



Comments of the

## **World Shipping Council**

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Submitted to the

**U.S. Customs and Border Protection  
Department of Homeland Security**

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In the matter of

### **Interim Final Rule**

**Importer Security Filing and Additional Carrier  
Requirements**

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

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June 1, 2009

## **I. Introduction**

The World Shipping Council (the “Council”) submits these comments in response to the U.S. Customs and Border Protection (CBP) Interim Final Rule (“IFR” or “rule”) published on November 25, 2008 (73 Fed. Reg. 71730).

The Council, a non-profit trade association of over twenty-five international liner shipping ocean carriers<sup>1</sup>, was established to address public policy issues of interest and importance to the international liner shipping industry. The Council’s Members include the leading ocean liner companies from around the world -- carriers providing efficient, reliable, and low-cost ocean transportation for America’s international trade<sup>2</sup>. The Members of the World Shipping Council are major participants in an industry that has invested over \$400 billion in the vessels, equipment, and marine terminals that are in worldwide operation today. Today, over 1,500 ocean-going liner vessels, mostly containerships, make more than 27,000 calls at ports in the United States each year -- more than 70 vessel calls a day. In 2007, approximately 29 million TEUs<sup>3</sup> of containerized cargo were imported into or exported from the U.S. The industry generates over one million American jobs and over \$38 billion of wages annually to American workers. The industry provides the knowledge and expertise that built, maintains, and continually expands a global transportation network that provides seamless door-to-door delivery service for almost any commodity moving in America’s foreign commerce. The Council’s Member lines include the full spectrum of carriers from large global lines to niche carriers, offering container, roll on-roll off, and car carrier service as well as a broad array of logistics services.

The Council and the liner shipping industry support the Department of Homeland Security (DHS) and CBP strategy of using risk assessment and targeting techniques to screen U.S. import containerized cargo shipments before they are loaded on board a vessel bound for the United States. The Council and its Member companies have worked closely with CBP to provide advance cargo manifest information under the “24 Hour Rule” so that information

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<sup>1</sup> “Liner shipping” involves vessels engaged in regularly scheduled service to and from U.S. ports (e.g., ships leaving particular foreign ports for particular U.S. ports on a weekly schedule) in contrast to cargo vessels that call on U.S. ports for a particular voyage when hired (e.g., tanker and bulk shipping).

<sup>2</sup> A list of the World Shipping Council’s Member companies is available at [www.worldshipping.org](http://www.worldshipping.org). WSC Member companies carry over 90% of the United States’ international containerized ocean cargo.

<sup>3</sup> A TEU is a standard container measure that represents a twenty-foot container. Most containers moving in the U.S. trades are forty-foot units equal to 2 TEU. 29 million TEU equates to about 18 million container loads of U.S. cargo.

could be subject to a risk assessment that would identify cargo that deserves further scrutiny before vessel loading. The use of this “24 Hour Rule” information has been a positive step in enhancing CBP’s risk screening process, but, as noted by the Congress, DHS, the Government Accountability Office (GAO), the Commercial Operations Advisory Committee (COAC), numerous security experts and the industry itself, the present system provides either no or unreliable data regarding the commercial parties involved in buying and selling the goods, where the goods originated, who supplied them, where they are going, and where and by whom the container was stuffed. After extensive consultation with the trade community, CBP’s “10 plus 2” IFR has generally laid out a logical approach through which to collect the additional pre-vessel-loading shipment information from the parties that have direct knowledge of that information. We appreciate CBP’s effort to continue to reach out to the trade community for comments on how best to implement this new data filing regime.

The following comments are made in support of the strategy behind the IFR and in an effort to address technical and operational issues in a way that should facilitate the efficient and effective implementation of the new requirements. Wherever the Council’s comments have identified an issue of concern in the IFR, we have tried to offer a recommended solution.

## **II. Comments on the Importer Security Filing (ISF)**

### ***A. Proposal for How to Address ISF-5 Filings When a Non-Vessel Operating Common Carrier (NVOCC) is Involved***

CBP has determined that it wants to obtain more complete data via an abbreviated Importer Security Filing (ISF-5) for foreign-to-foreign containerized cargo shipments that arrive in the U.S as freight remaining on board (FROB), immediate export (IE) or transportation and exportation (T&E) cargo. In the course of the development of the IFR, ocean carriers have raised questions with CBP about the necessity for this, because it has been unclear what security risk this non-U.S. destination cargo actually presents and whether the abbreviated additional data provides sufficient security value to warrant the additional regulatory burden, and because the rule almost certainly will be a disincentive for carriers and their customers to route foreign-to-foreign container shipments on vessels that call at U.S. ports, thus impairing the efficient and flexible handling of international goods movement. This is not an insignificant concern, and ocean carriers request that CBP work closely with the trade community to try to minimize inconveniences to this non-U.S. commerce. The Council nevertheless recognizes that CBP has determined that it wants the additional ISF-5 data for such shipments before vessel loading for cargo security screening purposes.

These comments will not contest that policy judgment. Nevertheless, while we believe CBP's objective can be met, the approach as set forth in the IFR will not work when there is a non-vessel operating common carrier (NVOCC) shipment, because it imposes a data filing obligation on vessel operating common carriers (VOCCs) for data that they do not have (i.e., NVOCC house bill of lading data).<sup>4</sup> The process proposed is also unnecessarily complicated and deviates unnecessarily from both the statutory requirements of the Trade Act of 2002 and the process CBPs' regulations have currently established for VOCCs and NVOCCs regarding the filing of cargo declarations/manifests under the "24 Hour Rule".

The Council proposes a simplified, uniform, predictable process through which the NVOCC or the VOCC, as appropriate, would be required to file a cargo declaration plus an ISF-5 (i.e. a "unified" filing) for every FROB, IE or T&E cargo shipment.

## **1. DISCUSSION**

Today, for a "vessel arriving in the United States", CBP regulations require an NVOCC to file cargo declarations (Customs Form 1302/cargo manifests) with CBP prior to vessel loading for all cargo it "delivers ... to the vessel carrier for lading aboard the vessel at the foreign port...." This requirement applies to any cargo loaded aboard a vessel that will call the U.S., including FROB, IE and T&E shipments. (See 19 CFR. 4.7(b)(3)(i) and 4.7a(c)(1)).

If the NVOCC is licensed by or registered with the FMC and possesses an International Carrier Bond, it may file its cargo declarations directly with CBP via the Automated Manifest System (AMS). In the alternative, it must provide the cargo declaration to an automated third party or to the VOCC to file in AMS. In either case, the NVOCC is the regulated party that is required to provide the cargo declaration information at the house bill of lading level via one of the above-described filing methods.

The Trade Act of 2002 directs CBP to place such information filing obligations on the "party most likely to have direct knowledge of that information" unless it is "not practicable". (P.L. 107-210, § 343(a)(3)(B); 19 U.S.C. §2071 note). The "party most likely to have direct

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<sup>4</sup> The "ocean common carrier" or "vessel operating common carrier" issues bills of lading to its customers and can provide Customs with that data. When the VOCC's customer is an NVOCC, the NVOCC acts as a matter of law and practice as a separate and distinct carrier. The VOCC's bill of lading to an NVOCC can be provided to Customs by the VOCC, just as the VOCC's bill of lading data to its other shipper customers can be provided. When an NVOCC resells the transportation service to its separate, distinct, and proprietary customers, however, its bills of lading (the house bills of lading) and booking information are not within the knowledge of the VOCC, and for competitive reasons, are not generally shared. The NVOCC bill of lading data can be obtained from the NVOCC and, as a matter of U.S. law and practical commercial practice, is today obtained from the NVOCC. For simplicity's sake, this paper will simply use the terms VOCC and NVOCC to describe these respective parties.

knowledge of” house bill of lading level information is the party issuing the house bill of lading – the NVOCC. Through its cargo manifest regulation, CBP has established an existing legal regime requiring NVOCCs to file house bill of lading level cargo declarations for FROB and arriving “transit” cargo, and has demonstrated that it is “practicable” to place the regulatory obligation for such filings on NVOCCs for such shipments.

Section 149.3(b) of the “10 plus 2” IFR requires that for FROB, IE and T&E cargo, five ISF data elements (ISF-5) (booking party, foreign port of unloading, place of delivery, ship to party and commodity HTSUS number) must be filed “at the lowest bill of lading level (i.e., at the house bill of lading level, if applicable)”. Section 149.1(a) of the IFR states that for FROB cargo “the ISF Importer will be *the carrier*”; however, there are two carriers when there is an NVOCC-controlled shipment, and the regulation does not state which carrier has the ISF-5 filing obligation -- the VOCC that issues a master bill of lading to the NVOCC, or the NVOCC that issues the house bill of lading to its shipper customer. Both are carriers. The regulation is ambiguous on this point.

A VOCC is able to file the ISF-5 data elements for a “straight” bill when there is no NVOCC; however, there are numerous problems with requiring a VOCC to file ISF-5 data at the NVOCC’s house bill of lading level, including:

- The VOCC does not “have direct knowledge of that information”;
- Such information is likely to be unavailable to the VOCC in many, if not most, cases;
- NVOCCs have strong competitive and commercial reasons not to provide such data to VOCCs, because it discloses the NVOCCs’ customers and consignees;
- Such information would not be verifiable by the VOCC;
- Such a requirement would be inconsistent with the provisions of the Trade Act of 2002 quoted above; and
- Such a process would create an inefficient and unproductive bifurcation of the house bill information filing -- with the NVOCC being required to provide house bill data in its required Customs Form 1302, and the VOCC being required to supplement the NVOCC’s CF 1302 house bill information with a separate ISF-5 filing of house bill information.

It makes no sense to obtain Customs Form 1302 cargo declaration data from the NVOCC at the house bill level, but then force the VOCC to undertake another, separate data filing process in order to provide a couple of additional house bill level data items -- when it can all be obtained at one time from the NVOCC. For CBP to obtain ISF-5 information at a house bill level, it would be much simpler, less costly, more accurate, more efficient and more reliable for the NVOCC to provide this data when it files its cargo declaration. In fact, by facilitating the filing of

a unified Customs Form 1302 and ISF-5, CBP has already facilitated a much more appropriate way to address this issue.

The commentary in the Federal Register accompanying the “10 plus 2” regulation states that “the NVOCC can submit the Importer Security Filing directly to CBP, if it does so as the vessel operating carrier’s agent.” (73 Fed. Reg. 71744) The commentary is thus inconsistent with the Trade Act directive quoted above requiring that the information filing obligation “shall be imposed on the party most likely to have direct knowledge of that information”, which in the case of house bill of lading information is the issuer of that bill of lading, namely the NVOCC. Further, the NVOCC will often have commercial and competitive reasons not to give the VOCC accurate ISF-5 data. Further, CBP has already rejected the commentary’s above quoted rationale in its manifest regulations, which require NVOCCs to file Customs Form 1302 cargo declarations for their foreign-to-foreign cargo aboard a vessel arriving in the U.S

CBP’s IFR frequently asked questions (FAQs) add further uncertainty to the question of who is to file the ISF-5, raise questions about consistency with the terms of the “10 plus 2” regulation, and appear to contradict the Federal Register commentary on this issue. For FROB, the IFR says “the carrier” is to file without identifying which carrier. The commentary says the “vessel carrier” is to file and that the NVOCC can only be an agent of the carrier. For IE and T&E cargo the regulation says the party filing the IE and T&E documentation is the party with the regulatory filing obligation. The IFR FAQs at page 30, however, state:

*“B. Transit Cargo (FROB, IE, TE):*

- 1. Can the NVOCC file an ISF even though there is no legal requirement to do so? Yes, an NVOCC can file an ISF on its own behalf (as an ISF Importer) or file an ISF as an agent for another party. “*

The FAQs thus take the position that an NVOCC “can” file on its own behalf and not as an agent of the VOCC, and thus contradicts the Federal Register commentary.

The Council supports having the NVOCC file the ISF-5 information directly to CBP, but the interim final regulations need to be modified to make it clear that this is a regulatory obligation for NVOCCs, rather than merely an option that they may adopt or reject at their choosing.

## **2. RECOMMENDATION**

The present treatment of this issue is confusing, contradictory, and unlikely to provide CBP with the information it wants. A solution meeting CBP's information needs can be implemented that is simpler and more predictable for all concerned, based on the following:

- The ISF-5 data elements that CBP wants for FROB, IE and T&E cargo can and should be obtained from the appropriate carrier's bill of lading/booking process.
- CBP should follow and build upon the established precedent and jurisdictional approach of its cargo manifest regulations.
- CBP should follow the statutory directive of Section 343 of the Trade Act.
- A "unified" filing of a cargo declaration plus the ISF-5 data should be filed by the appropriate carrier (the VOCC or the NVOCC) for each FROB, IE and T&E container shipment, as follows:
  - a. When the shipment is an NVOCC controlled shipment, the NVOCC would be required to make the unified filing of the required data (ISF-5 data and manifest data) at the house bill of lading level, and
  - b. When the shipment is not an NVOCC controlled shipment, the VOCC would be required to make the unified filing of the required data from its bill of lading (straight bill) level.

Under this recommended approach, there would always be a filing of the ISF-5 data CBP wants either from the VOCC or the NVOCC for all FROB, IE and T&E shipments. When there is no NVOCC involved, this filing would be made by the VOCC with information derived from the VOCC's bill of lading; and, when there is an NVOCC shipment, there would always be a single, unified filing from the NVOCC at a house bill level. To obtain this result, the final regulation should treat ISF-5 data filing obligations as follows:

- *Shipments Involving Straight VOCC Bills of Lading*: If the FROB, IE or T&E transit cargo is moving on a straight VOCC bill of lading, there is no NVOCC or house bill of lading information. A new bill of lading type should be developed that is applicable only to FROB, IE and T&E cargo, and the Customs Form 1302 for this bill type would be a unified filing, including the ISF-5 data elements. [It might be called a "transit" type of bill.] There would one filing from the vessel carrier that includes the cargo declaration and the ISF-5 data that CBP wants (the separate ISF-5 filing would be eliminated), and it would be provided in the pre-vessel loading time frame that CBP wants.

- Shipments Involving NVOCC Bills of Lading: If the FROB, IE or T&E shipment is being transported under an NVOCC's bill of lading, the NVOCC will file the ISF-5 data elements CBP wants at the house bill level by filing a single, unified Customs Form 1302 plus ISF-5 filing rather than a 1302 and a separate ISF-5 filing. The NVOCC has all the house bill information, is filing a 1302, and should simply file a house level transit type bill that includes all the unified information. If the NVOCC is an automated AMS filer, then the NVOCC would file the house transit type 1302 with CBP electronically itself. If the NVOCC is not an automated AMS filer, then whichever party (the designated VOCC or an automated third party filer) is filing the cargo declaration for the NVOCC as required by 19 CFR 4.7(b)(3) would file the house transit type 1302 on behalf of the NVOCC.

This recommendation is consistent with the approach, timing and process of the existing cargo declaration regulations, consistent with the Trade Act requirements, and places the responsibility on the party with direct knowledge of the information. VOCCs already look to see if there is a house bill filing in AMS before vessel loading, and they could continue to do so to ensure that the unified filing has been made by the NVOCC. CBP has already facilitated the submission of unified filings for the 24 hour manifest data and ISF-5 data. This recommendation simply builds on that premise, provides for a single transmission from the relevant carrier, and gives CBP the house bill of lading level it wants for these shipments from the parties that possess the house bill data.

We offer the following suggested Amendments to the IFR to facilitate the above recommendations:

[**Note:** Recommended additions are underlined and in **bold**; recommended deletions have been lined out.]

**19 CFR § 149.1 Definitions.**

(a) *Importer Security Filing Importer.*

For purposes of this part, "Importer Security Filing (ISF) Importer" means the party causing goods to arrive within the limits of a port in the United States by vessel. For shipments other than foreign cargo remaining on board (FROB), immediate exportation (IE) and transportation and exportation (T&E) in bond shipments, and goods to be delivered to a foreign trade zone (FTZ), the ISF Importer will be the goods' owner, purchaser, consignee, or agent such as a licensed customs broker. For FROB, **IE and T&E** cargo, the ISF Importer will be the carrier, **meaning the vessel carrier is responsible for submitting the information required by § 149.3(b) of this part, except when the shipment is being transported by a non-vessel operating common carrier (NVOCC), in which case the NVOCC is the ISF importer and responsible for submitting the information required by § 149.3(b) of this part at the house bill level.** For ~~IE and T&E~~

~~in bond shipments, and~~ goods to be delivered to an FTZ, the ISF Importer will be the party filing the ~~IE, T&E, or~~ FTZ documentation.

**19 CFR § 149.3 Data elements.**

(b) *FROB, IE shipments, and T&E shipments.*

For shipments consisting entirely of foreign cargo remaining on board (FROB) and shipments intended to be transported in-bond as an immediate exportation (IE) or transportation and exportation (T&E), the following elements must be provided for each good listed at the six-digit HTSUS number **by the vessel carrier, or if applicable, by the NVOCC** at the lowest bill of lading level (i.e., at the house bill of lading level, ~~if applicable~~).

(1) *Booking party.* Name and address of the party who initiates the reservation of the cargo space for the shipment. A widely recognized commercially accepted identification number for this party may be provided in lieu of the name and address.

(2) *Foreign port of unloading.* Port code for the foreign port of unloading at the intended final destination.

(3) *Place of delivery.* City code for the place of delivery.

(4) *Ship to party.* Name and address of the first deliver-to party scheduled to physically receive the goods after the goods have been released from customs custody. A widely recognized commercially accepted identification number for this party may be provided in lieu of the name and address.

(5) *Commodity HTSUS number.* Duty/statistical reporting number under which the article is classified in the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number must be provided to the six-digit level. The HTSUS number may be provided to the 10-digit level.

**The above data elements shall be provided for FROB, IE and T&E shipments by the vessel carrier or by the NVOCC, if applicable, as part of their cargo manifest required by section 4.7a of this chapter.**

**19 CFR § 4.7a Inward Manifest; information required; alternative forms.**

[ADD A NEW SUBPARAGRAPH (C)(5): ]

**(c)(5) In addition to the cargo manifest information required in paragraphs (c)(1)-(c)(4) of this section, for foreign cargo remaining on board (FROB), immediate exportation (IE) and transportation and exportation (T&E) in bond shipments that require a carrier to provide the data elements set forth in section 149.3(b) of this chapter, such data shall be included in the required Cargo Declaration.**

**3. PROCEDURE**

The Council requests that CBP revise the regulations as discussed above when it issues its final rule in this docket. Such an amendment would be proper given the procedural history of this rulemaking, including CBP's structured review and formal outreach activities and the scope of its request for comments on the IFR. Although CBP cautioned that it was not

reopening the proposed rule in its entirety, it did request comments on six of the data elements (two of which – ship to party and HTSUS number – are ISF-5 elements), as well as on the revised Regulatory Assessment and “the barriers to submitting Import Security Filing data 24 hours prior to lading.” (73 Fed. Reg. 71731)

WSC’s comments and request for clarification of the regulatory language fall squarely within the scope of CBP’s request for comments. Interested parties are clearly on notice that CBP is considering barriers to submission of ISF data, both through the submission of industry comments and through CBP’s own public outreach and analysis, and that CBP may modify the final rule accordingly. Such notice is sufficient to satisfy the Administrative Procedure Act’s notice requirements. *See, e.g., Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007) (explaining that “the object” of notice and comment rulemaking “is one of fair notice”); *Owner-Operator Independent Drivers Assoc. v. Federal Motor Carrier Safety Admin.*, 494 F.3d 188, 209 (D.C. Cir. 2007) (“test is satisfied if interested parties ‘should have anticipated the agency’s final course in light of the initial notice’”); *Nat’l Electrical Manufacturers Assoc. v. Environmental Protection Agency*, 99 F.3d 1170, 1172 (D.C. Cir. 1996) (“To meet the requirements of § 553, an agency ‘must provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully”).

The requested changes would correct a barrier to CBP’s collection of accurate information in a timely manner. They will also bring the final rule into compliance with section 343(a) of the Trade Act of 2002. A regulatory change to comply with a controlling statutory directive should surprise no one. All interested parties are on notice that additional changes may be made, and all have had an opportunity to comment on the proposed and interim final rule. All parties have accordingly been given fair notice and opportunity to comment on which carrier<sup>5</sup> should provide ISF-5 information when an NVOCC is involved in the transaction.

In addition to seeking comment on the six items that CBP is treating with some flexibility, it also seeks comments on the revised Regulatory Assessment and Final Regulatory Flexibility Analysis. The Regulatory Assessment includes, as required by the Safe Ports Act of 2006, an analysis of the feasibility of the IFR. For the reasons discussed above, requiring VOCCs to provide house level bill of lading information for NVOCC shipments is not feasible. CBP recognizes this in its Regulatory Assessment, stating that:

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<sup>5</sup> In addition, CBP’s statements that the “carrier” to provide ISF-5 information is the VOCC are found in the background section of the regulations, not in the regulations themselves. As such, they constitute an interpretation of the meaning of “carrier.” CBP is permitted to change its interpretation of the regulation without issuing a notice of proposed rulemaking.

“Buyers and sellers can also hire freight forwarders and Non-Vessel Operating Common Carriers (NVOCCs), known collectively as “cargo consolidators,” as well as third party logistics providers to collect, transport, and arrange shipment of the goods. Cargo consolidators buy space from an ocean carrier or VOCC and resell it to smaller shippers. For logistical and economical reasons, they may collect and consolidate multiple shipments from multiple shippers into a single consolidated shipment. In this situation, the consolidator books a container with a carrier, stuffs the container with shipments received from various shippers while documenting its contents, seals the container, and delivers the container to the VOCC for lading. At the time of booking, the VOCC issues a unique “master” BOL number to the consolidator, which designates the consolidator as the “shipper” for all of the consolidated shipments that are to be stuffed in the container. *Consolidators use this process to effectively conceal the identities of their shipping customers from the VOCCs.*”

Regulatory Assessment at 2-14 (emphasis added). CBP also recognizes that VOCCs have not traditionally collected ISF-5 data and that “shipping customers may be reluctant to provide the necessary data.” Regulatory Assessment at 4-8. This reluctance is amplified when NVOCCs are involved because, as noted above, they do not want to reveal information about their customers. Thus, it is not feasible for VOCCs to collect this information.

CBP recognized these problems but failed to adjust its regulatory approach to address them. As such, the IFR is inconsistent with the agency’s own Regulatory Assessment, which could make the IFR vulnerable to a claim that it is arbitrary and capricious. CBP should reconsider its implementation in light of the assessment and these comments, and it should revise its decision to make clear that NVOCCs, not VOCCs, are to provide ISF-5 house bill of lading level information for NVOCC shipments.

For all of these reasons, CBP has the authority to make the changes requested above in the final rule, without soliciting additional comments. If, however, CBP believes additional notice and opportunity to comment are required, WSC requests that CBP treat these comments as a petition for amendment of the regulations pursuant to 5 U.S.C. § 553(e) and that it initiate a proceeding in time to correct the regulations well in advance of the January 25, 2010, enforcement date.

## ***B. Ship To Party***

This party is defined in the IFR as “Name and address of the first deliver-to-party scheduled to physically receive the goods after the goods have been released from customs

custody". WSC's comments in response to the "10 plus 2" Notice of Proposed Rulemaking (NPRM) had requested that CBP adopt a clearer definition, namely "the party to whom the carrier is to deliver the goods under the carrier's contract of carriage". The "released from custody" language in the ISF context is drafted to refer to CBP release, which has no meaning for FROB, IE, or T&E cargo.

We also note that there are circumstances when the ocean carrier would not have the complete street address of the "ship to" party and instead would simply have the company name and city as identified on the contract of carriage. We believe that this is acceptable, in part, because the AMS transaction sets for implementing the IFR requirements indicate that the address field for the "ship to" party data element is optional.

We therefore wish to confirm that CBP will continue to accept, for FROB, IE and T&E cargo, in the "ship-to" party field the party to whom the carrier is to deliver the goods under the carrier's contract of carriage. This means that the ocean carrier will provide to CBP in the "ship to" party field the information, which may not always include a complete street address as noted above, listed on the carrier's contract of carriage.

### ***C. When FROB, IE or T&E Becomes U.S. Import Cargo or U.S. Import Cargo becomes FROB, IE, or T&E Cargo***

For a FROB, IE or T&E shipment, the carrier (i.e. either the VOCC or NVOCC) is deemed the ISF importer and must file an abbreviated five data element ISF. There are occasions when, after sailing, the shipper changes the shipment to become U.S. destination and discharge cargo, as it is legally entitled to do. We wish to confirm with CBP: 1) that in such cases the importer would become the party responsible for filing the full 10 element ISF to CBP, and 2) if the conversion of FROB, IE or T&E cargo to U.S. import cargo results in the creation of a split bill of lading, the importer would be responsible for ensuring a new 10 element ISF is filed for the new bill of lading.

There are also situations in which the shipper changes a U.S. import cargo shipment to become FROB, IE, or T&E cargo after the ship has sailed en route the United States. We wish to confirm that in such cases the carrier would not be required to file an ISF-5 because the full 10 element ISF would have already been filed with CBP by the importer prior to vessel loading.

## ***D. Rolled and Split Shipments***

For various operational and business reasons there are situations in which containerized cargo shipments, including FROB, IE or T&E cargo, may be rolled onto a different vessel or split into two or more shipments, each with new bill of lading numbers. We wish to confirm that CBP will only require a new ISF filing when a new bill of lading number is created as a result of a rolled or split shipment. Thus, for a rolled shipment for which the bill of lading number did not change, there would be no need to file a new ISF.

## ***E. Emergencies/Bad Weather By-Passes of Foreign First Port of Call***

Oceangoing vessels from time to time encounter contingencies such as bad weather, or a shipboard emergency that may cause the vessel to call at a U.S. port with cargo on board that was never intended to enter the United States. For example, bad winter weather in the North Atlantic may cause a vessel to bypass Halifax as first port of call and call New York directly. Due to the contingency, the Halifax destination cargo would become U.S. FROB, IE, or T&E cargo, and no ISF filing would have been made to CBP.

We request that CBP grant an ISF filing exemption for such cargos due to the fact that the emergency prevented the carrier from filing the ISF as required and the incidence of such cases should be infrequent. If CBP will not exempt such cargos, we request that the agency, at a minimum, refrain from issuing penalties to carriers for failing to file the ISF on time in such instances, as carriers cannot be expected to predict when forces of nature or any other contingencies may cause them to deviate from their scheduled itinerary and enter the United States with cargo bound for a foreign destination.

## ***F. Bill of Lading Numbers***

It is the Council's understanding that ocean carriers either are presently or very will soon be issuing bill of lading (B/L) numbers to their customers either at booking or within sufficient time for their customer to have the B/L number in time to file the ISF in a timely manner. We understand that some shippers may submit comments to CBP in this docket on the issue of obtaining bill of lading numbers for ISF filings. WSC submits that any issues that may exist with respect to the issuance of timely and correct bill of lading numbers need to be carefully and correctly analyzed and understood, and in any event, they do not justify any additional regulatory treatment.

To the extent that WSC Members have identified issues with respect to accurate B/L numbers to be used for ISF filing, they appear to be based on: carrier systems or processes that have already been or are in the process of being upgraded; customers providing insufficient shipping instructions to know how many bills of lading will be needed, splitting bills of lading, or combining bills of lading; or, complexities relating to timing arising with respect to NVOCCs that continue to refuse to automate and need an ocean carrier to electronically file their house level bill of lading data for them.

In this latter regard, when an importer uses an NVOCC as its carrier, the importer is required to submit its ISF-10 at the “lowest bill level”, that is, the NVOCC’s bill of lading. We are not aware of issues with respect to these B/L numbers when the NVOCC is automated. However, when an NVOCC is not automated and uses an ocean carrier to issue “house bill numbers” for submittal in AMS on behalf of the NVOCC, the ocean carrier generated “house bill” numbers can only be created by most carriers after the NVOCC has submitted its master and house bill details (shipping instructions) to the ocean carrier. This is an unavoidably slower process than if the NVOCC is automated and generating its own B/L numbers and filing its own data. At the time of the NVOCC’s booking with the ocean carrier, neither the NVOCC nor the carrier is likely to know how many house bills will have to be generated, thereby making it problematic for the ocean carrier to provide “house bill numbers” at time of booking.

WSC Member lines are very willing to work with CBP and the trade community to analyze and address any such issues at a technical level. We also recommend that CBP strongly encourage those NVOCCs that have not yet automated to do so, as this will simplify procedures, be much more efficient, and enhance their ability to process the documentation required by these new regulations in a timely manner.

### **III. Comments on Container Status Messages (CSMs)**

#### ***A. Empty Containers***

CBP’s IFR expanded the requirements in the NPRM to require the filing of CSMs for empty containers. CBP has acknowledged in discussions with WSC that the CSM filing obligation does not begin until a container is designated for shipment to the United States. Because empties may not be identified for loading to the U.S. until the last minute, CBP would only receive a single CSM indicating the loading of an empty container onto the vessel and would not receive any prior CSMs for those containers. We wish to confirm that CBP only expects to receive a single CSM relating to the loading of an empty container onto the vessel.

## ***B. Bookings***

The IFR requires that carriers send CSMs to CBP when a booking is “confirmed” and leaves it to the carrier’s discretion to define when it deems a booking to have reached “confirmed” status. We wish to confirm that CBP will accept carriers’ interpretation of “confirmed” to mean after the shipper has picked up an empty container against that booking.

## **IV. Conclusion**

The World Shipping Council and its Member companies continue to support DHS’s strategy to use risk assessment and targeting methodologies to identify and further scrutinize high risk cargo shipments rather than attempting to use limited government resources to try to inspect 100% of U.S. import cargo containers. We believe that the “10 plus 2” effort is an important enhancement of CBP’s capabilities, which will provide the government with additional information on the cargo, from the party that possesses direct knowledge of that information.

We look forward to continuing to work closely with CBP to implement the “10 plus 2” requirements and commend the agency on its willingness to work with the affected trade community to understand and resolve challenges identified with the proposed regulation. We hope that CBP will find the above comments constructive and helpful in enhancing the containerized cargo risk assessment process while facilitating the smooth flow of America’s international commerce.

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