



WORLD SHIPPING COUNCIL  
PARTNERS IN TRADE

Comments of the  
World Shipping Council

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Submitted to the  
Bureau of Customs and Border Protection  
Department of Homeland Security

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In the matter of  
Notice of Proposed Rulemaking  
Importer Security Filing and Additional Carrier Requirements

**Docket Number:**  
**USCBP -2007-0077**  
**RIN 1651-AA70**

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March 3, 2008

## **Introduction**

The World Shipping Council (WSC or “Council”) begins these comments with a recognition that the various actors in international maritime commerce must continue to work closely with the U.S. government and other governments to improve the security of that commerce. This necessarily involves a multi-faceted and multi-layered strategy and set of implementing regimes.

For containerized maritime cargo transportation, the Department of Homeland Security (DHS) and Customs and Border Protection (CBP) strategy of using risk assessment and targeting techniques to review all containerized cargo shipments before vessel loading is logical from a security, an operational, and a practical perspective. The Council and the liner shipping industry support it.

The Congress, DHS, the Commercial Operations Advisory Committee (COAC), the Government Accountability Office (GAO), cargo security experts, and the industry all have recognized that reliance on carriers’ cargo manifest data under the existing “24 Hour Rule”, while a fine start in developing effective security screening capabilities, has significant limitations. The present system provides either no or unreliable data regarding the commercial parties involved in buying and selling the goods, where the goods are originating and who produced or supplied them, where the goods are ultimately going, and where and by whom the container was stuffed.

This Notice of Proposed Rulemaking (NPRM) is the culmination of several years of consultation by CBP and DHS with the private sector, and is mandated by Section 203 of the SAFE Port Act. No one who has been following the government’s consideration of how to enhance containerized cargo security for the last four years can be surprised by this NPRM.

This NPRM proposes that the carrier controlled shipment data that is currently submitted to the government’s cargo risk assessment system should be supplemented in order to provide better security risk assessment capabilities. Currently, there is no data that is required to be filed into the government’s container shipment targeting system by the U.S. importer or the foreign exporter that can be used in the pre-vessel loading security screening process. This occurs, even though these parties or their agents possess shipment data that government officials believe would have security risk assessment relevance that is not available in the carriers’ manifest filings, and notwithstanding the fact that the law requires the cargo security screening and evaluation system to be conducted “prior to loading in a foreign port”. This NPRM also requires new additional data from carriers.

Implementation of this “10 plus 2” NPRM will not be simple or cost-free, but the security logic of the proposal is evident. A system that bases the nation’s container security screening strategy on the information in a carriers’ bill of lading will continue to

be the subject of legitimate criticism from Congress, the Inspector General, GAO, and anyone else performing a critical analysis of present security tools.

The Council's following comments are made in full support of the strategy behind the NPRM, and in an effort to identify technical and practical issues that should be addressed in order to facilitate the smooth and effective implementation of the proposed new regime. Wherever the Council's comments have identified an issue of concern in the NPRM, we have tried to offer a recommended solution.

A final point regarding this initiative is its relationship to trade continuity in the event of a transportation security incident involving containers. While this initiative is needed to improve the government's ability to detect security questions and to prevent them from disrupting commerce or threatening populations, it could also be very important in the event the government had to manage the consequences of a major maritime security incident involving a container. The "10 plus 2" initiative would enhance the government and industry's ability to analyze and respond to what may have happened, and to determine what trade may be allowed to continue – an issue the trade community and the government insist is a priority concern.

## **I. Comments on the Importer Security Filing**

### ***A. Visibility into Importer Security Filings (ISFs)***

#### **Comment #1: Messaging Needs of Ocean Carriers**

Under the NPRM, an ocean carrier would not have visibility into whether an importer has made its ISF filing with CBP. The NPRM provides that CBP will provide the ISF filer with an electronic acknowledgment of receipt; thus, the ocean carrier would not have any ISF information (unless it were the filer of the ISF for the importer).

Ocean carriers recognize and accept this for several reasons. There is no way an ocean carrier would know how many importers' shipments there are or should be in a container, particularly with consolidated containers where the ocean carrier's customer is a consolidator. There is often no commercial relationship between the importer and an ocean carrier. An ocean carrier would have no use for the millions of ISFs that will be generated, nor, if it received such ISFs, would it have any ability to know if all the ISFs that should have been filed had been filed.

The NPRM provides that ISF filing regulatory compliance is an issue between the importer and CBP. A carrier will load containers for transport to the U.S. unless CBP issues a Do Not Load (DNL) message.<sup>1</sup> Thus, the impact of the ISF on the ocean carrier

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<sup>1</sup> We would expect that the agency would not use DNL messages in the initial implementation stages of this effort, and that "hold" messages at the U.S. discharge port and/or fines may be used, but also

would seem to be dealing with any DNL messages at the foreign port of loading or “hold” messages at the U.S. port of discharge that may arise from the filing or non-filing of the ISF.

The Council and its Member lines wish to emphasize that, while the industry can work with CBP and the trade on many implementation and enforcement strategies, including DNL and “hold” messages, “do not unlade” messages would be an entirely inappropriate enforcement mechanism. The operational and commercial chaos that would be created by allowing a container to be loaded onto a vessel destined to the U.S., but not allowing it to be unloaded would be immense. We strongly urge CBP not to use this tool except in the most dire security situations.

What the ocean carrier will need from CBP is timely receipt against its AMS manifest filing of any DNL message that CBP issues based on the filing or the non-filing of an ISF -- whether the ISF filing was made via AMS or ABI and regardless of who filed the ISF.

**Comment #2: The Need for Unique ISF Filing Acknowledgments  
and Importer Visibility to its ISFs**

The Council is aware that some non-vessel operating common carriers (NVOCCs), non-NVOCC consolidators, and their customers are concerned about how this system will work in practice, and how they can be sure that one importer’s failure to file its required ISF does not delay the loading or release of all the shipments in a consolidated container. We also understand that some importers will want the CBP system to allow them to check to see if an ISF for their shipment has been filed in a timely manner, particularly considering that they may be subject to penalties if their agent failed to perform the required filing. We understand that these concerns and questions exist, and believe it would have been helpful for the NPRM to have addressed such practical questions in more detail, at least in the background discussion of the proposed rules.

We note, however, that it would appear that at least some of these questions could be addressed by commercial agreement amongst the directly affected parties. For example, for a consolidator stuffing a container with shipments from multiple importers, that consolidator can protect itself and its customers by only loading shipments for which it knows an ISF has been filed, either by filing the ISF itself for that importer or by having the importer provide it with a CBP confirmation message that an ISF has been filed for that shipment.

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sparingly at first. At some time, however, one would expect that an importer’s failure to submit a proper ISF would create an operational restriction on the cargo. Those issues are ones that we expect would be the subject of on-going discussions with CBP over the next year, and will not be fully addressed by the wording of the regulation.

In that regard, we note the NPRM states at page 98 that: “CBP will provide, to the filer, electronic acknowledgment that the filer’s submission has been received according to ABI and AMS standards.” What the NPRM does not make clear is whether this CBP acknowledgment will have a specific reference number. It would seem that a specific reference number associated with each ISF would be necessary for a consolidator to have reasonable assurance that each import shipment it stuffs into a container can be associated with an ISF, even if an importer files the ISF itself or through an agent other than the consolidator. We also note that a specific reference number for each ISF would be needed so that when an importer needed to amend its ISF filing, it could do so with reference to that unique reference number. We recommend that CBP clarify its intentions in this regard, and provide a unique and specific reference for each ISF acknowledgment.

Such technical and information systems questions need to be discussed and understood with the trade before successful implementation of this initiative can be accomplished. These issues are not addressed by the terms of the proposed rule, but are critically important. We recommend that CBP clearly identify how it intends to proceed with identifying and discussing such matters with the trade community.

In summary, we recommend that CBP: 1) ensure that CBP’s electronic acknowledgment of an ISF filing include a unique reference number of some kind; 2) that CBP provide importers with visibility into the ISF filings that their agents make on their behalf; and 3) conduct information sessions with the trade to clearly explain how the agency intends to implement the new rules with respect to such details.

## **B. Bill of Lading Requirement in Importer Security Filings**

### **Comment # 3: The Regulations Should Clearly State the B/L Requirement**

The NPRM’s Background Information (p.96) discusses that an Importer Security Filing must include a bill of lading (B/L) number, but the proposed regulations do not list the bill of lading number as a required data field. This should be clarified. CBP should also clarify that both the master bill number and the house bill number are required on an ISF relating to an NVOCC controlled shipment. This is the position CBP took in earlier discussions with the trade when 10 plus 2 was being formulated, and we understand that it continues to be CBP’s intent, but it is not clearly reflected in the NPRM. This will be needed to ensure effective messaging between CBP and carriers.

### **Comment # 4: Carrier Commercial Practices**

The fact that the bill of lading number will be required in the Importer Security Filing means that carriers will be required to provide their customers with bill of lading numbers in sufficient time for the importer or its agent to include the number in the Importer Security Filing 24 hours before vessel loading. Obviously, importers would be

unable to comply with the proposed regulations if their carrier does not provide the B/L number in sufficient time.

Under the existing 24 Hour Rule for advance manifest filings, this issue has been addressed satisfactorily with NVOCCs who need this master B/L information to comply with their filing obligations under the 24 Hour Rule. However, under this new regulation, carriers will need to provide *all* their customers with B/L numbers in sufficient time for the importer or its agent to include the number in the Importer Security Filing 24 hours before vessel loading. Some carriers today do this at time of booking, but others will need to change their systems.

This is a necessary operational change that some ocean carriers will need to address, although how they do may vary from carrier to carrier. It is not an issue that is, or should be, addressed by the terms of the regulation. It is a matter for each carrier to address as a business process issue.

#### **Comment # 5: Split Shipments and Rolled Cargo**

If a container is rolled from one scheduled vessel to a different vessel, does the importer need to amend its ISF? Does a new 24 hour clock start? During previous discussions with CBP on this issue, CBP responded that it was not necessary for the importer to amend its filing if the container (or shipment) is rolled from one vessel to another and the B/L remains the same.

While the bill of lading number should generally remain the same, there are two situations we can identify where this would not be true, and on which we seek CBP guidance.

For a bill of lading covering multiple containers, the carrier (due to operational reasons or due to customer instructions) may load some of the containers on one vessel and the rest on another, resulting in “split” or two B/Ls.

Another exception will be that a carrier B/L number may consist of its SCAC, voyage number, and bill number. (E.g., XYZU7324S1234567). When a container is rolled the voyage number would change. (e.g., XYZU7325S1234567). In this case the container information would not change, and an audit trails remains in place.

In these cases, where an importer has satisfied the requirement that an ISF be filed but the shipment is rolled or split, we do not believe the importer should be required to resubmit its ISF. No security purpose would be served by such a requirement, and it would impose an unnecessary administrative burden on the importer. We recommend that CBP work with the carriers to devise an acceptable arrangement for such cases, and that these arrangements be made known to the shipping public through CBP’s planned publication of FAQs.

**C. FROB and IE and T&E cargo**

For FROB cargo, and for IE cargo and T&E cargo where the ocean carrier is the party filing the IE and T&E documentation, there is no U.S. importer to make the ISF filing. As a result, the NPRM provides that the carrier is required to provide an abbreviated five data element Importer Security Filing “for each good listed at the 6 digit HTSUS number at the lowest bill of lading level (i.e., at the house bill of lading level, if applicable)”. The five data elements are: 1) booking party, 2) foreign port of unloading, 3) place of delivery, 4) ship to name and address, and 5) six digit HTSUS cargo classification number.

The following comments will first address the specific data elements identified in the NPRM, and then propose an alternative approach.

**Comment # 6: FROB/In-Bond Booking Party**

The NPRM proposes to define the “booking party” for such cargo as the “*the name and address of the party who is paying for the transportation of the goods*”. This proposed definition is problematic, does not conform to commercial practice, and should be amended. A forwarder or agent who actually makes the transportation booking for a shipper with the carrier would not satisfy this proposed CBP definition.

Furthermore, “transportation” costs can include ocean base freight, surcharges, fuel charges, terminal handling charges, and even local currency charges. Transportation costs also can be split among the shipper, forwarder, and the consignee. This commercial reality regarding the broad range of entities that might pay for the transportation in any given instance is reflected in standard wording from liner carrier bills of lading. Those documents universally include the term “Merchant,” which is defined as including the shipper, the receiver, the consignee, the holder of the bill of lading, and the owner of the cargo.

Furthermore, at the time the ISF needs to be submitted, it may not be known which party is paying for the transportation cost of the goods. For example:

A) In some instances, the party paying for the transportation costs may not be known until actual payment is received by the carrier. This scenario exists because such costs can still be negotiated between the importer and shipper during the shipment process.

B) When payment terms on the B/L is ‘collect’, the consignee is responsible for the transportation costs. However, the consignee may not be actually known at the time the ISF is submitted to CBP.

Accordingly, if such filings are to occur for this cargo, the Council recommends that CBP amend the NPRM’s definition of the booking party to be “*the party who*

*initiates the reservation of the cargo space for the shipment*” because this would better reflect the common and accepted definition of the term.

#### **Comment # 7: FROB/In-Bond Place of Delivery**

“Place of delivery” is defined as the “city code for the place of delivery”. The Council believes this would be acceptable, subject to several clarifications. First, we request that CBP clarify that this means the place of delivery under the terms of the carrier’s contract of carriage.

Second, it is common for a carrier’s delivery obligation to end at the port of discharge. We also request that CBP confirm in the final regulation that, when that it is the case, it would be appropriate to use the port code, rather than having to enter a city code.

Third, we request clarification and confirmation that, when there is no UN Code for the city or port, that the carrier be allowed to use narrative text to describe the place.

#### **Comment # 8: FROB/In-Bond Ship to Name and Address**

“Ship To Name and Address” is defined in the NPRM as the “name and address of the first deliver-to party scheduled to physically receive the goods after the goods have been released from customs custody.”

The first party to physically receive the goods might be a trucker or other service provider performing services before being delivered to the consignee. At the time this filing must be made, the first party to physically receive the cargo is likely to be unknown. In fact, this information may never be known by the carrier for a shipment where delivery is at the port. We also do not believe that this is the party that CBP is trying to identify.

In order to provide greater definitional clarity, we recommend that CBP change the definition of the “ship to” party to be “the party to whom the carrier is to deliver the goods under the carrier’s contract of carriage”.

#### **Comment # 9: FROB/In-Bond Six Digit Code**

The NPRM states that the carrier is responsible for providing CBP with the six digit HTSUS cargo description code for FROB and in-bond cargo.

This is not required for CBP-mandated manifest filings, which only require a “precise description” of the cargo, which may be a six digit code “if that information is received from the shipper.” This optional use of the six digit code in existing Customs regulations is a reflection of two, practical facts: 1) shippers often do not provide carriers

with this data, and 2) carriers are not appropriate parties to classify cargo under the HTSUS. Carriers do not have expertise in cargo classification. For example, at the six digit level, there are multiple possible categories of bed linens, but security screening should not be affected by whether the bed linens are of cotton or include man-made fibers (which have different six digit codes). Furthermore, carriers may not have access to the level of cargo detail necessary to make such classifications. For example, six digit codes may vary depending on whether “woven fabrics of cotton” containing more than 85 percent weight of cotton or less than 85 percent.

When the European Commission considered the issue of whether to require six digit harmonized code cargo descriptions in its “24 Hour Rule” for advanced manifest or shipment declaration filings, it concluded that it was impractical to require carriers to provide this information and determined that such a requirement needed to await the World Customs Organization (WCO) making it a universal obligation on shippers to provide carriers with this information. The Council urges CBP to take a similar position on the NPRM’s proposed requirement to require carriers to provide six digit harmonized code for such a small subset of cargo, which is not even destined for importation into the United States.

We recommend that six digit cargo classification codes be made an optional element of the filing for FROB, IE and T&E cargo in any ISF filings that may be developed for such cargo, as they are in carrier manifest filings for U.S. import cargo.

#### **Comment # 10: Scope of “FROB”**

The term FROB means “foreign cargo remaining on board” (page 94). The Council requests that CBP confirm that this term does not include U.S. export cargo (e.g., export container for Asia loaded in NY, vessel stops in Panama where it is relayed onto another vessel which then proceeds to LA, before sailing to Asia), or U.S. destination cargo (e.g., container for U.S. destination is loaded in Asia, vessel calls LA, then Panamanian port, then another U.S. port for discharge).

#### **Comment # 11: FROB/In-Bond House Bill of Lading Level Information**

The NPRM proposes to require for FROB, IE and T&E shipments, that the five required data elements “*be provided for each good listed at the 6 digit HTSUS number at the lowest bill of lading level (i.e., at the house bill of lading level, if applicable)*”.

The background explanation in the NPRM states that for FROB cargo “the importer is construed as the international carrier of the vessel arriving in the United States” (p.94), yet the section of the proposed regulations (section 149.1(a)) simply says for FROB cargo “the importer is construed as the carrier” without distinguishing between vessel operating carriers and non-vessel operating common carriers (NVOCCs).

The ocean carrier does not and will not have access to house bill of lading information, unless it is filing for the NVOCC. If CBP wishes to require, for FROB and these in-bond shipments, house bill of lading level information for 1) the booking party, 2) place of delivery, 3) ship to name and address, and 4) six digit HTSUS cargo classification number, the regulations would need to be amended to make it clear that this is an NVOCC responsibility, as ocean carriers do not have such information and cannot reasonably obtain it.

**Comment # 12: FROB Submission Timing**

The NPRM provides that: “Because FROB is frequently laden based in a last-minute decision by the carrier, the Importer Security Filing for FROB would not be required 24 hours prior to lading. Rather, the Importer Security Filing for FROB would be required any time prior to lading.” (p.94). WSC Members have considered this issue and request that CBP not provide a different time treatment for FROB cargo. One common timeline 24 hours prior to lading would be preferable.

**Comment # 13: Alternative Recommended Approach for FROB, IE and T&E**

The above comments note that: 1) the NPRM’s proposed definition of “booking party” is not workable and needs to be amended; 2) the NPRM’s definition of the “ship to name and address” is not workable and needs to be amended; 3) the six digit code cargo classification is not routinely provided by shippers of FROB cargo and would require cargo classification by carrier personnel who have no expertise in this subject and may not have adequate information to perform a correct six digit classification.

Accordingly, the Council recommends that that CBP not require such a modified ISF filing for these shipments, because after adjusting for these facts, CBP would receive little additional information of security value that would justify the requirement of a separate additional regulatory filing for such cargo.

If CBP determines that, notwithstanding the above comments, it wishes to require additional data for these shipments, we recommend that this be done through an expansion of the vessel cargo manifest filing in AMS. Specifically, the booking party, the place of delivery, and the ship to party could be made part of the carrier manifest filing 24 hours before vessel loading, rather than creating a separate ISF filing for this subset of cargo. This would create one expanded cargo manifest filing for such cargo, rather than two filings (cargo manifest and ISF).

## **D. Canada**

### **Comment #14: Cargo Diversion**

The NPRM states that CBP does not expect shipments to be diverted to Canada or Mexico to avoid the proposed requirements. No explanation or justification of this statement is provided by CBP.

In the absence of a similar “10 plus 2” regime being adopted by Canada and Mexico, it would seem likely that some shippers would find it advantageous to route U.S. destination cargo through these nations’ ports to avoid the Importer Security Filing requirements.

## **II. Comments on the Requirement to Submit Stow Plans**

### **Comment # 15: General Principle**

Vessel stowage plans (like Container Status Messages) are not documents created for the purpose of satisfying regulatory requirements, such as carrier manifest filings or entry filings are. Vessel stow plans and Container Status Messages are commercial, operational message sets, which carriers receive from their service providers and which assist in operational planning and execution.

The World Shipping Council’s members have worked closely with CBP in the development of this initiative and can support providing copies of these operational messages to CBP in order to increase the government’s visibility and confidence in the transportation of maritime commerce. They do so, however, on the basis of the premise and the understanding that CBP will accept this information as it exists and is used by the carriers’ themselves, not on the basis that these messages are up to the completeness or accuracy standards of regulatory filings. CBP officials have repeatedly assured the industry that they agree with that premise, but it is an essential one in the development and the drafting and implementation of this regulation.

The stowage plans that CBP is seeking in this NPRM are received by ocean carriers from the port facility terminal operator that stevedored the vessel at the last foreign port of loading. The stow plan is an unregulated and continuously changing document. Its purpose is a working tool for a ship’s operations. It can begin with inaccuracies which can carry throughout the entire voyage. However, such inaccuracies are generally insignificant to normal ship operations as a carrier uses other documents and IT systems to identify and resolve discrepancies.

**Comment # 16: Carrier Responsible for the Stow Plan Submission**

The proposed regulations require that the vessel stow plan be submitted by the “incoming carrier”. Several ocean carriers may share space on a single vessel. The stow plan will include information regarding the stowage of the entire ship and not just an individual carrier’s containers aboard.

We request that CBP clarify that the carrier responsible for filing the stow plan is the carrier responsible for the operation of the vessel. Thus, for example, if Carriers A, B, C and D operate in a vessel sharing alliance, Carrier A will be responsible for the submission of the stow plan for the ships it operates, Carrier B for the ships it operates, etc.

**Comment # 17: Short Voyages**

During discussions with CBP prior to the NPRM, the Council had recommended that for voyages of short duration, CBP allow stow plans to be filed by the time of vessel arrival for reasons of operational practicality. The NPRM does provide that, for voyages of less than 48 hours, the stow plan can be transmitted prior to arrival. This is generally acceptable. We wish to re-emphasize, however, that for some very short duration voyages (e.g. Vancouver to Seattle) compliance may prove very challenging and will be highly dependent on the carrier’s terminal operator. In those cases where compliance may prove difficult, we request that CBP work closely with the affected carrier to ensure reasonable implementation that does not impair scheduled vessel arrival or operations.

**Comment # 18: Foreign-U.S.-Foreign-U.S. Voyages**

If a carrier operates a service such as Japan – Tacoma – Vancouver, British Columbia – Portland – Japan, does it submit to CBP the stow plan after leaving Japan and another stow plan after it leaves Canada?

If the carrier sends the post-Vancouver stow plan, CBP needs to recognize that it will include the U.S. exports from Tacoma, and whatever CBP reconciliation process is used will have to recognize the U.S. Tacoma exports, which will not be manifested like U.S. imports.

**Comment # 19: Timing of Stow Plan Submission**

The NPRM provides that stow plans must be submitted no later than 48 hours after the vessel departs from the last foreign port. It provides no rationale for why it chose 48 hours after vessel departure.

The Council had recommended to CBP that the filing timing should not be earlier than the required filing by the vessel of its Notice of Arrival, i.e., 96 hours before arrival. The rationale for this recommendation was that carriers are dependent upon stevedores to

provide the stow plan, and that receipt of the data can be impacted by a company's operations, IT applications, communication methods, and even by data integrity issues. In addition 48 hours, if over a weekend, may not allow enough time for the vessel operator to review and correct errors in the stow plan. 96 hours before arrival would provide more time for most voyages. The stow plan may thus be more accurate, and fewer amendments would be needed. Further, 96 hours should be adequate.

CBP chose to retain 48 hours after vessel departure as the proposed requirement in the NPRM. The Council continues to believe that aligning the timing of the stow plan submission with the timing of the vessel's Notice of Arrival would be preferable for the reasons stated above, and recommends that CBP make such a change.

#### **Comment # 20: Amendments to Stow Plan Submissions**

CBP is aware that stow plans are imperfect, changing operational document used by carriers. There will be data defects in them, and carriers will amend the stow plans from time to time as they obtain updated and improved information. This does not mean the stow plan becomes perfected, it just means it is an amended working tool.

The NPRM appears to anticipate, but does not address, amendments to stow plans. The Council simply notes that carriers will from time to time amend their stow plans to reflect new information they have received. We believe that it would be pointless and extremely burdensome for carriers to provide CBP with amendments every time they may find a discrepancy in stow plan data.

We recommend that CBP provide some guidance, however, regarding amendments. We recommend as a general rule that a carrier should provide CBP with an amended stow plan in the event that it finds that a container has been stowed aboard that was not on the stow plan as submitted to CBP. That would be an event that we understand CBP could have a significant security interest in, and in that case the carrier should be required to provide CBP with an amendment promptly. If the carrier finds that a container is shown on the stow plan, but in fact it was not loaded aboard the vessel, this would not create any security concern because the container is not coming to the U.S. and as such should not require an amended stow plan to be filed.

#### **Comment # 21: Acknowledgment of Stow Plan Receipt**

In order for a vessel operator to be satisfied that a stow plan transmission has been received and avoid the possibility of a failed transmission and a potential penalty, it needs to have an electronic receipt from CBP. Accordingly, the Council requests that CBP provide the filing vessel operator with an electronic acknowledgement/receipt (with time and date) as evidence that the vessel stow plan was successfully received.

### **Comment # 22: Stow Plan Data Format**

During last summer when ocean carriers were working with CBP in the development of this initiative, CBP repeatedly stated that they would accept vessel stow plans in whatever format carriers used. The industry welcomed and appreciated this assurance, as vessel stow plan formats vary across the industry, and may include manual text, MS-Word doc or MS-Excel, in addition to the EDI BAPLIE format.

The Council recommends that CBP clarify how such formats may be transmitted to CBP, as the terms of the NPRM are potentially confusing. The NPRM states that the transmissions will be “via the CBP-approved electronic data exchange system,” while the Background material in the NPRM states: “The current approved electronic data interchange system for the vessel stow plan is vessel AMS.” This sentence is a matter of concern.

The Council has no objection to the language CBP has proposed for addressing this issue in 4 CFR 4.7c, namely that the transmissions will be “via the CBP-approved electronic data exchange system.” However, as CBP has agreed with ocean carriers in the Advance Trade Data Interchange program that has piloted the filing of stow plans, such plans can be transmitted today to CBP via e-mail and not only through AMS. This has proven satisfactory. E-mail is currently an approved electronic data exchange system for transmitting stow plan data, and we request that CBP confirm that the systems that are presently used and accepted for transmitting stow plan continue will continue to be acceptable. The costs and difficulties for Members who are not using AMS for stow plan transmission to convert over to AMS would be significant, with no benefit resulting.

### **Comment # 23 – Recognizing the Limits of Stow Plan Content**

A vessel stow plan serves as a working tool for a ship’s operations and its information may contain flaws and will be constantly changing. It was never designed or intended to be a regulated document. It is likely to begin with inaccuracies which can carry through the voyage. It will never be 100% correct. It is essential that this proposed regulation recognize these facts.

The NPRM provides that the stow plan information of interest is:

A) *For the vessel*, vessel name (including IMO number), vessel operator, and voyage number; and

B) *For each container or unit of cargo*, the container operator, the equipment number, the equipment size and type, the stow position, the hazmat UN code, the port of lading and the port of discharge.

The issue that requires clarity is the level of accuracy expected in the content of these operating message sets that are provided to CBP. This is of particular importance

to carriers in light of the NPRM's proposed bonding requirements and potential penalties of \$50,000 per vessel arrival for non-compliance with the submission of stow plans.

It would be inappropriate to subject a carrier to penalties for errors in a message set created by a third party for commercial, operational utilization. Examples of discrepancies that can and will frequently occur in stow plans are:

- Container Numbers: A container number may contain transposed digits.
- Container Operator: The codes used may vary, and may not match the codes used on the manifest.
- Stow Position Inaccuracies: Containers will be planned to load in a particular order, forming the basis of the stow plan; however, it is common that during the stevedore's vessel loading process, containers may not be cued or sequenced in the same order as planned and therefore may be loaded into a different location aboard. As a result, the actual stow location may be different from the plan, and the plan may not be amended to show the correct location.
- Equipment Size and Type: This may not be indicated on a stow plan. In addition, it may have inaccuracies. For example, the container may be listed as a 40 foot container but is a 45 foot container, or a 48 foot container may be listed as a 45 foot container.
- Port of Discharge: Requests for changes in the port of discharge can occur anytime between vessel load and vessel arrival. Each carrier has its own rules regarding accepting or rejecting such change requests and whether or not the stow plan is revised. Other factors may cause a change in port of discharge, such as weather, congestion and vessel repairs, and the stow plan may not be amended to reflect such changes.
- Port Codes: Each carrier may use its own port code table for its documentation purposes. It is our understanding that CBP is not seeking to impose a particular port coding system into vessel stowage plans.
- Hazmat UN Code: This field may include HazMat class but not the UN or U.S. code. Further, the UN code may be inapplicable. For hazardous cargo regulated within the U.S. but not internationally, U.S. hazmat codes under title 49 of the Code of Federal Regulations may be used instead of the UN code. In addition, BAPLIE format stow plans may show only one hazmat class or code per container, even though more than one hazmat commodity may be stowed in the same container. Since all such cargoes are reported on the 24 Hour Rule manifest filing, and as each carrier will have a separate dangerous goods manifest document that is already required by regulation (33 CFR 160.206) to be provided to the Coast Guard 96 hours prior to vessel arrival, CBP should refer to those filings if more information is needed, as the stow plan will not contain all hazmat information.<sup>2</sup>

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<sup>2</sup> Carriers maintain and utilize separate, detailed dangerous goods manifests, which contain all the details on all the dangerous goods in the containers on board. Thus, information sources other than the BAPLIE stow plan document are used in planning the stowage of dangerous goods. The point is that the stow plan

These kinds of discrepancies or information gaps are not unusual in stow plans and should not generate fines or regulatory infractions.

The Council recommends that CBP provide clarity that its enforcement focus will be on the carrier submitting its stowage plan within the required time period. CBP should not impose penalties for data integrity, because stow plans are operational documents, not regulated documents. Nor should vessel operations be affected unless intelligence requires such action for security purposes.

If CBP feels a need to establish some standard of accuracy for stow plans, then we recommend that the agency adopt the following:

- A) A stow plan submission be accurate with respect to the vessel, for the vessel name (including IMO number), vessel operator, and the vessel operator's voyage number; and
- B) A stow plan should at a minimum ensure with respect to the containers aboard, that all the containers on the vessel are in fact reflected on the stow plan and that there are no containers on the vessel that are not on the stow plan. If a vessel operator discovers an error in this regard after the initial stow plan submission, it should promptly provide CBP with an amended stow plan upon discovering the error and prior to arrival.

This would ensure that CBP can fulfill the basic security rationale for obtaining the stow plan, namely to make certain that every container on board has been manifested and subject to 24 Hour Rule advance cargo screening and that there is no container on board that has not been so manifested and screened.

Finally, the Council notes that ocean carriers and CBP have not had any detailed, specific discussion about the precise use the agency intends to make of these stow plans. That is a necessary set of conversations between carriers and CBP which may result in additional comments and adjustments that would need to be made in how this initiative is implemented or used.

For example, does CBP intend to reconcile manifest filings against the stow plan submissions? If so, carriers are not aware of the specifics of how CBP intends to do this, and which data elements would be important for such a reconciliation process. For example, the voyage numbers in the stow plan and in the voyage numbers in the manifest filings may not match for legitimate and explainable operational reasons as those systems operate today. Will that make a difference to CBP? This and similar kinds of issues may, or may not, be important to CBP. We currently do not know. They are not addressed by the terms of the NPRM, yet the systems, data and IT implications and costs that might arise could be potentially significant.

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document that CBP is seeking in this NPRM may not be a complete document regarding dangerous goods. Other carrier working documents and processes address that set of issues.

The Council does not believe that the rulemaking process needs to stop until all such technical issues are addressed, as the terms of the proposed rule do not address the technical details necessary for a smooth implementation of this new regime. The Council and its Member lines do request, however, that an appropriate technical dialogue be established soon between CBP and the carriers so that such issues can be well understood and discussed prior to any decisions being made about the establishment of any consequences for normally occurring data in stow plans.

**Comment # 24: Ro-Ro Vessels and Break-Bulk Cargo**

While the Council and its Member companies understand the reason CBP has provided for wanting visibility into the vessel stow plan for containerized cargo on cellular container vessels, the rationale and utility of stow plans for roll-on/roll-off (ro-ro) vessels and break bulk vessels is not clear and has not been clearly articulated by CBP.

A stow plan for a container ship will allow CBP to check to see if there is any container on board that was not manifested and screened under the 24 Hour Rule. CBP will be able to perform a reconciliation between the vessel stow plan and the cargo manifest filings it received.

Stow plans for ro-ro vessels will not provide information showing positions of each unit of cargo, like a stow plan for a cellular containership will. The stow plan for such vessels is so generic that CBP will not have the ability to tie or reconcile stow plans to manifest filings.

For example, car carrier stow plans, unlike container stow plans, will not “show positions of each unit of cargo” as stated in the NPRM, but would identify, for example, 350 new Toyota cars on deck X being transported from the Japanese load port to the U.S. destination port.

Similarly, stow plans for break bulk cargo will be generic and far less specific than cellular containership stow plans.

In addition, even on container ships, break bulk cargo may be included on the stow plan in an ad hoc or improvised way, as it lacks equipment number, size and type. For example, “dummy” container numbers might be created for a container vessel’s BAPLIE stow plan to simply mark where a break-bulk item may be stowed. On container vessels, break bulk cargo is usually “top stowed” and the cargo is obvious and easily identifiable via visual inspection.

We do not see value or benefit comparable to a containership stow plan for such cargo. We recommend that CBP reconsider whether it wishes to mandate the filing of vessel stow plans for ro-ro and break bulk cargo. If it does determine to require such submissions, the Council requests that CBP acknowledge that the stow plan information for ro-ro and break-bulk cargo will be accepted in the form and with the content as they

are used today, which is far more generic and less specific than container vessel stow plans.

### **III. Comments on the Requirement to Submit Container Status Messages (CSMs)**

#### **Comment # 25: General Principle**

The CSM portion of the NPRM generally reflects the discussions that ocean carriers and CBP had in the spring and summer of 2007 in trying to develop a mutually acceptable way for carriers to transmit their CSMs to CBP.

Of critical importance in this regard is the following provision in proposed section 4.7d(a):

“There is no requirement that a carrier create or collect any CSM data under this paragraph that the carrier does not otherwise create or collect on its own and maintain in its electronic equipment tracking system.”

As these comments noted earlier with respect to vessel stowage plans, the premise of the “2” portion of “10 plus 2” is for carriers to provide CBP with visibility into these operational message sets that the carriers have in their operating data systems. That is, the carriers will share with CBP the messages that they have and as they exist. The premise is not that these messages are up to the completeness or accuracy standards of regulatory filings. CBP officials have repeatedly assured the industry that they understand and agree with that premise, but it is an essential one in the development of this regulation. The NPRM’s sentence quoted above is a critically important reaffirmation of this premise.

#### **Comment # 26: Time of CSM Transmission:**

The NPRM provides that the CSMs must be submitted to CBP “no later than 24 hours after the CSM is entered into the [carrier’s] equipment tracking system.” This is generally acceptable.

#### **Comment # 27: CSM Standards**

The NPRM provides that CSMs must be reported using ANSI X.12 or UN EDIFACT standards. This is acceptable.

### **Comment #28: Scope of Requirement's Coverage**

The NPRM is relatively clear that CSMs are required for loaded containers that are destined for the U.S., but is not clear whether CSMs are required after the container arrives at the U.S. port of discharge. WSC Members believe that the CSM obligation commences once they begin to receive CSMs after the loaded container has begun its transportation to the U.S., but they are not clear when the CSM obligation terminates. Is it after the container is released by CBP from the U.S. port, at which point presumably any security concern CBP may have would have been addressed or the container should not be released?

### **Comment # 29: Required Events**

The NPRM contains language about which CSM events are “required” to be reported. We believe that the intent of this part of the NPRM is to try to address the questions WSC Member lines had raised with CBP regarding what CSM events the agency interested in, or whether it wanted “all” CSM events. The NPRM confirms that CBP is seeking CSMs only for loaded containers that have been selected for U.S. destination.

There is a problem, however, in the proposed language of section 4.7d(b), “Events required to be reported”, which states that “The following events must be reported ...” and then identifies the following events: (1) when the booking is confirmed, (2) when a container “undergoes a terminal gate inspection”, (3) when a container “arrives or departs a facility”, (4) when a container is “loaded or unloaded from a conveyance”, (5) when a “vessel transporting a container ... departs from or arrives at a port”, (6) when a container “undergoes an intra-terminal movement”, (7) when a container “is ordered stuffed or stripped”, (8) when it is “confirmed stuffed or stripped”, and (9) when a container is “shopped for heavy repair”. The NPRM’s defined events do not reflect the reality of CSMs.

Regarding event (1), CSMs are not created when bookings are confirmed and therefore these cannot be required events

Regarding event (2), carriers do not receive terminal gate inspection messages and therefore these cannot be required events. Instead, they receive gate-in and gate-out messages as defined in event (3).

Regarding event (4), we believe that what CBP is referring to is CSMs that are generated when a container is loaded or unloaded to or from a vessel or to or from a rail carrier. We would appreciate clarification on this interpretation.

Regarding event (5), CSMs are *container* status messages, not vessel departure or arrival messages. There is no CSM created for a carrier by a marine terminal when a vessel arrives or departs a port. Some carriers may artificially create a CSM in their data

system as a customer service for a particular customer who wishes to receive an EDI notification of these events; however, if CBP wants these CSMs, it needs to recognize that this is not a universal practice amongst carriers, it is not done for all shippers, and it is an artificially created and unique CSM. Furthermore, vessel arrival and departure information is already obtained by CBP.

Event (6) is defined in the NPRM to be when a container “undergoes an intra-terminal movement”. While marine terminal operators may create such messages in their internal operating systems, marine terminal operators are not parties subject to this NPRM. Ocean carriers do not receive such CSMs, and therefore these cannot be required events for ocean carriers.

Regarding event (7), CSMs are not created when a container is “ordered stuffed or stripped”, and therefore these cannot be required events.

Regarding event (8), CSMs are not created when a container is “confirmed stuffed or stripped”, and therefore these cannot be required events.

Regarding event (9), loaded containers are not “shopped for heavy repair”. They are emptied so that the shipper’s cargo will not be delayed and then the empty is sent for repair. Thus CSMs for such events are not created for loaded containers, and therefore these cannot be required events.

Proposed paragraph (b) “Events required to be reported” fails to properly identify CSM events, and needs to be amended. We recommend that it be amended so that the events to be identified as “required” be those as proposed in events (3) and (4) as clarified above.

### **Comment # 30: More on Required Events**

It appears that the NPRM is attempting to create a workable approach to CSM filings. The general principle noted in Comment # 25 above is a cornerstone of this effort. The Council also appreciates that the NPRM provides that carriers may wish “to transmit all CSMs, rather than to filter out CSMs relating to containers destined to the United States or relating only to the required events. Accordingly, CBP is proposing to allow carriers to transmit. ... CSMs relating to events other than the required events.” (p. 93) Thus, compliance could result by sending whatever CSMs a carrier has regarding loaded U.S. destination containers. However, the following NPRM language in proposed section 4.7d(d) is also problematic. It states:

- “Contents of report. The report of each event must include the following:*
- (1) Event code being reported, as defined in the ANSI X.12 or UN EDIFACT standards;*
  - (2) Container number;*
  - (3) Date and time of the event being reported;*

- (4) *Status of the container (empty or full);*
- (5) *Location where the event took place; and*
- (6) *Vessel identification associated with the message.”*

It is our understanding that what CBP intends is that the carrier will transmit the CSMs that the carrier receives from its terminal operators, etc. Thus, if a CSM lacks one or more of these six identified information elements, or if a CSM data element as provided to the carrier is incorrect, the carrier would still be in compliance with the proposed regulation so long as it has transmitted the message as it exists in the carrier’s data system. (E.g., if two of the digits in the container number have been transposed in the CSM, that is what is transmitted; if the CSM lacks information on status of the container (empty or full), that CSM is what is transmitted). In short, the obligation is for the carrier to provide CBP with the CSM as it exists in the carrier’s data system. We therefore understand that there is no obligation to ensure that each of these six data elements is in each CSM or is in a particular form. The “must include” language underlined above should therefore be modified and clarified to make it clear that the CSM CBP should receive is the CSM as it exists in the carrier’s data system.

We believe it is important to seek and obtain this clarity from CBP, especially considering the new bond/penalty provisions discussed in Part V below.

## **IV. Cargo Diversion of IE and T&E Shipments**

The NPRM proposes a new Section 18.5(g) requiring for Immediate Exportation (IE) or Transportation and Exportation (T&E) shipments that “permission to divert the in-bond movement to a port other than the listed port of destination or export or to change the in-bond entry into a consumption entry must be obtained from the port director of the port of origin.” We have several questions and comments on this part of the NPRM.

### **Comment # 31: IE Shipments**

For these shipments, the cargo shipment is retained within the port of unloading for exportation from that same port. It is not clear what this new language is proposing with respect to IE bond shipments.

Consider an example of a foreign-to-foreign shipment (e.g., German export cargo to Mexico) that is scheduled to be relayed in the Port of Miami from one ship to another. If operational changes result in the shipment being relayed in the Port of Savannah from one vessel to another under an IE bond instead (e.g., a tropical storm has closed the Port of Miami, or the outbound Miami vessel is off schedule so a Savannah connection is needed for timely delivery), what happens?

Today, the carrier would simply amend its CBP Form 7512 to note the different U.S. relay port. There is no permission process. Is the NPRM proposing that CBP intends to establish a process that any such change requires affirmative permission from CBP? What would the purpose of that be? On what basis would/could CBP refuse permission? We recommend that permission not be required for such changes to IE shipments.

### **Comment # 32: T&E Shipments**

For these shipments, the cargo shipment moves from the U.S. port of unloading to the U.S. port of destination for exportation. (These underlined terms are from the Customs Automated Manifest Interface Requirements Glossary (CAMIR).) We have the following questions.

A) The first question is whether the term in the new proposed Section 18.5(g) in the NPRM “port of destination or export” was intended to read “port of destination for export” per the CAMIR Glossary?

B) Second, consider the example of an Asia-to-Mexico shipment that arrives in the Port of Los Angeles to be transported by truck or rail to its Mexican destination. If the U.S. port of destination for exportation was originally Nogales and is changed to a different CBP port along the border, is it correct that this change would require permission under the terms of the NPRM? If so, we request that CBP provide clarity regarding the permission process. For example: To which CBP office would one apply for permission? How is permission communicated? Who receives that communication?

C) Today, the diversion can be electronically reported, but permission is not needed. If approval were needed before diversion, we are concerned about the resulting process, delays, and the basis on which CBP would deny permission. Please consider the following examples:

- The truck or rail carrier needs to divert due to road or track conditions. Who is responsible for applying for permission? The ocean carrier? How long will permission take, and on what basis would CBP deny permission? What form would the permission take, how would it be communicated, and to whom?
- If the truck or rail carrier fails to request and receive permission, is the ocean carrier’s bond responsible for the penalty?
- If the shipper sells the goods while in transit and instructs the carrier to divert the shipment (which is not uncommon), does the ocean carrier need CBP approval before it can instruct the road or rail carrier to deliver to the new destination?

WSC Members are concerned about the practical implications of this part of the NPRM, what basis CBP would use to deny permission, what bureaucratic process CBP would use to consider such requests, and the resultant delays in commerce. We request a

reconsideration of this provision, or at a minimum a much clearer explanation from CBP about how this new process would work.

## **V. Bonds, Penalties and Enforcement**

The NPRM proposes to amend agency bonding requirements so that:

1. The party filing an ISF (which would include ocean carriers for FROB and in-bond cargo) would be liable for damages equal to the value of the merchandise for violations; and
2. Stow plan filing requirements would be enforced via an increase in the carrier bond for damages up to \$50,000 for each vessel arrival for violations; and
3. CSM filing requirements would be enforced via an increase in the carrier bond for damages up to \$5,000 for each violation to a maximum of \$100,000 per vessel arrival.

These are substantial potential penalties that could be wholly inappropriate and excessive unless there is greater clarity regarding what constitutes a violation justifying penalties.

### **Comment # 33 : Liquidated Damages for ISFs**

While the Council understands the need for CBP to create an enforcement regime for these new requirements, liquidated damages in an amount equal to the value of the merchandise for ISF filing violations is excessive. We recommend that CBP instead establish a monetary penalty for violations, such as is done for CSMs.

Furthermore, particularly during implementation phases, CBP should develop a judicious approach to the enforcement of this new regime.

### **Comment # 34: Container Status Messages**

There are roughly twelve million import containers a year. If one were to assume an approximate average of ten CSMs per import container, that would comprise 120 million messages. As explained earlier, these messages are internal, operating message sets, not regulatory documents. There are going to be many incomplete and imperfect CSMs. It is for that reason, for example, that the comments above request that the regulations not refer to “required” elements of CSMs.

Specifically, we propose that CBP articulate that the regulatory obligation for CSMs that could trigger liability for a penalty should be that the carrier must provide

CBP with the CSMs that it receives and as they exist in the carrier's equipment tracking system in the time frame required, i.e., within 24 hours of entry into the carrier's equipment tracking system. Even with this, however, enforcement and penalties should be considered judiciously, as even an error rate of 1/10 of 1% would equal 120,000 errors.

Accordingly, penalties should be considered only in cases of willful or repeat serious violations.

### **Comment # 35: Vessel Stow Plans**

As noted in Comment # 23, a vessel stow plan serves as a working tool for a ship's operations and its information may contain flaws and will be constantly changing. It was never designed or intended to be a regulated document. It is likely to begin with inaccuracies which can carry through the voyage. It will never be 100% correct. It is essential that enforcement and penalty application recognize these facts.

CBP should clarify what would constitute grounds for penalties and enforcement actions, as accuracy of all stow plan elements cannot be a realistic standard, as discussed above.

The Council recommends that a carrier should be held responsible for:

1. Filing the stow plan in whatever time frame is ultimately decided to be included in the final regulation;
2. The stow plan submission being accurate with respect to the vessel, for the vessel name (including IMO number), vessel operator, and the vessel operator's voyage number; and
3. The stow plan should at a minimum ensure with respect to the containers aboard, that all the containers on the vessel are in fact reflected on the stow plan and that there are no containers on the vessel that are not on the stow plan. If a vessel operator discovers an error in this regard after the initial stow plan submission, it must promptly provide CBP with an amended stow plan upon discovering the error and prior to arrival.

## **VI. Effective Date of the Regulations and Their Implementation Plan**

### **Comment # 36: Effective Date and Implementation Plan**

The NPRM makes no mention of a proposed effective date for the regulations, which is unusual. The NPRM also includes a discussion of CBP's desire to amend the WCO Framework of Standards to accommodate such new data elements, but leaves the question unanswered about whether CBP will proceed unilaterally or only after the WCO Framework is amended. It would seem highly improbable that most WCO member countries would be prepared to implement a "10 plus 2" regime in the foreseeable future. Most have not implemented a vessel manifest 24 Hour Rule, and most do not appear to have the information systems, budgets or expressed interest to proceed to a "10 plus 2" type regime. Further, we would expect that, if CBP's position was that the WCO Framework needed be amended before it proceeded with this initiative, it would not have issued this NPRM, but would have instead gone directly to the WCO.

While the Council fully supports the WCO and CBP's efforts at the WCO, the industry needs to clearly understand what time frame the U.S. government intends to adopt if it is going to proceed with these proposed regulations. This issue should not be left ambiguous. Carriers, U.S. importers, foreign exporters, and third party service providers need to plan and allocate limited operational and information technology resources for these initiatives, at the same time that they are having to deal with other projects in other parts of the world, including entry summary declaration and manifest filing requirements in Europe, Mexico and China, and presumably U.S. export declaration and manifesting requirements, as well as migration to ACE. We request that CBP provide the trade with specific and clear guidance on the timing of the effective date for these regulations.

In doing so, we are also mindful of the fact that these proposed regulations will require more significant changes to business practices than the 24 Hour Rule. We thus recommend that CBP also provide clarity on the specifics and the timing of how it proposes to implement this new regime. We see the need for a defined period of time for CBP to work in an open and interactive way with shippers, ocean carriers, NVOCCs, forwarders and brokers to address practical implementation specifics. A clear time frame should be established for this. The effective date and implementation schedule should provide sufficient time for the trade to prepare and implement necessary changes to business practices, but such dates should be provided.

Many of the issues and questions that the trade community has with this initiative are not issues that are addressed by the terms of the NPRM, but are issues relating to data formats, technical specifications, and data interchanges and access. These require a consultation process between CBP and the trade before implementation of the regulations can occur.

In summary, CBP needs to provide clarity to the trade regarding its intent for an implementation date, and must provide adequate time for the trade to prepare for that date.

## **Conclusion**

The World Shipping Council and its Member carriers appreciate the strategy that CBP is pursuing with this NPRM, and we support that strategy. We also commend CBP for the open and consultative process it has used in the development, presentation, and explanation of this initiative.

This initiative is substantial and challenging, but important, and it has our support. We look forward to working with CBP to make this proposal a working reality that can improve the government's containerized cargo risk assessment capabilities. We hope that the above comments will be of assistance in reaching that goal in the foreseeable future.

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