



WORLD SHIPPING COUNCIL
PARTNERS IN AMERICA'S TRADE

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**COMMENTS OF
THE WORLD SHIPPING COUNCIL**

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD**

**IN THE MATTER OF:
NOTIFICATION OF ARRIVAL IN U.S. PORTS
Docket Number USCG-2001-11865**

August 19, 2002

1. Introduction

The World Shipping Council (“the Council” or “we”) submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) issued by the United States Coast Guard (“the Coast Guard” or “USCG”) on June 19, 2002. (*67 Fed.Reg. 41659*) By that Notice, the Coast Guard solicited comments on its proposal to make permanent changes to its arrival and departure information requirements for vessels bound for or departing from ports or places in the United States; to incorporate most of the temporary changes to the arrival and departure information requirements promulgated in its temporary final rule, dated October 4, 2001, (*66 Fed.Reg.50565*)¹; to consolidate the notice of departure and notice of arrival; to require electronic submission of cargo manifest information to the U.S. Customs Service (“Customs” or “USCS”); and to require additional crew and passenger information to be included in the so-called Notices of Arrival (NOAs) required by 33 CFR Part 160, Subpart C.

The Council, a non-profit association of over forty international ocean carriers, was established to address public policy issues of interest and importance to the international liner shipping industry. The Council’s members include the full spectrum of ocean carriers, from large global operators to trade-specific niche carriers, offering container, roll-on roll-off, car carrier and other international transportation services. They carry approximately 90% of the United States’ imports and exports transported by international liner shipping, or roughly \$500 billion worth of American foreign commerce per year.²

International liner shipping provides regular, scheduled services connecting U.S. exporters and importers with virtually every country in the world. Liner shipping vessels make more than 22,000 calls at ports in the United States each year – or more than 60 vessel calls a day - and, consequently, submit literally thousands of Notices of Arrival each year to the USCG. The members of the Council have a direct and substantial interest in both the structure and information requirements of the NOAs as well as the role they play in ensuring public safety, security and the uninterrupted flow of international commerce.

2. Notices of Arrival, Public Safety and Security

NOAs play an important role in the Coast Guard’s Port State Control Program. The Council and its member companies support the objective of the Coast Guard’s Program, which is to eliminate substandard vessels of a greater risk to the environment and public safety, and also to support the refining and calibration of the information obtained via the NOAs in furtherance

¹ The effective period for the temporary final rule has subsequently been extended to March 31, 2003. *67 Fed.Reg 48073*.

² A list of the Council’s members is attached as Appendix A.

of that objective. For those same reasons, the Council last year filed comments in the still open docket on addition of charterer to the required information to be provided as part of the NOA.³

Since the September 11th terrorist attacks, the NOAs have taken on added significance as an important tool in enhancing maritime security. The Council and its member companies support the efforts of the Executive Branch and the Congress to develop and implement policies that will reduce the vulnerability of the international transportation system to terrorist threats. We also appreciate, understand and agree that one component of these efforts is the government's need to obtain earlier, more specific and focused information about vessels calling at U.S. ports and their crews. The Council cooperated closely with the Coast Guard in disseminating to the international liner industry the new information requirements in the temporary final rule on the submission of NOAs, promulgated on October 4, 2001. The most significant change in that temporary final rule was a requirement that NOAs as of October 4, 2001, be submitted 96 hours prior to arrival in the first port of call in the U.S. instead of the earlier, 24-hour submission requirement.⁴ Additional vessel, crew member and cargo information was also required to be included in the NOAs.

The Coast Guard's efforts to reach out to the shipping industry and explain the new requirements prior to the actual promulgation of the temporary final rule (and the industry's recognition of the importance of the new temporary, but by no means insignificant, information requirements for enhanced maritime security) help explain why the transition to the current temporary 96 hour NOA submission requirement went relatively smoothly. We are not aware of any major, current problems in the transmission of the NOAs in accordance with the existing temporary rule.⁵

Just as the Council supported the October 2001 rulemaking, we support in principle making the earlier NOA information submission requirement permanent as an important enhancement to homeland security.

We have a suggested addition to subparagraph 160.204(a) of the regulations regarding submission of NOAs, namely, that the Coast Guard should include the National Vessel Movement Center's (NVMC) alternate telephone and fax numbers, because vessels calling or faxing the NVMC are unable to access 1-800 numbers through INMARSAT.

³ The Council submitted comments on June 27, 2001, to Docket Number USCG-2001-8659. *66 Fed.Reg.21710.*

⁴ The 96 hour NOA submission requirement applies to vessels with a voyage time of 96 hours or more. For vessels with a voyage time of less than 96 hours, the NOAs should be submitted before departing the foreign port of departure but not less than 24 hours before entering the port or place of destination in the U.S. For vessels with a voyage time of less than 24 hours, the NOAs should be submitted prior to departing the foreign port of departure. The USCG proposes – and we agree – to maintain the same submission deadlines for the three types of voyage durations.

⁵ We do, however, continue to believe that government agencies with responsibilities relating to foreign seafarers (particularly the Coast Guard, the Immigration and Naturalization Service and the Customs Service) could do a better job sharing the crew member information provided electronically as part of the NOAs to the USCG. We discuss below the existing possibilities for more efficient information sharing about crew members on arriving vessels.

In its proposed rulemaking, the Coast Guard also proposes to require new information elements in the NOAs in addition to the already expanded information requirements in last year's rulemaking. We hereby comment on the most significant proposed information requirements and reply to the specific questions posed in the proposed rulemaking.

3. Electronic Submission of Cargo Manifests

Currently, the NOA is required to include a “[g]eneral description of the cargo onboard the vessel (e.g., grain, containers, oil, etc.)”.⁶ Currently, cargo manifests must be filed with Customs upon arrival in a U.S. port, although, in practice, the vast majority of carriers file their cargo manifests electronically with Customs 48 hours before arrival.

The Coast Guard now proposes, as part of this rulemaking, that a carrier's cargo manifest should be submitted to Customs at the same time the NOAs are submitted to the Coast Guard.⁷ As a result, carriers would be required to file cargo manifests 96 hours in advance of arrival, rather than the 48 hours in advance that the industry generally follows in filing with Customs' Automated Manifest System (AMS) today. Because, under the Coast Guard's proposed rulemaking, the cargo manifests would technically be made part of the NOA, the submission of cargo manifests would be required of ocean carriers as vessel owners and operators only, not non-vessel operating common carriers (NVOs).⁸ While technically a part of the NOA information requirements – which otherwise are submitted directly to the Coast Guard's NVMC – the Coast Guard proposes that cargo manifest information be submitted directly to the Customs Service, using the existing Customs Form 1302, not to the Coast Guard.

The Coast Guard also proposes that only electronic submissions of the cargo manifest information via Customs' Automated Manifest System should be allowed in the future. The supplementary information in the proposed rule notes that approximately 95% of the vessels that are required to submit cargo manifests to Customs already submit them electronically via AMS.⁹ The USCG does, however, expressly seek comments on whether all vessels should be required to submit cargo manifests electronically using AMS.

The supplementary information explains that cargo manifests are necessary to assess cargoes entering the U.S. for potential threats to national security and to take appropriate actions against such threats, that the Coast Guard's NVMC does not have the capability to receive and process cargo manifest information (but that the Customs Service does have an existing capability to receive, process, and share the information with the Coast Guard), and that a “single

⁶ 33 CFR §160.T208 (10).

⁷ See footnote 4 for the exact submission deadlines for NOAs.

⁸ “Under 33 CFR part 160, subpart C, owners, agents, masters, operators, or persons in charge of vessels bound for U.S. ports must file an NOA... .The Coast Guard proposes requiring a new information requirement as part of the NOA submission. The new requirement is the vessel's cargo manifest information described in 19 CFR 4.7(a). This requirement is in addition to the one in [33 CFR] § 160.207(b)(14), ‘general description of the cargo’ ”. 67 *Fed.Reg.41660-1* (emphasis added).

⁹ Cargo manifests submitted electronically via AMS are submitted 48 hours prior to arrival at the first U.S. port of call.

electronic submission of the cargo manifest information (Customs Form 1302) to USCS would satisfy the requirements of both agencies for submission of that information".¹⁰

The World Shipping Council agrees with several of these observations. We believe that enhanced maritime security requires higher cargo security, and that such higher cargo security necessitates a clearly defined and coordinated government information system capable of receiving, analyzing and acting on data determined by the government to be necessary to screen cargo shipments.

The Council agrees that advance cargo manifest information should be required to be submitted to the Customs Service electronically. We also agree that such cargo information should only be required to be submitted once to a single government repository which can analyze and screen cargo information to identify which cargo requires further review, inspection or other appropriate actions.

The Council does not support, however, the portion of this proposed rulemaking addressing the filing of cargo manifests with the Customs Service for several reasons. First, cargo manifest filing regulation should be addressed, and is currently being addressed, by the Customs Service. Second, even if the Coast Guard were to proceed with cargo manifest filing regulations, the terms of the proposed requirements in this docket: (1) are inconsistent with the presently proposed Customs Service rulemaking on this issue, (2) do not articulate a convincing rationale for moving the submission of cargo manifests via AMS up from the current 48 hours prior to arrival to the proposed 96 hours prior to arrival; and (3) are unacceptably incomplete in that they address the government's need for earlier cargo manifest information without addressing the need for non-vessel operating common carriers to file such information.

A. Subsequent Action Addresses This Issue

We recognize that, at the time of publication in the *Federal Register* of this proposed rulemaking, the Customs Service had not issued its proposed rulemaking to require the advance filing of inbound cargo manifests before vessel loading. Technically making the Customs cargo manifest filing a part of the NOAs may have been perceived as a way of addressing shortcomings in the existing cargo manifest filing system. However, since the publication of the proposed rulemaking, two major events have occurred with a direct bearing on this proposed rulemaking. First, the Trade Act of 2002 has been enacted and signed into law, and it includes provisions specifying the Customs Service as the agency to address the requirements for advance cargo security information policy and filing requirements. Second, the Customs Service has issued its own proposed rulemaking to require cargo manifests to be filed with the Customs Service before vessel loading (67 *Federal Register* 51519, August 8, 2002).

Thus, there is not only no longer a need for the Coast Guard to address cargo manifest filing procedures at Customs, but to do so would necessarily raise confusion and potential inconsistency with the regulatory actions of the Customs Service.

¹⁰ 67 *Fed.Reg.*41661 .

B. 96 Hours

Even if the Coast Guard were to issue rules on cargo manifest filings, this proposed rulemaking provides no explanation for why filing manifests 96 hours in advance of arrival provides greater security than the current 48 hours before arrival. In fact, the Customs Service pending proposed rulemaking indicates that 96 hours is not what the government's advance information needs actually are. Instead, Customs is proposing to require that inbound cargo manifests to be provided to the government before vessel loading in the foreign port, so that the government can review cargo information and make further inquiries or inspections as appropriate before the cargo is loaded aboard ship. In addition, the Customs Service has explained how such manifest filing before loading ties into the strategy of the agency's Container Security Initiative. In short, there is no explanation or clear rationale supporting 96 hours advance cargo manifest filing.

C. Proposal is Unacceptably Incomplete

If cargo manifests are to be used by the government as a key mechanism for its cargo security strategy, then *all* carriers must be required to file. This is especially true as the government requires earlier filing times, as such earlier times also have operational and commercial consequences. Security-based requirements should apply to all carriers. Non-vessel operating common carriers (NVOs) carry more than a third of the containerized cargo moving in U.S. foreign trades (including full loads as well as consolidated containers), yet they do not currently file manifests with the government for the shipments they carry. The only manifest information available to the government today for NVO controlled containers is from the ocean carrier's manifest, which contains *no* information about the actual shippers or consignees of the cargo.

It is essential that any new cargo manifesting regulations require that NVOs file cargo manifests with the Customs Service for shipments for which they are responsible at the same time and in the same manner and form as ocean carriers.¹¹ AMS is now capable of receiving NVO manifest filings, so there is no reason not to require this. In fact, the Customs Services' current proposed rulemaking recognizes that NVO's need to be bonded like ocean carriers and file manifests in AMS at the same time as ocean carriers. Without such a requirement, the government will continue to have no advance information about the identity of the shippers or consignees of more than a third of our imported ocean-borne cargo. Without such a requirement, a shipper or consignee could conceal its identity from advance disclosure to the government by using an NVO rather than an ocean carrier to transport its goods. Furthermore, without such a requirement, the same shipment would be subject to less onerous security documentation requirements if handled by an NVO than if handled by an ocean carrier. This would make no sense. In short, it is essential that NVOs file cargo manifests for their shipments at the same time and in the same manner as ocean carriers. We are aware of no governmental or commercial interest that disagrees with this, including the NVO community.

¹¹ The Ports and Waterways Safety Act, in conjunction with the Coast Guard's establishing statute, Title 14 of the U.S. Code, and in particular Section 2, provide authority for the Coast Guard - in the event that the agency were to decide not to agree to our recommendation above and instead to make cargo manifest information part of the NOA requirements - to require the direct submission of cargo information by NVOs to Customs.

D. Recommendation Regarding Cargo Manifest Filing With Customs

In view of the above comments, the Council respectfully submits that the Coast Guard should refrain from regulating the time and manner of the submission of cargo manifests as part of the NOA requirements, and instead defer to the Customs Service pursuant to its legal authority.

The Council wishes to emphasize that this recommendation is *not* borne out of a policy disagreement with the underlying rationale of gathering earlier, better cargo information. Quite the contrary. The Council understands, and agrees, that earlier, advance electronic submission of cargo information is one of the essential prerequisites for an enhanced maritime security system. Our recommendation here is based solely on the need for the federal government to establish a single, consistent set of cargo security information requirements.

4. Additional Crew Member Information

Currently, a NOA is required to include a list of crew members onboard the vessel with the following information: full name; date of birth; nationality; passport number or mariners document number, and position or duties on the vessel.¹² The temporary rule expressly states that inclusion of a copy of the Immigration and Naturalization Service (INS)'s crew list form (I-418) in the NOA meets this information requirement.¹³ This consistency of approach by the Coast Guard and the INS to crew member information is essential.

The Coast Guard now proposes¹⁴ that the following new crew member information should be included in the NOAs: (A) "Any other name [in addition to full name] including alias, nickname, maiden name, professional or stage name by which each individual has been known", and (B) "Where the crew member embarked (list port or place and country)".

Before commenting on each of these proposals, the Council wishes to make the following general observations on transmission of crew member information to the federal government.

Today, the industry provides the same crew manifest information to three different federal agencies in different formats at different times. Liner vessels provide their NOAs, including crew manifest information, electronically (via e-mail) to the NVMC 96 hours prior to arrival at the first U.S. port of call. Immediately prior to port arrival, that same crew manifest information is submitted in paper (fax) form to the local INS and Customs inspectors. We understand that the agencies' computer systems do not currently allow INS or Customs to obtain the crew manifest information that the Coast Guard is receiving at the earlier time in the NOAs.

¹² 33 CFR § 160.T208 (c) (14).

¹³ "You may submit a copy of INS Form I-418 to meet the requirements of [33 CFR §160.T208 (c)(14)]. 33 CFR § 160.T208 (d).

¹⁴ 67 *Fed.Reg.* 41667

The Council believes that this information can and should be shared more efficiently to the benefit of both the government and the industry. A vessel operator should be able to submit its crew manifest information electronically once to one federal agency, which could then share its data base with other appropriate agencies. The Council has made a specific proposal that would meet this objective to the government's Data Management Information Act (DMIA) Task Force's Seaport Subgroup.

Despite the obvious logic of a single government repository for electronically submitted crew member information, we recognize that it may take some time to implement because of apparent difference in the agencies' information systems. Accordingly, we have proposed an interim measure that could provide the INS and Customs with the crew manifest information earlier, enabling those agencies to perform their duties more efficiently and enabling carriers to operate more efficiently. Specifically, we have proposed that, in lieu of the present system in which INS and the Customs Service receive a paper copy of the manifest at the time of vessel arrival, that the vessel operator be allowed to e-mail the INS and Customs Service a copy of the NOA at the same time it transmits that information to the Coast Guard. This would not only allow for the immediate implementation of the electronic transmission of crew information for a substantial number of the approximately 200,000 foreign seafarers who come to the U.S. each year, but it would provide the INS and Customs with the information 96 hours prior to arrival, thus allowing the two agencies greater time to, in coordination with the Coast Guard, properly validate the identity of arriving seafarers and target their inspection efforts towards high risk vessels and crews.

Both our proposal for the longer term (one single government repository for electronically submitted crew member information) and our proposed interim measure (better use of the crew member information provided today as part of the NOA information requirements) are based on two simple and straightforward principles: (1) There must be agreement among the government agencies with responsibilities relating to foreign crew members on what information elements are needed regarding arriving foreign seafarers, and (2) The government should use a common transmission system or mechanism for collecting this information (e.g. the INS I-418 Form pending the development of a single electronic transmission system).

The current situation, where each government agency requires crew member information in different formats and at different times, should not continue to exist, and it definitely should not be aggravated. For the reasons set out below, we have concerns about the Coast Guard's proposals for new crew member information elements, as currently drafted.

A. Proposed NOA element: "Where the crew member embarked"

The Council does not object in principle to the inclusion of information about where a crew member embarked among the new, permanent NOA information requirements.

We do, however, note with concern that the proposed rule explicitly states that the INS Form can not be used to provide information about where the crew embarked – presumably

because the current INS Form uses somewhat different terminology for essentially the same information requirement.¹⁵

As stated above, the government agencies involved need to agree on the information elements they need to fulfill their statutory and regulatory responsibilities, and agree on a single form to collect this information. A single transmission medium should be used for the submission of these information elements. We note, and appreciate, that the Coast Guard explicitly agrees with this objective in regard to cargo information.¹⁶ There is no reason why the same principles should not – and can not – apply in regard to collection of crew member information, particularly when it appears that only a seemingly innocuous problem of agreeing on a common terminology stands in the way of being able to continue to use the same form for providing the proposed new crew member information element to the INS and the Coast Guard (and for that matter also to the Customs Service). This is particularly true in view of the fact that the INS is in the process of revising its I-418 Form, and may be preparing to require in the near future that the industry use the revised Form for submission of crew member information.

We request that the Coast Guard continue to accept the I-418 Form, and, if that Form needs changes, to work with the INS to make those changes in the I-418 Form.

B. Proposed NOA element: “Any other name, including alias, nickname, maiden name, professional or stage name”

The Council understands the objective behind the Coast Guard’s proposal to include this crew member information element among the NOA information requirements.¹⁷

Again, we are concerned, however, that this proposed rulemaking moves away from, rather than towards, a single transmission system for crew member information. The inclusion and immediate enforcement of this proposed information element in the final, permanent NOA requirements without preceding agreement with the INS (and perhaps also Customs) on how best to collect such additional information (including necessary changes to the INS I-418 to allow it to continue to be the common transmission mechanism for crew member information) would aggravate the current situation where each government agency receives crew member information in different formats and at different times.¹⁸ The current INS I-418 Form does not include such an information element nor does the current draft of the revised INS I-418 Form, according to our understanding.

¹⁵ Proposed 33 CFR § 160.207 (c) reads: “You may submit a copy of INS Form I-418 to satisfy the requirements of paragraphs [33 CFR § 160.207] (b)(15)(i), (b)(15)(iii) through (vi)”, thus excluding information about embarkation (proposed 33 CFR § 160.207 (b)(15)(vii)) and alias, nickname etc. (proposed 33 CFR § 160.207(b)(15)(ii)). The terminology used in the current INS I-418 form is: “Where shipped or engaged”.

¹⁶ “A single electronic submission of the cargo manifest information (Customs Form 1302) to USCS would satisfy the requirements of both agencies for submission of that data”. 67 Fed.Reg.41661.

¹⁷ “This new information would allow us to better identify crewmembers entering our ports”. 67.Fed.Reg.41661.

¹⁸ The Coast Guard even recognizes that this could be the outcome, as noted in footnote 15, since the proposed rulemaking expressly states that this information requirement can not be met through submission of a copy of the INS I-418 Form.

We also note that the recently enacted “Enhanced Border Security and Visa Entry Reform Act of 2002” (Public Law 107-173) does not include a similar information requirement for crew manifests. *That Act also requires that any new information requirements deemed “necessary for the identification of persons transported and for the enforcement of the immigration laws and to protect safety and national security” should be promulgated in rulemakings by the Attorney General, not other government departments.*¹⁹ The Enhanced Border Security Act requires close cooperation and coordination among and between government agencies with responsibilities relating to foreign crew members for determining and collecting necessary crew member information.

Inclusion of both the proposed new crew member information elements in the final, permanent NOA information requirements should be done after that information has been required in accordance with the terms of the Enhanced Border Security Act, and has been incorporated into the INS I-418 Form, so that it can continue to be a common mechanism for transmission of all crew member to the Coast Guard, the INS, and the Customs Service. Inclusion of these two new crew member information elements in the NOA submissions should only occur after the Coast Guard and the INS (and the Customs Service) have reached a positive determination on the information elements’ inclusion in crew manifests, and have agreed on the content and format of a revised INS I-418 Form.

Should the government agencies agree on the inclusion of “*Any other name, including alias, nickname, maiden name, professional or stage name*” in the crew manifest information (and thus also in the NOAs through the submission of a copy of an amended, revised INS I-418 Form), the Council requests that the regulations expressly state that the submitting carrier, in the absence of knowledge to the contrary, may rely on the veracity and completeness of the information provided to it by the individual crew members. Other crew information can be verified by the vessel operator by reference to physical documents (e.g., passport number) or is within the knowledge of the vessel operator (e.g., duties on the vessel). For this information element, the obligation of the submitting carrier should be to ask its crew members to declare information about “Any other name, including alias, nickname, maiden name, professional or stage name”, and then include that information, as provided in the copy of the INS I-418 Form submitted as part of the NOA submission to the Coast Guard. The vessel operator has no ability to check or verify the accuracy or completeness of such information.

Finally, the Council wishes to suggest for the Coast Guard’s consideration that, if the U.S. government determines that information about “Any other name, including alias, nickname, maiden name, professional or stage name” should be included in the crew manifests and thus the NOA information requirements, the agency should propose to the International Maritime Organization (IMO) and the International Labor Organization (ILO) that such an information element be included in the International Seafarer Identification Document concurrently being

¹⁹ Pub.L. 107-173, Section 402 (c)(10). It should also be noted that the law’s definition of “United States border officer” to whom passenger and crew manifests must be presented – i.e., “U.S. border officer means, with respect to a particular port of entry in to the United States, any United States official who is performing duties at that port of entry” (section 402(i); emphasis added) – appears to expressly include the Coast Guard’s responsibilities in regard to foreign crew members.

considered by those two organizations.²⁰ The inclusion of this information element in an internationally accepted and applied document would conceivably provide the U.S. government agencies with ready access to the requested information earlier and in a more comprehensive way than might be obtained through the submission of crew manifests and the inclusion of copies of the INS I-418 Form in the NOA submissions.

5. Last Foreign Ports Visited

Today, the NOA is required to include date of departure and name of the foreign port from which the vessel last departed.²¹ The Coast Guard proposes to amend that requirement to include the names and dates of arrival and departure, respectively, of the last five ports or places visited.²²

Assuming that the agency's proposal pertains to the last five foreign ports visited during the vessel's *current* voyage, the Council can support the proposal.

We would, however, recommend that in the final rule this requirement be amended to read (suggested new language is indicated in bold):

“(8) Provide the following information for the five **most recent** ports or places **where cargo was loaded onto the vessel and for which you will submit a Cargo Declaration (U.S. Customs Form 1302) upon arrival in the United States:**

(i) The name of each port; [continue as drafted]”.

6. U.S. Destinations To Be Visited

When first published, the temporary final NOA rule requested that NOAs include the name(s) of the port(s) or place(s) of destination in the United States. Subsequently, the Coast Guard published a correction to the temporary final rule²³, amending that requirement to list the names, for each destination in the United States, of the receiving facility, the port or place, the city, and the state. The Coast Guard now proposes to make the corrected, amended requirement permanent.

The Council supports the proposal.

²⁰ Under U.S. leadership, the recent G8 Summit also included in its “Statement on Cooperative G8 Action on Transport Security” a commitment to “[w]ork towards agreement...by June 2003 on minimum standards for issuance of seafarers’ identity documents for adoption at the ILO”. The World Shipping Council fully supports the U.S. initiative, and applauds the U.S. government, and in particular the U.S. Coast Guard, for the leadership it is showing on this important issue.

²¹ 33 CFR § 160.T208(c)(11).

²² 67 *Fed.Reg.*41667.

²³ 66 *Fed.Reg.*57877

7. Estimated Departure Date and Time and Reporting Changes to NOAs

Except for vessels carrying dangerous cargoes²⁴, the NOAs are not today required to include information about estimated date and time of departure. Consequently, vessels with non-dangerous cargoes are currently *not* required to report (changes in) departure date and time from a U.S. port.²⁵ Such vessels are, however, required to report changes to the information submitted in the NOAs no later than 24 hours before entering the first U.S. port except that changes in arrival time of less than six hours need not be reported.²⁶

The Coast Guard now proposes to not only include estimated departure date and time for each destination in the United States listed in the NOA, but also require that changes in departure time of more than six hours be reported.²⁷

The supplementary information does not explain the reasons for the proposed changes except to say that the agency wishes to combine the NOAs and the so-called Notices of Departure (NODs), which vessels with certain dangerous cargoes are required to submit. If a change in vessel departure time of more than six hours is required to be filed, this will create a substantial number of filings with the Coast Guard.

The result, based on the information provided in the proposed rulemaking, could very well be that vessels with non-dangerous cargoes would be burdened with additional information and reporting requirements seemingly without enhancing security, because the major security concern for these types of vessels would seem to be the estimated and actual arrival times (in order to prepare for possible activation of sea marshal and security zone measures as well as immigration procedures). It also seems that the existing requirement -- that changes to the information in the original NOA, which includes the estimated date and time of arrival at all the identified destinations to be visited in the U.S., must be reported at least 24 hours before first port of call in the United States -- should in and of itself be sufficient to enable the Coast Guard to activate and implement appropriate security measures.²⁸

For these reasons, the Council respectfully requests that the Coast Guard reconsider the need to include estimated departure date and time, and changes to them, in the final, permanent NOA reporting requirements for vessels with non-dangerous cargoes. If upon consideration, such information is determined necessary, we recommend consideration be given to requiring filing changes in departure time only if the changes are for a period significantly longer than 6

²⁴ As defined in 33 CFR § 160.203.

²⁵ See the table on Times of Submission included in the Coast Guard's proposed rulemaking. *67 Fed.Reg.41662*.

²⁶ 33 CFR § 160.T208(e).

²⁷ *67.Fed.Reg.41667 and 41668*.

²⁸ This requirement explicitly also applies to so-called consolidated NOAs for vessels planning to enter two or more consecutive ports in the United States during a single voyage. 33 CFR. § 160.T.208 (h).

hours, as delays of 6 hours are common and would generate a large number of filings that would appear to have little security value.

8. Additional NOA-related Issues

In its proposed rulemaking, the Coast Guard invites comments on a number of additional issues concerning NOA submissions. The World Shipping Council provides the following observations and comments to these additional issues.

A. Who Can Submit NOAs?

Currently, the vessel's owner, authorized agent, master, operator, or person in charge of a vessel must submit the NOA. The Coast Guard states in the supplementary information to its proposed rulemaking that it is considering accepting NOA submissions from (i) only the vessel owner and operator, or (ii) only the vessel owner, operator, and authorized agent (including shipping agents and maritime exchanges) of the vessel. The Coast Guard requests comments on how either of these changes would affect the method of submission of NOAs currently used by the shipping industry.²⁹

Unfortunately, the Coast Guard does not provide any explanation for why it is considering reducing the number of authorized submitters of NOAs. We do not know, therefore, whether such considerations are based on security concerns, other policy reasons or purely administrative reasons.

The Council is not aware of any security concerns that would necessitate or warrant changing the current list of submitters. We also want to point out that the master is currently required to sign and authenticate several official government forms, including the INS I-418 Form, which requires the master's signature to verify that the master has informed the crew and any passengers on board the vessel of U.S. immigration and customs laws. The U.S. Customs service similarly requires the master to sign and verify cargo descriptions and other forms necessary for the vessel's entry into the United States.

We would therefore urge the Coast Guard to only make changes or limit the universe of accepted submitters of NOAs after careful analysis of existing government filing requirements, and after a rulemaking process explains the reasons for any suggested changes. As of this time, the Council would not support making only the vessel owner and operator authorized submitters NOAs. We might be able to support the second alternative being considered by the Coast Guard, i.e. the vessel owner, operator and authorized agent, as long as the master would be regarded as an agent acting on behalf of the vessel owner or operator.

²⁹ 67 *Fed.Reg.* 41663.

B. Electronic Submissions of NOAs

The Coast Guard states in its proposed rulemaking that it is considering developing a capability to receive and automatically process NOA data submitted in a specified electronic file format, and that if such a capability is in place when a final rule is published, it would be the preferred or possibly exclusive method for filing NOA submissions.³⁰

The Council's member lines are already submitting their NOAs electronically, using e-mail with the required information attached in various common file formats (e.g., ASCII text, MS Word documents and MS Excel spreadsheets). Thus, the Council can support making electronic submission of NOAs the preferred or even the exclusive method *as long as the common file formats, currently accepted by the NVMC and used by the Council's member lines today, would continue to be accepted.*

The Coast Guard also poses six specific questions about electronic submission. They and the Council's responses are:

Question # 1: *“What are your information security concerns regarding electronic submissions of NOA?”*

Response: The Council's member lines are already submitting NOAs electronically, and have not experienced, or expressed, any security concerns in this regard. We assume that electronic transmissions are being sent to and via a secure website.

Question # 2: *“Would you allow the Coast Guard to forward all or parts of your NOA information to entities such as marine exchanges or port authorities as a value added service to facilitate information sharing at the port level?”*

Response: Absent further explanation of the nature and scope of the envisaged “value added service” of such information sharing, the Council and its member lines are not in a position to endorse the forwarding of NOA information to non-governmental entities. We are, at this time, not convinced that there are any added security benefits of such information sharing, and are concerned that it might lead to greater security risks. We are also uncertain as to exactly what kind of information would lend itself to such information sharing. We assume that cargo manifest and crew member information would not be shared. We believe that further clarification is needed before this issue is pursued further.

Question # 3: *“If the Coast Guard produced a desktop application that allowed you to create, manage, and automatically submit NOA via email, would you use it?”*

Response: The Council's member companies are already submitting their NOAs electronically, using e-mail with the required information attached in various common

³⁰ 67 Fed.Reg. 41663.

file formats currently accepted by the NVMC (e.g., ASCII text, MS Word and MS Excel spreadsheets). Also in order to allow for integration into other applications, the currently accepted file formats should continue to be allowed alongside a future desktop application.

Question # 4: *“Which electronic means for submitting NOAs would you prefer (e.g., HTML, SMTP, FTP)?”*

Response: We do not regard these means to be mutually exclusive, and would encourage that as many options be made available to submitters as technically feasible.

Question # 5: *“What are your information security concerns if the Coast Guard allowed you to send your NOA to an FTP (File Transfer Protocol) server or web server in the public domain?”*

Response: It is our understanding that e-mails with NOA information transmitted to the NVMC today are often sent via FTP or web servers. We believe that the Coast Guard and perhaps other government agencies ultimately have the responsibility of deciding on the security requirements pertaining to electronic NOA submissions.

Question # 6: *“If the Coast Guard provided an XML (Extensible Markup Language) data specification for NOA, would you be able to generate XML documents and submit them via email or other means?”*

Response: Relatively few shipping companies today have the capability of generating XML documents for NOA submissions, which underscores our response to question # 4 that no single electronic means should become the exclusive method for submitting the NOAs electronically.

On a related issue, the Council understands that other government databases are in the process of moving, or already have switched, from USEDIFACT to UNEDIFACT data specification. This includes the Customs Service’s Advanced Passenger Information System (APIS) which we are told already can and does interface with INS’ databases, and conceivably could become a vehicle for also collecting crew member information transmitted as part of the NOAs, provided that data application and specification requirements are compatible. We are, however, not sure how an eventual XML data specification for NOAs would impact the possibility of APIS (and possibly other government databases) interacting with the Coast Guard’s database. We are also not sure what, if any, implications this would have for what ought to be the government’s objective in regard to crew member information –namely, *one* federal data collection system. We would encourage the Coast Guard to carefully address this issue before deciding on future data specifications.

9. Conclusion

The World Shipping Council commends the U.S. Coast Guard for its leadership, both domestically and internationally, in identifying and implementing measures intended to enhance the security of the international supply chain while at the same time continuing to facilitate international commerce.

A key component in the Coast Guard's efforts has been the existing temporary NOA information requirements which provide for the submission of important vessel, crew and cargo information 96 hours prior to first port of arrival in the United States, thus allowing the agency to target its inspection, sea marshal and other enforcement and port state control resources towards entities deemed to pose a greater risk to public safety, security and the environment. The Council supports making the earlier NOA submission permanent.

The Council also supports several of the proposed new information elements to be included in the NOAs. We also support a requirement that the NOAs be submitted electronically; in fact, the Council's member lines already submit their NOAs electronically via e-mail.

It is more important than ever, however, that the government not create inconsistent or redundant information systems and requirements, but instead establish and further develop a single, coordinated and clearly defined government information system capable of receiving, analyzing and acting on data determined by the government to be necessary to assess security risks.

Applying that standard to cargo shipments, and in consideration of the recently enacted legislation and the Customs Service's presently proposed rulemaking on cargo manifests, we do not believe that the Coast Guard should make cargo manifest filing part of the NOA information requirements. Instead, these issues should be addressed by Customs Service regulations defining the various issues involved in the scope, nature and timing of submission of cargo information to the government.

Similarly, we are concerned that this rulemaking's proposed new crew member information elements, as currently drafted, would not allow for the continued use of the INS I-418 Form as the medium for meeting the crew member information requirements in the NOAs. This would move the government and the industry further away from the universally agreed objective of a single, government information system that asks for the same crew information to be submitted to the government once. We therefore urge the Coast Guard to agree with the INS (and the Customs Service) on a common set of crew member information elements that would meet all three agencies' information requirements as defined in current statutes, including the Enhanced Border Security Act, and that would be reflected in a revised INS I-418 Form that could be used to submit the NOA crew member information requirements.

We appreciate the opportunity to provide comments on the Coast Guard's proposed rulemaking and look forward to providing any further explanation or observations the agency may request, and in particular to continuing cooperation with the agency in furtherance of our shared objective of increased maritime security.

Attachment A**Member Companies of the World Shipping Council**

APL

A.P. Moller-Maersk Sealand
(including Safmarine)

Atlantic Container Line (ACL)

CP Ships

(including Canada Maritime, CAST, Lykes Lines, Contship
Containerlines, TMM Lines, Italia Line, and ANZDL)

China Ocean Shipping Company (COSCO)

China Shipping Group

CMA-CGM Group

Compania Sud-Americana de Vapores (CSAV)

Crowley Maritime Corporation

Evergreen Marine Corporation

(including Lloyd Triestino and HATSU Marine)

Gearbulk Ltd.

Great White Fleet

Hamburg Sud

(including Columbus Line, Crowley American Transport and
Alianca)

Hanjin Shipping Company

Hapag-Lloyd Container Line

HUAL

Hyundai Merchant Marine Company

Kawasaki Kisen Kaisha Ltd. (K Line)

Malaysia International Shipping Corporation (MISC)

Mediterranean Shipping Company

Mitsui O.S.K. Lines

NYK Line

Orient Overseas Container Line, Ltd. (OOCL)

P&O Nedlloyd Limited

(including Farrell Lines)

Torm Lines

United Arab Shipping Company

Wan Hai Lines Ltd.

Wallenius Wilhelmsen Lines

Yangming Marine Transport Corporation

Zim Israel Navigation Company