond merchandise within 48 hours. The NPRM would shorten this deadline to 24 hours after the arrival of the merchandise. While reporting the arrival of merchandise to an in-bond location within 24 hours may not pose a problem during the regular Monday to Friday work week, it would pose a problem for shipments that arrive late on Friday or over the weekends, because many in-bond arrival locations do not report the arrival of cargo on the weekends. Cargo arrivals that occur over the weekend are processed the first business day after the weekend (i.e. Monday morning). We therefore recommend that CBP retain the original in-bond arrival reporting deadline of 48 hours or instead require that in-bond arrivals be reported to CBP not more than one business day after the arrival has occurred.

7. Split In-Bond Shipments

The NPRM proposes in Section 18.24 (b) to require that the splitting of shipments for exportation be initiated within two days of the date that the split shipment was authorized.

Comments: While we have no comments on the proposed procedures for splitting in-bond shipments, we do not understand what it means to “initiate” the movement of the split shipment within two days of the date the split shipment is authorized. Does it mean that one or all parts of the split shipment must be exported within two days? If so, then it will be very difficult to comply with this requirement because the exporting vessel may not be in port or be available to export the split shipments within that very short timeframe.

We also note that regular immediate exportation (IE) in-bond shipments are allowed by the proposed rule up to 15 days to be exported after the cargo has arrived at the port of export. If CBP is concerned that parties may seek to split in-bond shipments to restart the 15 day clock, then CBP should require each resulting portion of a split shipment to be exported not later than 15 days after the cargo arrived in the port of export.

8. Transshipment of In-Bond Merchandise to Another Conveyance

Section 18.3(a) of the NPRM would require that transshipment of in-bond merchandise from one conveyance to another be electronically reported to CBP by the current in-bond carrier before the transshipment occurs. Applied literally, this would require an electronic
notification to be sent to CBP every time the in-bond shipment passes from one carrier to another.

**Comments:** The proposal to require the in-bond carrier to report, via EDI, the transshipment of in-bond merchandise from one conveyance to another presents a number of problems and questions.

An ocean carrier that files an in-bond application, and on whose bond the shipment is authorized, often will assume the transportation responsibility for arranging the delivery of the goods to the in-bond destination, and this frequently involves numerous intermodal transshipments. For example, a shipment that arrives and is discharged from a ship in Long Beach and is to be shipped in-bond to Indianapolis, Indiana might first be drayed by truck ten miles from the port terminal to an inland rail yard, where the shipment is put on one train that transports the cargo to an inland rail hub in Kansas City, where it is then transshipped to a second train that transports the shipment to Chicago, where it is then transported by truck to the in-bond destination. The proposed regulation would appear to state that this example would require the in-bond carrier to provide multiple EDI notifications to CBP. This would make the continued efficient transportation of such cargo impossible, and we do not believe that this is CBP’s intention.

CBP’s in-bond regulations already require that CBP be notified when in-bond goods arrive at a marine terminal, arrive at the final port of destination or export, or are diverted or split by the in-bond issuing carrier. We request CBP to clarify this in the final regulation.

9. Time to Export

Sections 18.7(a)(2) and 18.26(d) of the NPRM would require that transportation and exportation (T&E) shipments and immediate exportation (IE) shipments be exported within 15 calendar days after the filing of the report of arrival for the shipment at the port of export. The current deadline for the exportation of T&E and IE shipments is 30 days after the goods have arrived at the port of export.

**Comments:** CBP is proposing to reduce the amount of time that T&E and IE shipments have to be exported following their arrival to the port of export from 30 days to 15 days. While we appreciate CBP’s desire to ensure that cargo does not sit at a port of export for an unreasonable amount of time, there are legitimate situations in which more than 15 (and up to 30) days would be needed to export cargo from the port of export. For example, many vessel operating companies offer services to a given terminal on a bi-weekly basis. If a cargo container is bumped from its scheduled conveyance due to an overbooking, overweight condition on the ship, or for another operational reason, that cargo container would remain in the port for more than 15 days awaiting the next ship. This situation could also occur if one of
the vessels in the bi-weekly service is forced to skip a given port due to weather or a vessel or facility-related contingency.

We recommend that CBP retain the current 30 day deadline for the exportation of T&E and IE shipments that have arrived at the port of export.

10. Monitoring and Closing In-Bond Shipments

Under current electronic in-bond processing in AMS, it is possible for an ocean carrier’s IRS number to be used by a third party to cut an in-bond movement without the carrier’s knowledge. While the ACE M1 functionality will allow ocean carriers to better control which parties are authorized to use the carrier’s IRS number to cut an in-bond, carriers need to be able to know when their bonds are invoked by a third party so that the carrier can close any in-bonds cut against the carrier’s IRS number that the third party filer fails to close.

Comments: To enable ocean carriers to monitor when their IRS numbers are used to cut in-bonds, we recommend that CBP modify the EDI in-bond message set (350) for M1 to include two additional pieces of information: 1) the SCAC of the bond holder, and 2) the SCAC or filer code of the party that opened the in-bond movement.

We also recommend that CBP develop a mechanism within ACE M1 that would allow an ocean carrier to electronically close an in-bond that the in-bond filer created in the Automated Broker Interface (ABI) --using the ocean carrier’s IRS number -- but then never closed in ABI. This would enable ocean carriers, none of whom use ABI, which is a broker filing system, to use ACE M1 to close in-bonds cut against the carrier’s IRS number.

11. Short Shipments

Section 18.6 of the proposed rule would require the carrier to notify CBP electronically when an in-bond shipment arrives at the port of destination or the port of export and a portion of the cargo covered by the original in-bond application is “short”. The proposed rule would also require the submission of a new electronic in-bond application to transport short-shipped packages in-bond to the port of destination or port of export.

Comments: It is not clear what CBP means by a “short shipment” in the NPRM. Does a short shipment in Section 18.6(a) mean that a portion of the shipment covered by the original in-bond application did not arrive with the rest of the shipment? If so, short shipments would occur for routine multiple container in-bond shipments that cannot be shipped on a single truck or rail car.
For example, if one bill of lading and in-bond application covers five containers discharged from a ship in Long Beach that are to move in-bond to Chicago, all five containers cannot be placed on the same truck, rail car or perhaps even train for the in-bond movement to Chicago. Since the five containers will need to be transported on separate trucks, rail cars or trains, each of the five containers in the in-bond shipment could arrive to the bonded facility in Chicago hours or even a few days apart, even though they are part of the same bill of lading and in-bond movement. Under normal procedures, this five-container in-bond shipment will not be “arrived” in Chicago until all five containers arrive at the bonded facility. Requiring the in-bond applicant to make an additional “short-shipment” notification to CBP in the above scenario would provide no apparent benefit.

We recommend that CBP clarify what it means by a short shipment in the proposed rule so that short shipment notifications would only apply when a portion of an in-bond movement fails to arrive at the in-bond destination within a reasonable period of time after the other portions have arrived.

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