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 Part II

Department of Homeland Security

 U.S. Customs and Border Protection

 19 CFR Parts 4, 12, 18, et al.

Importer Security Filing and Additional Carrier Requirements; Final
 Rule

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 DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Parts 4, 12, 18, 101, 103, 113, 122, 123, 141, 143, 149,
 178, and 192

[Docket Number USCBP-2007-0077; CBP Dec. 08-46]
 RIN 1651-AA70

Importer Security Filing and Additional Carrier Requirements

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Interim final rule, solicitation of comments.

 SUMMARY: To help prevent terrorist weapons from being transported to the United States, vessel carriers bringing cargo to the United States are required to transmit certain information to Customs and Border Protection (CBP) about the cargo they are transporting prior to lading that cargo at foreign ports of entry. This interim final rule requires both importers and carriers to submit additional information pertaining to cargo to CBP before the cargo is brought into the United States by vessel. This information must be submitted to CBP by way of a CBP-approved electronic data interchange system. The required information is reasonably necessary to improve CBP's ability to identify high-risk shipments so as to prevent smuggling and ensure cargo safety and security. These regulations specifically fulfill the requirements of section 203 of the Security and Accountability for Every (SAFE) Port Act of 2006 and section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002.

DATES: Effective Date: This rule is effective on January 26, 2009.

Compliance Dates: The compliance dates for these regulations are set forth in Sec. 4.7c(d), 4.7d(f), and 149.2(g).

Comment Date: As provided in the "Public Participation" section of this document, comments are requested on certain aspects of the rule. Comments must be received on or before June 1, 2009.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments via docket number USCBP-2007-0077.

Mail: Border Security Regulations Branch, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., Washington, DC 20001.

Instructions: All submissions received must include the agency name and document number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC.

Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Richard Di Nucci, Office of Field Operations, (202) 344-2513.

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Abbreviations and Terms Used in This Document

AAEI--American Association of Exporters and Importers
 AAPA--American Association of Port Authorities
 ABI--Automated Broker Interface
 ACE--Automated Commercial Environment
 AES--Automated Export System
 AMS--Automated Manifest System
 ANSI--American National Standards Institute
 ATDI--Advance Trade Data Initiative
 ATS--Automated Targeting System
 BAPLIE--Bayplan/stowage plan occupied and empty locations message
 CAMIR--Customs Automated Manifest Interface Requirements
 CATAIR--Customs and Trade Automated Interface Requirements
 CBP--Customs and Border Protection
 CFR--Code of Federal Regulations
 COAC--Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions
 CSI--Container Security Initiative
 CSM--Container status message
 C-TPAT--Customs-Trade Partnership Against Terrorism
 DDP--Delivered duty paid

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DHS--U.S. Department of Homeland Security
 DNL--Do not load
 DUNS--Data Universal Numbering System
 EIN--Employer identification number
 FAQ--Frequently asked questions
 FDA--U.S. Food and Drug Administration
 FIRMS--Facilities Information and Resources Management System
 FROB--Foreign cargo remaining on board
 FTZ--Foreign trade zone
 FR--Federal Register
 GLN--Global Location Number
 HTSUS--Harmonized Tariff Schedule of the United States
 ICPA--International Compliance Professionals Association
 IE--Immediate exportation

IIT--Instrument of international trade
 IMO--International Maritime Organization
 IRS--Internal Revenue Service
 IT--Immediate transportation
 ISF--Importer Security Filing
 JIG--Joint Industry Group
 LCL--Less than Container Load
 MID--Manufacturer identification
 MTSA--Maritime Transportation Security Act of 2002
 NAM--National Association of Manufacturers
 NCBFAA--National Customs Brokers and Forwarders Association of America
 NII--Non-Intrusive Inspection
 NPRM--Notice of Proposed Rule Making
 NVOCC--Non-vessel operating common carrier
 OCS--Outer Continental Shelf
 OFA--Outward Processing Arrangement
 OMB--Office of Management and Budget
 PDF--Portable Document Format
 PGA--Participating Government Agency
 Pub. L.--Public Law
 RILA--Retail Industry Leaders Association
 RFA--Regulatory Flexibility Act of 1980
 SAFE Port Act--Security and Accountability for Every Port Act of 2006
 SBREFA--Small Business Regulatory Enforcement Fairness Act of 1996
 sFTP--Secure File Transfer Protocol
 SSN--Social Security Number
 T&E--Transportation and exportation
 TIB--Temporary Importation Bond
 TSC--Technology Support Center
 TSN--Trade Support Network
 UMRA--Unfunded Mandates Reform Act of 1995
 UN EDIFACT--United Nations rules for Electronic Data Interchange For Administration, Commerce and Transport
 U.S.C.--United States Code
 VIN--Vehicle Identification Number
 VOCC--Vessel Operating Common Carrier
 WHTI--Western Hemisphere Travel Initiative
 WSC--World Shipping Council

I. Public Participation

Interested persons are invited to submit written comments on only the six data elements for which CBP is providing some type of flexibility (container stuffing location, consolidator (stuffer), manufacturer (or supplier), ship to party, country of origin, and commodity HTSUS number) and the requirements related to those elements discussed in section 149.2(b) and (f). CBP also invites comments on the revised Regulatory Assessment and Final Regulatory Flexibility Analysis, including compliance costs for various industry segments, the impact of the flexibilities provided in this rule, and the barriers to submitting Importer Security Filing data 24 hours prior to lading. We urge commenters to reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authorities that support such recommended change.

II. Background

Section 203 of the Security and Accountability for Every Port Act of 2006 (Pub. L. 109-347, 120 Stat. 1884 (SAFE Port Act)) provides that the Secretary of Homeland Security (Secretary), acting through the Commissioner of CBP, shall promulgate regulations to "require the electronic transmission to the Department [of Homeland Security] of additional data elements for improved high-risk targeting, including appropriate security elements of entry data, as determined by the Secretary, to be provided as advanced information with respect to cargo destined for importation into the United States prior to loading of such cargo on vessels at foreign seaports." Pursuant to this Act, and section 343(a) of the Trade Act of 2002 (19 U.S.C. 2071 note), CBP published a Notice of Proposed Rule Making (NPRM) in the Federal Register (73 FR 90) on January 2, 2008, proposing to require importers and carriers to submit additional information pertaining to cargo before the cargo is brought into the United States by vessel.

CBP has provided an overview of existing advance cargo information requirements and entry requirements below. For a detailed discussion of the advance cargo information requirements prior to this interim final rule, the statutory and regulatory histories, and the statutory factors governing development of these regulations, please see the NPRM published at 73 FR 90.

The proposed rule was known to the trade as both the "Importer Security Filing proposal" and the "10 + 2 proposal." The name "10 + 2" is shorthand for the number of advance data elements CBP was proposing to collect. Carriers would be generally required to submit two additional data elements--a vessel stow plan and container status messages regarding certain events relating to containers loaded on vessels destined to the United States--to the elements they are already required to electronically transmit in advance (the "2" of "10+2"); and importers, as defined in the proposed regulations, would be required to submit 10 data elements--an Importer Security Filing containing 10 data elements (the "10" of "10+2").

\1\ For purposes of the proposed regulations, importer means the party causing goods to arrive within the limits of a port in the United States. For foreign cargo remaining on board (FROB), the importer was proposed to be construed as the carrier. For immediate exportation (IE) and transportation and exportation (T&E) in-bond shipments, and goods to be delivered to a foreign trade zone (FTZ), the importer was proposed to be construed as the party filing the IE, T&E, or FTZ documentation with CBP.

CBP extended the initial 60-day comment period by 15 days, from March 3, 2008 to March 18, 2008. See 73 FR 6061 (Feb. 1, 2008). Approximately 200 commenters responded in a timely manner to the NPRM. As certain comments pertained to the proposed carrier requirements and others pertained to the proposed importer requirements, this interim final rule addresses separately the issues presented in the comments regarding the proposed carrier requirements and the proposed importer

requirements.

III. Carrier and Importer Requirements

A. Existing Requirements

Carriers are currently required to submit advance cargo information for vessels, including a vessel's Cargo Declaration, to CBP no later than 24 hours before the cargo is laden aboard a vessel at a foreign port. See 19 CFR 4.7 and 4.7a. This is generally referred to as the "24 Hour Rule." This information must be submitted to CBP via the Vessel Automated Manifest System (AMS). Carriers are currently not required to submit vessel stow plans or container status messages to CBP. In addition, importers of record are generally required to file entry information, including CBP Form 3461, with CBP within fifteen calendar days of the date of arrival of a shipment at a United States port of entry and entry summary information, including CBP Form 7501, within 10 working days of the entry of the merchandise. Entry and entry summary information is submitted to CBP via the Automated Broker Interface (ABI) or via paper forms. Importers are not currently required to submit advance cargo information to CBP.

B. New Carrier Requirements Under This Interim Final Rule

1. Vessel Stow Plan

In addition to the existing carrier requirements pursuant to the 24 Hour Rule, this interim final rule requires

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carriers to submit a vessel stow plan for vessels destined to the United States. Carriers must transmit the stow plan for vessels transporting containers so that CBP receives the stow plan no later than 48 hours after the carrier's departure from the last foreign port. For voyages less than 48 hours in duration, CBP must receive the stow plan prior to the vessel's arrival at the first port in the United States. Bulk and break bulk carriers are exempt from this requirement for vessels exclusively carrying bulk and break bulk cargo. Carriers must submit the vessel stow plan via the CBP-approved electronic data interchange system, which currently includes AMS, secure file transfer protocol (sFTP), or e-mail. If CBP approves of different or additional electronic data interchange systems, CBP will publish a notice in the Federal Register.

The vessel stow plan must include standard information relating to the vessel and each container laden on the vessel, including the following standard information:

With regard to the vessel,

- (1) Vessel name (including international maritime organization (IMO) number);
- (2) Vessel operator; and
- (3) Voyage number.

With regard to each container,

- (1) Container operator;
- (2) Equipment number;
- (3) Equipment size and type;
- (4) Stow position;
- (5) Hazmat code (if applicable);
- (6) Port of lading; and
- (7) Port of discharge.

2. Container Status Messages

In addition to the existing carrier requirements pursuant to the 24 Hour Rule, this interim final rule also requires carriers to submit container status messages (CSMs) \2\ to CBP daily for certain events relating to all containers laden with cargo destined to arrive within the limits of a port in the United States by vessel. CSMs created under either the American National Standards Institute (ANSI) X.12 standard or the United Nations rules for Electronic Data Interchange For Administration, Commerce and Transport (UN EDIFACT) standard are acceptable.

 \2\ CSMs are used to report terminal container movements (e.g., loading and discharging the vessel) and to report the change in status of containers (e.g., empty or full).

Carriers must submit a CSM when any of the required events occurs if the carrier creates or collects a CSM in its equipment tracking system reporting that event. Carriers are not required to create or collect any CSM data other than those which the carrier already creates or collects on its own and maintains in its electronic equipment tracking system. Carriers must submit CSMs no later than 24 hours after the message is entered into the carrier's equipment tracking system.

The events for which CSMs are required are:

- (1) When the booking relating to a container which is destined to arrive within the limits of a port in the United States by vessel is confirmed;
- (2) When a container destined to arrive within the limits of a port in the United States by vessel undergoes a terminal gate inspection;
- (3) When a container, which is destined to arrive within the limits of a port in the United States by vessel, arrives or departs a facility (These events take place when a container enters or exits a port, container yard, or other facility. Generally, these CSMs are referred to as "gate-in" and "gate-out" messages.);
- (4) When a container, which is destined to arrive within the limits of a port in the United States by vessel, is loaded on or unloaded from a conveyance (This includes vessel, feeder vessel, barge, rail and truck movements. Generally, these CSMs are referred to as "loaded on" and "unloaded from" messages.);
- (5) When a vessel transporting a container, which is destined to arrive within the limits of a port in the United States by vessel, departs from or arrives at a port (These events are commonly referred to as "vessel departure" and "vessel arrival" notices.);
- (6) When a container which is destined to arrive within the limits of a port in the United States by vessel undergoes an intra-terminal movement;
- (7) When a container which is destined to arrive within the limits of a port in the United States by vessel is ordered stuffed or stripped;
- (8) When a container which is destined to arrive within the limits

of a port in the United States by vessel is confirmed stuffed or stripped; and
 (9) When a container which is destined to arrive within the limits of a port in the United States by vessel is shipped for heavy repair.\3\

\3\ A container is shipped for heavy repair when it is delivered to a facility for the purpose of being repaired.

CBP is aware that it might be cost beneficial for some carriers to transmit all CSMs, rather than filter out CSMs relating to containers destined to the United States or relating only to the required events. Therefore, carriers may transmit their ``global'' CSM messages, including CSMs relating to containers that do not contain cargo destined for importation into the United States and CSMs relating to events other than the required events. By transmitting CSMs in addition to those required by this interim final rule, a carrier authorizes CBP to access and use those data.

For each CSM submitted to CBP by the carrier, the following information must be included:

- (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 if the container is associated with a specific vessel.

Carriers are exempt from the CSM requirement for bulk and break bulk cargo. Carriers must submit CSMs via the CBP-approved electronic data interchange system. The current electronic data interchange system for CSMs approved by CBP is sFTP. If CBP approves of a different or additional electronic data interchange system, CBP will publish a notice in the Federal Register.

The following chart illustrates the existing carrier data requirements pursuant to the 24 Hour Rule and the new carrier data requirements required pursuant to this interim final rule.

Existing Carrier Requirements Versus New Carrier Requirements

	Existing requirements		New requiremen
Requirement.....	Advance Cargo Information (i.e., Trade Act Requirements or 24 Hour Rule)	Stow Plan	Container Status Messages
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Timing.....	24 hours prior to lading	48 hours after departure; prior to arrival for voyages less than 48 hrs	24 hours after the messag into the carrier's equip tracking system
Submission Method.....	vessel AMS	vessel AMS, sFTP, or email	sFTP
Elements.....	--Bill of Lading Number --Foreign Port before vessel departs for U.S. --Carrier SCAC [Standard Carrier Alpha Code] --Carrier Assigned Voyage Number --Date of Arrival at First U.S. Port --Quantity --Unit of measure of Quantity --First Foreign Place of Receipt --Commodity Description (or six-digit HTSUS Number) --Commodity Weight --Shipper Name and Address --Consignee Name and Address or ID Number --Vessel Name --Vessel Country --Vessel Number --Foreign Port of Lading --Hazmat Code --Container numbers --Seal Numbers --Date of Departure from Foreign Port --Time of Departure from Foreign Port	--Vessel name (including international maritime organization (IMO) number); --Vessel operator; and --Voyage number With regard to each container, --Container operator; --Equipment number; --Equipment size and type; --Stow position; --Hazmat code (if applicable); --Port of lading; and --Port of discharge.	--Event code being report defined in the ANSI X.12 EDIFACT standards; --Container number; --Date and time of the ev reported; --Status of the container full); --Location where the even place; and --Vessel identification a with the message if the associated with a specif

C. New Importer Requirements Under This Interim Final Rule

This interim final rule requires Importer Security Filing (ISF) Importers, as defined in these regulations, or their agents, to transmit an Importer Security Filing to CBP, for cargo other than foreign cargo remaining on board (FROB), no later than 24 hours before cargo is laden aboard a vessel destined to the United States. See the ``Structured Review and Flexible Enforcement Period'' section of this document for flexibilities related to timing for certain Importer Security Filing elements. Because FROB is frequently laden based on a last-minute decision by the carrier, the Importer Security Filing for FROB is required any time prior to lading. An Importer Security Filing is required for each shipment, at the lowest bill of lading level (i.e., at the house bill of lading level, if applicable). The party required to submit the Importer Security Filing is the party causing the goods to enter the limits of a port in the United States. This party is the carrier for FROB and the party filing for the immediate exportation (IE), transportation and exportation (T&E), or foreign trade zone (FTZ) documentation for those types of shipments. The ISF Importer, as a business decision, may designate an authorized agent to file the Importer Security Filing on the ISF Importer's behalf. A party can act as an authorized agent for purposes of filing the Importer Security Filing if that party obtains access to ABI or AMS.

ISF Importers, or their agents, must transmit the Importer Security Filing via a CBP-approved electronic data interchange system. The current approved electronic data interchange systems for the Importer Security Filing is ABI and vessel AMS. If CBP approves a different or additional electronic data interchange system in the future, CBP will publish a notice in the Federal Register.

The party who filed the Importer Security Filing must update the Importer Security Filing if, after the filing and before the goods arrive within the limits of a port in the United States, there are changes to the information filed or more accurate information becomes available.

ISF Importers, or their agents, must submit 10 elements to CBP for shipments consisting of goods intended to be entered into the United States and goods intended to be delivered to an FTZ. ISF Importers, or their agents, must submit five elements to CBP for shipments consisting entirely of FROB and shipments consisting entirely of goods intended to be "transported" as IE or T&E in-bond shipments.

For shipments other than those consisting entirely of FROB and goods intended to be "transported" in-bond as an IE or T&E, the Importer Security Filing must consist of 10 elements, unless an element is specifically exempted. The manufacturer (or supplier), country of origin, and commodity Harmonized Tariff Schedule of the United States (HTSUS) number must be linked to one another at the line item level. The 10 elements are as follows: (1) Seller; (2) Buyer; (3) Importer of record number/Foreign trade zone applicant identification number; (4) Consignee number(s); (5) Manufacturer (or supplier); (6) Ship to party; (7) Country of origin; (8) Commodity HTSUS number; (9) Container stuffing location; and (10) Consolidator (stuffer).

For shipments consisting entirely of FROB and shipments consisting entirely of goods intended to be "transported" in-bond as an IE or T&E, the Importer Security Filing must consist of five elements, unless an element is specifically exempted. The five elements are as follows: (1) Booking party; (2) Foreign port of unloading; (3) Place of delivery; (4) Ship to party; and (5) Commodity HTSUS number.

Four of the Importer Security Filing elements are identical to elements submitted for entry (CBP Form 3461) and entry summary (CBP Form 7501) purposes. These elements are the importer of record number, consignee number, country of origin, and

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commodity HTSUS number when provided at the 10-digit level. An importer may submit these elements once to be used for both Importer Security Filing and entry/entry summary purposes. If an importer chooses to have these elements used for entry/entry summary purposes, the Importer Security Filing and entry/entry summary must be self-filed by the importer or filed by a licensed customs broker in a single transmission to CBP no later than 24 hours prior to lading. In addition, the HTSUS number must be provided at the 10-digit level.

Two of the Importer Security Filing elements are identical to elements submitted for application to admit goods to an FTZ (CBP Form 214). These elements are the country of origin and commodity HTSUS number when provided at the 10-digit level. The filer may submit the Importer Security Filing and CBP Form 214 in the same electronic transmission to CBP and may submit the country of origin and commodity HTSUS number once to be used for both Importer Security Filing and FTZ admission purposes. If the party submitting the Importer Security Filing chooses to have this element used for FTZ admission purposes, the HTSUS number must be provided at the 10-digit level.

The following chart illustrates the existing importer data requirements for entry and entry summary purposes and the new importer data requirements pursuant to this interim final rule.

Existing Importer Requirements Versus New Importer Requirements

	Existing Requirements	New Requirements
Requirement.....	Entry and Entry Summary \4\	Importer Security Filing
Timing.....	Entry within 15 calendar days of date of arrival; Entry summary within 10 working days of entry	24 hours prior to lading for 8 of the elements; as early as possible, in no event later than 24 hours prior to arrival, for 2 of the elements
Submission Method.....	ABI or paper	ABI or vessel AMS
Elements.....	--Bill of Lading Number --Importer of Record Number * --Foreign Port before vessel departs for U.S. --Carrier SCAC --Carrier Assigned Voyage Number --Date of Arrival at First U.S. Port --Quantity --Unit of measure of Quantity --First Foreign Place of Receipt --Commodity Description --Commodity HTSUS Number * --Commodity Weight --Shipper Name and Address --Consignee Name and Address and Number * --Country of Origin * --Vessel Name --Vessel Country --Vessel Number --Foreign Port of Lading --Hazmat Code --Container numbers --Seal Numbers --Date of Departure from Foreign Port --Time of Departure from Foreign Port	Shipments Other Than FROB, IE Shipments and T&E Shipments: --Seller --Buyer --Importer of record number/FTZ applicant identification number * --Consignee number(s) * --Manufacturer (or supplier) --Ship to party --Country of origin * --Commodity HTSUS number * --Container stuffing location --Consolidator (stuffer) FROB, IE Shipments and T&E Shipments: --Booking party --Foreign port of unloading --Place of delivery --Ship to party --Commodity HTSUS number

* These elements are provided for Importer Security Filing and entry/entry summary or FTZ admission purposes.

D. Structured Review and Flexible Enforcement Period

In order to provide the trade sufficient time to adjust to the new requirements and in consideration of the business process changes that may be necessary to achieve full compliance, CBP will show restraint in enforcing the rule, taking into account difficulties that importers may face in complying with the rule, so long as importers are making satisfactory progress toward compliance and are making a good faith effort to comply with the rule to the extent of their current ability. This policy will last for twelve months after the effective date and will apply to all aspects of the filing rule.

\4\ Importers are not currently required to submit any information to CBP prior to foreign lading for targeting purposes.

In addition, this rule provides flexibility with respect to certain elements of the Importer Security Filings. This flexibility falls into two categories:

Two elements of the Importer Security Filings will be subject to flexibility as to timing. These elements are the Container stuffing location and Consolidator (stuffer). The ISF Importer must submit these elements as early as possible, and in any event no later than 24 hours prior to arrival in a U.S. port (or upon lading at the foreign port if that is later than 24 hours prior to arrival in a U.S. port).

Four elements will be subject to flexibility as to interpretation. These elements are the Manufacturer (or supplier), Ship to party, Country of origin, and Commodity HTSUS number. There is no special timing flexibility for these elements; they must be filed 24 hours prior to lading. However, CBP has added flexibility by allowing ISF Importers, in their initial filing, to provide a range of acceptable responses based on facts available to the importer at the time, in lieu of a single specific response (which may become known to the importer only at a later time). ISF Importers will be required to update

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their filings with respect to these elements as soon as more precise or more accurate information is available, in no event later than 24 hours prior to arrival at a U.S. port (or upon lading at the foreign port if that is later than 24 hours prior to arrival in a U.S. port). For example, 24 hours prior to lading:

The ISF Importer could identify the manufacturer as being one of three typically used manufacturers, with more precision to be provided in subsequent ISF updates.

The ISF Importer could submit the identity of the importer, consignee, or the facility where the goods will be unladen in the event that the ship to party is unavailable (e.g., "to order" shipments).

If the ISF Importer is, in good faith, unable to determine whether the country where the final stage of production of an article took place is the country of origin, the ISF Importer may provide the country where the final stage of production of the article took place in lieu of the country of origin, and update the ISF submission as soon as more accurate data are available.

The purpose of these flexibilities is to allow CBP to conduct a structured review of the elements, including an evaluation of any specific compliance difficulties that the trade may be encountering with respect to these elements. CBP may gather information by conducting reviews of particular importers to determine whether submission of all 10 data elements 24 hours prior to lading was in fact feasible and, if not, what barriers the importer encountered. The structured review will cover a range of enterprises, from small to large, and will include both integrated and nonintegrated supply chains.

The structured review will further be enhanced by comments filed in response to this publication. Although the rule is now final, CBP invites comments on the 6 data elements for which CBP is providing some type of flexibility (Container stuffing location, Consolidator (stuffer), Manufacturer (or supplier), Ship to party, Country of origin, and Commodity HTSUS number). These comments are due by June 1, 2009.

The structured review will also be enhanced by feedback provided in CBP's formal outreach program, described below. The information gathering phase of the structured review will end on June 1, 2009. All comments must be submitted to CBP by that date. We note, again, that CBP is not reopening the proposed rule in this action for comment; rather CBP is seeking comment on the requirements discussed in section 149.2(b) and (f) of this rule and the revised Regulatory Impact Assessment.

On the basis of information obtained during the structured review and public comments, DHS will undertake an analysis of the elements subject to flexibilities discussed in this section. The analysis will examine compliance costs for various industry segments, the impact of the flexibilities, the barriers to submitting these data 24 hours prior to lading, and the benefits of collecting these data. Based on that analysis, DHS, in coordination with other parts of the Executive Branch, will determine whether to eliminate, modify, or leave unchanged these requirements.

CBP is committed to fully supporting the trade community in its efforts to successfully implement the requirements of this rule. During the first months of implementation--(1) CBP will conduct an extended round of structured outreach activities to engage with the trade on all aspects of the rule with a series of regional seminars and trade round table discussions at all of CBP's major seaports of entry and other ports as needed or requested by the trade. (2) CBP will identify trade community operators who have established processes (or who have successfully re-engineered processes) to deliver the data timely to CBP to provide their colleagues in the community with business advice on how to comply with the regulatory requirements. (3) CBP's seminars will focus on all topics related to this rule, technical, operational, and process components, such as documentation adjustments (e.g., modifying the terms of letters of credit to require receipt of data to effect final payment) and developing automated solutions to track supply chain partners and commodity orders (e.g. creating vendor/supplier databases).

A proposed schedule for these outreach activities is as follows:

Regions	Proposed dates
North East Coast: Ports of Newark/New York and Boston.	30 days after publication.
South East Coast: Ports of Baltimore, Philadelphia, and Norfolk.	45 days after publication.
Ports of Charleston, Savannah, and Jacksonville.	60 days after publication.
Ports of Miami, Port	75 days after publication.

Everglades, and San Juan.
 Gulf Coast:
 Ports of Houston and New Orleans. 90 days after publication.
 Northwest Pacific Coast:
 Ports of Seattle/Tacoma and Portland. 105 days after publication.
 Ports of Oakland/San Francisco. 120 days after publication.
 Pacific Coast:
 Ports of Los Angeles/Long Beach. 135 days after publication.

 Additional sessions will be scheduled based on trade community needs and feedback. All material discussed and presented at the seminars will be published on the CBP Web site along with Frequently Asked Questions (FAQs) and a general "How to Guide." CBP will consider an entity's progress in the implementation of the rule during the delayed enforcement period as a mitigating factor in any enforcement action following the delayed enforcement period.

E. Summary of Changes From NPRM

As referenced below, CBP is making several significant changes from the proposed rule. These changes consist of the following:

- (1) A compliance date of one year from the effective date of this final rule is established (in new Sec. Sec. 4.7c(d), 4.7d(f), and 149.2(g)).
- (2) CBP has added flexibility for four Importer Security Filing elements (Manufacturer (or supplier), Ship to party, Country of origin, and Commodity HTSUS number). Specifically, CBP is allowing importers, in their initial filing, to provide a range of acceptable responses based on facts available to the importer at the time, in

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lieu of a single specific response (which may become known to the importer only at a later time). Importers will be required to update their filings with respect to these elements as soon as more precise or more accurate information is available, in no event less than 24 hours prior to arrival at a U.S. port (or upon lading at the foreign port if that is later than 24 hours prior to arrival in a U.S. port).

(3) CBP has added flexibility for two Importer Security Filing elements (Container stuffing location and Consolidator (stuffer)) by requiring submission as early as possible, and in any event no later than 24 hours prior to arrival in a U.S. port (or upon lading at the foreign port if that is later than 24 hours prior to arrival in a U.S. port).

(4) The requirement that break bulk cargo be included on vessel stow plans is removed from Sec. 4.7c.

(5) The liquidated damages amount for violations of the Importer Security Filing requirements are changed from the value of the merchandise, as proposed, to \$5,000 for each violation in proposed Sec. Sec. 113.62(j), 113.64(e), and 113.73(c) and new Sec. 113.63(g) and Appendix D to part 113.

CBP is also making the following additional changes from the proposed rule:

- (1) Proposed Sec. 4.7(c)(5) required carriers to provide the "Hazmat-UN code." This section is changed to allow the carrier to provide any Hazmat code, if applicable.
- (2) Proposed Sec. 4.7d(a) is changed to clarify that CSMs are required for empty containers.
- (3) The label for the party required to submit the Importer Security Filing is changed from the "importer" to the "ISF Importer" in part 149 and proposed Sec. 149.1(a) is changed to clarify that the ISF Importer is construed as the owner, purchaser, consignee, or agent such as a licensed customs broker.
- (4) Proposed Sec. 149.3(a)(5) is changed to clarify that the supplier must be the "party supplying" the finished goods in the country from which the goods are leaving and that this party does not necessarily need to be in the country from which the goods are leaving.
- (5) The definition for the "Booking party" element in proposed Sec. 149.3(b)(1) is changed to require the identity of the "party who initiates the reservation of the cargo space for the shipment."
- (6) Proposed Sec. 149.3(a)(1), (2), (5), (6), (9), and (10) and (b)(1) and (b)(4) are changed to allow the ISF Importer to provide widely recognized commercially accepted identification numbers.
- (7) The section heading for proposed Sec. 149.5 is changed to clarify that the eligibility and bond requirements therein apply to an ISF Importer who submits an Importer Security Filing on his own behalf as well as agents submitting an Importer Security Filing on behalf of another party.
- (8) An importer security filing bond is added in a new Appendix D of part 113 and provisions for the Importer Security Filing are added to Sec. 113.63 in a new paragraph (g).
- (9) The new importer security filing bond and basic custodial bond are added to the list of bonds in proposed Sec. 149.5(b) that may be posted for Importer Security Filing purposes.
- (10) Proposed Sec. 149.5(b) is changed to require the ISF Importer to possess one of the required bonds or to have an agent post the agent's bond when submitting an Importer Security Filing on behalf of the ISF Importer.
- (11) Proposed Sec. 149.5(c) is changed to clarify that powers of attorney must be in English and that powers of attorney and letters of revocation must be retained for five years from revocation.
- (12) Proposed new 113.64(c) provides that liquidated damages for violations of advance cargo information requirements are capped at \$100,000 for vessel carriers. Proposed redesignated paragraph (d) of Sec. 113.64 is changed to include a \$100,000 cap on all other conveyance arrivals as well.
- (13) Sections 4.7c, 4.7d, and 149.2 are added to the list of approved information collections in Sec. 178.2.

IV. Discussion of Comments Regarding This Rulemaking Generally

Comment

CBP should postpone implementation until the regulations can be implemented through the Automated Commercial Environment (ACE), a

vigorous outreach to the public sector and other agencies of the government is undertaken and CBP is able to further study the costs, benefits, and alternatives. CBP should then issue a new Strawman \5\ or initially publish the rule as an interim final rule providing details of the bonding, liquidated damages, penalty, collection proposal, and data requirements, so that companies can develop or adapt their information technology systems and software to properly transmit the filing. When CBP does proceed, the rule should include a delayed effective date of 90 days to 14 months to provide ample time for the trade to prepare their systems and processes. Following the delayed effective date, CBP should phase-in enforcement over a 12-month period during which CBP should accept less than the full complement of data elements, accept data at some point less than 24 hours prior to lading, phase in individual elements, phase in trade participants, and/or not impose any punitive measures.

\5\ Prior to publishing the NPRM, CBP posted a ``strawman'' proposal on the CBP website along with a request for comments from the trade.

CBP Response

Section 203 of the SAFE Port Act of 2006 provides that the Secretary of Homeland Security shall promulgate regulations requiring additional data elements for improved high-risk targeting. CBP has engaged the trade through the rulemaking process and through consultation as required by section 203 of the SAFE Port Act (incorporating the requirements of section 343(a) of the Trade Act of 2002). CBP has met with groups representing the trade while developing the proposal, including: The Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC), the American Association of Exporters and Importers (AAEI), the American Association of Port Authorities (AAPA), the Joint Industry Group (JIG), the National Association of Manufacturers (NAM), the National Customs Brokers and Forwarders Association of America (NCBFAA), the International Compliance Professionals Association (ICPA), the Retail Industry Leaders Association (RILA), the Trade Support Network (TSN), the U.S. Chamber of Commerce, and the World Shipping Council (WSC). Prior to publishing the NPRM, CBP also posted a ``strawman'' proposal on the CBP Web site along with a request for comments from the trade. CBP has also considered the costs, benefits, and alternatives and has prepared a cost, benefit, and feasibility analysis. An updated cost, benefit, and feasibility analysis has been prepared for this interim final rule and is available in the public docket and on Regulations.gov.

After careful consideration, DHS has determined that issuance of this interim final rule is necessary at this time to fulfill the SAFE Port Act's statutory mandate and increase the security of cargo entering the United States by vessel by improving CBP's risk assessment capabilities. The information collected pursuant to this interim final rule will greatly enhance CBP's enforcement decision making process. The sooner that CBP can obtain these data, the sooner CBP can use these data to perform better risk analysis and identification of high-risk shipments.

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CBP understands that the trade may need time to adjust business practices to comply with this interim final rule and that large and complex parties may respond to these requirements differently than small and less sophisticated importers. Therefore, in order to provide the trade sufficient time to adjust to the new requirements and in consideration of the business process changes that may be necessary to achieve full compliance, CBP will show restraint in enforcing the rule, taking into account difficulties that importers may face in complying with the rule, so long as importers are making satisfactory progress toward compliance and are making a good faith effort to comply with the rule to the extent of their current ability. This policy will last for twelve months after the effective date and will apply to all aspects of the filing rule.

During this period, CBP will also work with the trade to assist them in achieving compliance and will continue to update the trade on issues associated with the regulations in the form of FAQs, postings on the CBP Web site, other outreach to the trade, and consultation with foreign countries. This rule also provides flexibilities with respect to certain elements of Importer Security Filings. CBP has also committed to a structured review of the elements, including an evaluation of any specific compliance difficulties that the trade may be encountering with respect to these elements. See the ``Structured Review and Flexible Enforcement Period'' section of this document for further discussion regarding the delayed compliance period, flexibilities, and CBP's structured review.

Comment

Prior to finalizing the regulations, CBP should undertake a pilot test using the required timeframes for data submission and employing the actual targeting, validation, and electronic processes that are intended to be employed upon implementation

Comment Response

As part of CBP's pre-existing Advance Trade Data Initiative (ATDI), CBP worked with a wide variety of volunteers from the world trade community to test the trade's ability to provide data, including some elements of the Importer Security Filing, to CBP. ATDI has proven that the industry has access to the required data and can get the data to CBP. CBP also has proven the ability to incorporate the ATDI data into the Automated Targeting System (ATS). Regarding timing requirements, some ATDI participants are hitting the 24 hours prior to lading deadline today. However, CBP understands that some business practices may need to change in order for the ISF Importer to obtain the required information 24 hours prior to lading. Therefore, in order to provide the trade sufficient time to comply with these requirements, CBP has taken several steps, including adoption of a 12-month delayed compliance date. This rule also provides flexibilities with respect to certain elements of Importer Security Filings. In addition, CBP has committed to a structured review of the elements, including an

evaluation of any specific compliance difficulties that the trade may be encountering with respect to these elements. See the "Structured Review and Flexible Enforcement Period" section of this document for further discussion regarding the delayed compliance period, flexibilities, and CBP's structured review.

Comment

CBP should extend the comment period for the NPRM.

CBP Response

CBP published a document in the Federal Register (73 FR 6061) on February 1, 2008, extending the comment period an additional 15 days until March 18, 2008.

Comment

When the technical information has been developed, CBP should publish proposed data specifications in the Customs and Trade Automated Interface Requirements (CATAIR) and Customs Automated Manifest Interface Requirements (CAMIR) without requiring that a confidentiality agreement be signed and should re-issue the NPRM with a 90-day comment period.

CBP Response

CBP disagrees that re-issuing the NPRM is necessary. CBP has amended the CATAIR, CAMIR, and American National Standards Institute (ANSI) X.12 transaction messages, providing the technical requirements necessary to comply with these regulations. CBP has posted these documents to the CBP Web site. While this interim final rule becomes effective 60 days from the date of publication in the Federal Register--thus codifying the specific requirements--CBP is extending the compliance date to one year from the effective date and is providing flexibilities with respect to certain elements of Importer Security Filings. See the "Structured Review and Flexible Enforcement Period" section of this document for further discussion regarding the delayed compliance period and flexibilities. CBP believes that, especially with the flexibilities that CBP is providing, this is sufficient time for the trade to prepare for and comply with the new requirements.

Comment

The proposed regulation runs afoul of section 343(a)(3)(I) of the Trade Act of 2002 which requires that, where practicable, the regulations shall avoid redundant requirements because the requirement for line item information for each shipment will result in redundant Importer Security Filing submissions and CBP has announced that it intends to target upon receipt of the Importer Security Filing as well as upon entry.

CBP Response

CBP is aware that four of the Importer Security Filing elements, while collected at a different time, are identical to elements submitted for entry (CBP Form 3461) and entry summary (CBP Form 7501) purposes and two of the Importer Security Filing elements, while collected at a different time, are identical to elements submitted for application to admit goods to an FTZ (CBP Form 214). In an effort to minimize the redundancy of data transmitted to CBP, after further consideration and in response to public comments, CBP is allowing an importer to submit these elements once via the same electronic transmission to be used for both Importer Security Filing and entry/entry summary or FTZ admission purposes. With regard to redundancy of multiple Importer Security Filings, CBP understands that for some Importer Security Filing filings the 10 data elements will not change for multiple bills of lading. Therefore, CBP will accept one Importer Security Filing for multiple bills of lading in the same shipment.

Comment

This rule has become superfluous with the statutory requirement for the foreign port image scanning of all containerized maritime cargoes prior to their being placed on vessels for shipment to the United States. In addition, there has been no demonstration that the Importer Security Filing will contribute to the effectiveness of the ATS.

CBP Response

CBP disagrees. Advance cargo information provides transparency into the transaction, including the parties

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and goods involved, which is part of the overall risk analysis. The information required by this rule will allow CBP to conduct data analysis to more effectively identify high-risk containers for increased scrutiny, and screen out shipments for increased scrutiny. Additional scrutiny could include additional non-intrusive inspection (NII) and physical examination. The value of NII, including radiation detection capabilities, is increased when the targeter has a frame of reference which is provided by accompanying transaction data such as the data required pursuant to these regulations.

Comment

CBP should scan 100% of cargo in lieu of requiring an Importer Security Filing, vessel stow plans and container status messages (CSMs).

CBP Response

CBP disagrees. The physical cargo is only one piece of the puzzle. Information, such as the information collected as a result of this rulemaking will allow CBP to put the image produced by a scan into context. The scan and Importer Security Filing together will provide additional transparency and validate the shipment and parties involved.

Comment

It is unclear how the proposed requirements will enhance the security of the United States. This rule could result in increased transit time, which could actually increase security risks.

CBP Response

Pursuant to section 203 of the SAFE Port Act (6 U.S.C. 943), the Secretary of Homeland Security, acting through the Commissioner of CBP, must promulgate regulations to require the electronic transmission of additional data elements for improved high-risk targeting, including appropriate security elements of entry data for cargo destined to the United States by vessel prior to loading of such cargo on vessels at foreign seaports. The Importer Security Filing elements, vessel stow plans, and CSMS will enhance CBP's targeting and risk analysis capabilities by increasing the transparency of key supply chain participants, cargo, and events. CBP does not agree that increased transit time (dwell time at a foreign port terminal), if incurred due to this rulemaking, will result in an increased security risk. The risk reduction provided by the collection of additional information that will result from these regulations is significantly greater than any risk increase resulting from any increased dwell times. Furthermore, CBP is addressing global port security through other initiatives.

Comment

The Importer Security Filing should be expanded to prevent dangerous merchandise, including narcotics and other illegal consignments, from being shipped to the United States.

CBP Response

This rule is one part of CBP's layered approach to cargo security. CBP has implemented a comprehensive strategy designed to enhance national security while protecting the economic vitality of the United States. The Container Security Initiative (CSI), the 24 Hour Rule, and the Customs-Trade Partnership Against Terrorism (C-TPAT) are cornerstone approaches implemented to further this goal. Additionally, CBP has developed cargo risk assessment capabilities in its Automated Targeting System (ATS) to screen all maritime containers before they are loaded aboard vessels in foreign ports. Each of these initiatives is dependent upon data supplied by trade entities, including carriers, non-vessel operating common carriers (NVOCCs), brokers, importers or their agents. Internal and external government reviews have concluded that the more complete advance shipment data required pursuant to this interim final rule will produce even more effective and more vigorous cargo risk assessments. Accordingly, CBP will use these data to ensure cargo safety and security and to prevent smuggling.

Comment

Limiting the proposed requirements to the vessel environment will encourage circumvention by transshipment through Canada and Mexico. Does CBP plan to apply these requirements to other modes in the future? Significant adjustment will be necessary if these rules are applied to other modes.

CBP Response

CBP disagrees that this rule encourages circumvention, as the United States has a strong working relationship with both Canadian and Mexican border enforcement agencies. CBP will monitor any unexplained increases in land border traffic and will take appropriate security measures if warranted. This interim final rule is focused on vessel cargo pursuant to the requirements under the SAFE Port Act 2006 and the Trade Act of 2002. As such, this rule is an incremental step toward meeting the goal of securing shipments to the United States. CBP will continue to evaluate the effectiveness of this rule. However, at this time, CBP is not considering expanding the advance data requirements for other modes.

Comment

CBP should conduct outreach with the trade, including presentation of a white paper, PowerPoint presentation, and FAQs, prior to implementation and during the implementation phase, including a regular and recurring collaborative process with COAC and the TSN. CBP should also produce a "best practices" document, including detailed process flows, for industry and CBP officers to ensure that all trade participants understand how to comply with the new requirements. Importers will need to implement new processes regardless of whether enforcement is phased in.

CBP Response

CBP agrees that business practices and processes will need to be adjusted and that is reflected in our delayed compliance period and outreach efforts. See the "Structured Review and Flexible Enforcement Period" section of this document for further discussion regarding the delayed compliance period. CBP has amended the CATAIR, CAMIR, and X.12 transaction messages, providing the technical requirements necessary for submitting Importer Security Filings. These documents have been posted to the "Automated Systems" section of the CBP Web site. CBP will continue to conduct outreach with the trade, in fulfillment of its regulatory and statutory obligations, both during the delayed compliance period and thereafter, via FAQs, postings on the CBP Web site, and other outreach.

Comment

CBP should provide a Help Desk to assist in the resolution of problems associated with the Importer Security Filing requirements.

CBP Response

CBP will utilize existing resources to resolve problems associated with the Importer Security Filing requirements. In order to get access to the Automated Broker Interface (ABI) or the Vessel Automated Manifest System (vessel AMS), members of the trade should contact a CBP

Client Representative or the CBP Technology Support Center (TSC), formerly known as the CBP Help Desk, for resolution of technical problems associated with Importer Security Filings. In addition, CBP has

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established a dedicated email account for Importer Security Filing-related issues. Members of the public are directed to the CBP Web site at <http://www.cbp.gov> for the latest information regarding these contacts. CBP will also continue to update the trade in the form of FAQs, postings on the CBP Web site, and other outreach to the trade.

Comment

The information that CBP has requested is the same information that thousands of shippers, importers and manufacturers have at their fingertips every day. It has long been understood that importing into the United States is a privilege, not a right. Thus, it is completely proper for CBP to require those who would take advantage of our nation's prosperity to help to protect that prosperity. Importers will have an added incentive to investigate and identify the identity of their suppliers due to the penalties associated with improper Importer Security Filings. CBP should also be commended for its open, consultative approach in developing this initiative and these regulations.

CBP Response

CBP appreciates the support and cooperation offered by the trade.

V. Discussion of Comments Regarding Proposed Carrier Requirements Relating to Vessel Cargo Destined to the United States

A. Overview; Vessel Stow Plan

CBP proposed to require carriers to submit a vessel stow plan for vessels destined to the United States. Under the proposed regulations, carriers were required to transmit the stow plan for vessels transporting containers and/or break bulk cargo so that CBP received it no later than 48 hours after the carrier's departure from the last foreign port. For voyages less than 48 hours in duration, CBP was to receive the stow plan prior to the vessel's arrival at the first port in the United States. Bulk carriers were to be exempt from this requirement for vessels exclusively carrying bulk cargo. The proposal required carriers to submit the vessel stow plan via the CBP-approved electronic data interchange system. The current approved electronic data interchange system for the vessel stow plan is vessel AMS. The proposal stated that if CBP approves of different or additional electronic data interchange systems, CBP would publish a notice in the Federal Register.

Under the proposed regulations, the vessel stow plan was required to include standard information relating to the vessel and each container and unit of break bulk cargo laden on the vessel. The vessel stow plan was to include the following standard information:

With regard to the vessel,

- (1) Vessel name (including international maritime organization (IMO) number);
- (2) Vessel operator; and
- (3) Voyage number.

With regard to each container or unit of break bulk cargo,

- (1) Container operator, if containerized;
- (2) Equipment number, if containerized;
- (3) Equipment size and type, if containerized;
- (4) Stow position;
- (5) Hazmat-UN code;
- (6) Port of lading; and
- (7) Port of discharge.

B. Public Comments; Vessel Stow Plan

Comments Regarding Responsibilities

The vessel operating carrier, rather than the non-vessel operating common carrier (NVOCC), should be responsible for filing the stow plan. The NVOCC may not have the vessel stow plan because they do not operate the vessel and have no knowledge of the physical location of cargo as loaded on the vessel. Stow plans are not created to meet regulatory requirements, and therefore a vessel operating carrier should not be responsible for inaccuracies or incompleteness. In addition, carriers should not be responsible for errors in information carriers are unable to verify.

CBP Response

CBP agrees that the vessel operating carrier (i.e., vessel operator) is responsible for filing the stow plan. While, prior to this interim final rule, stow plans were not created to meet regulatory requirements, CBP is requiring, through this rulemaking, that vessel carriers submit accurate and timely stow plans for containerized cargo. CBP will use stow plan data to compare the containers listed on the stow plan with containers listed on the vessel's manifest in an effort to identify potentially unmanifested containers. CBP may take enforcement action against a carrier that fails to comply with the requirement to submit stow plans in a timely or accurate manner. CBP enforcement actions may include, but are not limited to, claims for liquidated damages pursuant to 19 CFR 113.64(f). However, CBP has set a compliance date of one year from the effective date of this interim final rule. During that one-year delayed compliance period, CBP will work with the trade to assist them in achieving compliance. CBP will also work with the trade on ongoing issues and will keep updating and posting new FAQs to the CBP Web site, while conducting additional outreach to the trade and various foreign government entities. See the "Structured Review and Flexible Enforcement Period" section of this document for further discussion regarding the delayed compliance period and CBP's planned outreach efforts.

Comments Regarding Procedures

Commenters questioned whether a stow plan is required for every U.S. arrival from a foreign port. Some also stated that CBP should provide the vessel stow plan filer an electronic acknowledgment, containing time and date of receipt and unique identification number, as evidence that the vessel stow plan was successfully received. Others questioned which formats can be used for submission of vessel stow

plans and whether CBP will accept vessel stow plans in Adobe Portable Document Format (.pdf). Some also stated that CBP should also accept the U.S. hazardous material (hazmat) codes or Hazmat class in addition to the proposed Hazmat-UN code and that CBP should not use the stow plan for securing detailed and complete hazmat information. Where reference is made to the equipment number, commenters questioned whether CBP wanted carriers to report the unique Vehicle Identification Number (VIN) for vehicles or if a simple vehicle count is sufficient.

CBP Response

CBP must receive a stow plan after the vessel departs from the last foreign port. CBP agrees that the vessel stow plan filer should receive a status notification message acknowledging that the vessel stow plan was accepted by CBP's system. As to formats, CBP will accept vessel stow plans in the United Nations rules for Electronic Data Interchange For Administration, Commerce and Transport (UN EDIFACT) Bayplan/stowage plan occupied and empty locations message (BAPLIE) SMDG format, which is the industry-wide standard for carriers who currently use electronic stow plans. CBP will also work with carriers to accept the ANSI X.12 ``324'' format on a case-by-case basis. Other formats, such as the Adobe.pdf format, are not specifically designed for stow plans and, therefore, would be difficult for CBP systems to interpret. Therefore, CBP cannot justify the costs associated with supporting these additional formats at this time. CBP will continue to consider

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additional formats in the future. Regarding hazardous materials reporting on vessel stow plans, the commenter did not provide information regarding what was intended by reference to U.S. Hazmat codes. The U.S. Department of Transportation Hazardous Materials Table lists Hazmat-UN identification numbers and hazard classes. See 49 CFR part 172.101. In order to minimize the cost to carriers, CBP will accept any widely recognized commercially acceptable hazardous materials identification numbers and classifications that the carrier uses in the normal course of business, such as those listed on the U.S. Department of Transportation Hazardous Materials Table. Regarding VINs, a VIN is not required as part of a stow plan. Also, since stow plans are not required for break bulk merchandise, they will not be required for vehicles unless they are containerized.

Comments Regarding Scope of Requirements for Stow Plan

CBP should not require stow plans for vessels transporting fewer than a threshold number of containers or for vessels traveling solely within the U.S. Outer Continental Shelf (OCS). CBP should not require stow plans for break bulk cargo (including roll-on/roll-off vessels) because break bulk is obvious as to what it is and where it is in the cargo hold and, therefore, of limited security value. CBP should also not require stow plans for bulk ships carrying either containers or break bulk cargoes on deck. Some questioned whether a carrier will need to include cargo that is not bound for the United States on a stow plan.

CBP Response

A stow plan must be filed for each vessel carrying containerized cargo that is required to transmit an advance cargo declaration pursuant to section 343(a) of the Trade Act of 2002. CBP will use stow plan data to compare the containers listed on the stow plan with containers listed on the vessel's manifest in an effort to identify potentially unmanifested containers. Unmanifested containers are considered to be of the highest risk to our nation's security since there is little information available about the contents or intended destination of these containers. Even a single unmanifested container poses a possible threat to the security of the United States. For this reason, CBP does not intend to establish an exemption from the stow plan requirement based on the number of containers carried on a vessel or for vessels traveling solely within the U.S. OCS. After further consideration and in response to comments, CBP has determined to not require break bulk cargo on stow plans. However, regardless of the type of vessel (including break bulk and bulk vessels), a vessel stow plan accounting for all containers onboard a vessel must be submitted to CBP. Finally, carriers will be required to submit stow plans for all containerized cargo that will enter the limits of a port in the United States.

Comments Regarding the Timing of Submission of the Stow Plan

Commenters questioned the timing for stow plans for trips of very short duration (e.g., Vancouver to Seattle). It was suggested that the stow plan not be required earlier than the required United States Coast Guard Notice of Arrival, which is 96 hours prior to arrival. It was also suggested that CBP should amend the regulations, as proposed, to require submission of the stow plan 48 hours after the vessel departs from the last foreign port where goods are laden on the vessel rather than the last foreign port. Others questioned when a vessel ``arrives'' for vessel stow plan timing purposes. Finally, commenters questioned whether carriers need to amend stow plans. If so, carriers should only be required to amend stow plans when they find that a container has been stowed aboard that was not on the stow plan as submitted to CBP and not when a container is on a stow plan but was not loaded aboard the vessel.

CBP Response

Stow plans are required for vessels carrying containers destined to the United States. For voyages less than 48 hours in duration (including very short voyages), CBP must receive the stow plan prior to the vessel's arrival at the first port in the United States. CBP disagrees with the remaining comments. Under the interim final rule, stow plans are required no later than 48 hours after the vessel departs from the last foreign port so that CBP has an accurate representation of the cargo laden on the vessel as it arrives in the United States. Except for voyages less than 48 hours in duration, a vessel stow plan must be submitted 48 hours after the vessel departs from the last foreign port, whether goods are laden and/or unladen at that port, so that the vessel stow plan will accurately depict the cargo onboard when the vessel arrives within the limits of a port in the United States. Vessel arrival for vessel stow plan purposes is the same as vessel arrival for vessel entry purposes. Arrival of a vessel is defined in 19 CFR 4.0. See also 19 CFR 4.2 regarding reports of arrival of vessels. Finally, inasmuch as CBP requires that an accurate and complete stow plan be submitted, a carrier must submit a new accurate stow plan immediately upon discovery of any inaccuracies. However, the carrier will still be liable for enforcement actions resulting from the inaccurate vessel stow plan.

C. Overview; Container Status Messages

Pursuant to section 343(a) of the Trade Act of 2002, CBP proposed to require carriers to submit CSMs daily for certain events relating to all containers laden with cargo destined to arrive within the limits of a port in the United States by vessel.

Under the proposed regulations, CSMs created under either the ANSI X.12 standard or the UN EDIFACT standard were to be acceptable.

Under the proposed regulations, carriers were required to submit a CSM when any of the required events occurs if the carrier creates or collects a CSM in its equipment tracking system reporting that event. The proposed regulations would not require a carrier to create or collect any CSM data other than that which the carrier already creates or collects on its own and maintains in its electronic equipment tracking system. CSMs were to be submitted no later than 24 hours after the message is entered into the carrier's equipment tracking system.

The events for which CSMs would be required are:

- (1) When the booking relating to a container which is destined to arrive within the limits of a port in the United States by vessel is confirmed;
- (2) When a container which is destined to arrive within the limits of a port in the United States by vessel undergoes a terminal gate inspection;
- (3) When a container, which is destined to arrive within the limits of a port in the United States by vessel, arrives or departs a facility (These events take place when a container enters or exits a port, container yard, or other facility. Generally, these CSMs are referred to as "gate-in" and "gate-out" messages.);
- (4) When a container, which is destined to arrive within the limits of a port in the United States by vessel, is loaded on or unloaded from a conveyance (This includes vessel, feeder vessel, barge, rail and truck movements. Generally, these CSMs are referred to as "loaded on" and "unloaded from" messages);
- (5) When a vessel transporting a container, which is destined to arrive within the limits of a port in the United States by vessel, departs from or arrives

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at a port (These events are commonly referred to as "vessel departure" and "vessel arrival" notices);

- (6) When a container which is destined to arrive within the limits of a port in the United States by vessel undergoes an intra-terminal movement;
- (7) When a container which is destined to arrive within the limits of a port in the United States by vessel is ordered stuffed or stripped;
- (8) When a container which is destined to arrive within the limits of a port in the United States by vessel is confirmed stuffed or stripped; and
- (9) When a container which is destined to arrive within the limits of a port in the United States by vessel is shipped for heavy repair.

CBP is aware that it might be cost beneficial for some carriers to transmit all CSMs, rather than filter out CSMs relating to containers destined to the United States or relating only to the required events. Therefore, CBP proposed to allow carriers to transmit their "global" CSM messages, including CSMs relating to containers that do not contain cargo destined for importation into the United States and CSMs relating to events other than the required events. CBP stated in the proposal that by transmitting CSMs in addition to those required by the proposed regulations, a carrier would authorize CBP to access and use those data.

For each CSM submitted, the following information was proposed to be included:

- (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.

Carriers would be exempt from the CSM requirement for bulk and break bulk cargo. Under the proposed regulations, carriers would be required to submit CSMs via the CBP-approved electronic data interchange system. The current approved electronic data interchange system for CSMs is vessel AMS. The proposal stated that if CBP approves of a different or additional electronic data interchange system, CBP will publish notice in the Federal Register.

D. Public Comments; Container Status Messages

Comments Regarding Responsibilities

Some commenters questioned whether the vessel operating carrier or NVOCC, when applicable, is required to submit CSMs. Others asked whether a carrier that has no electronic equipment tracking system needs to report any CSMs and when a carrier may stop sending event messages. Some noted that CBP should require all carriers, not just those who currently create or collect CSMs, to submit CSMs.

CBP Response

Vessel operating carriers are required to submit CSMs. If a carrier currently does not create or collect CSMs in an equipment tracking system, the carrier is not required to submit CSMs to CBP. If a carrier does create or collect CSMs, the carrier's obligation to transmit CSMs ends upon discharge of the cargo in the United States. However, a carrier may transmit other CSMs in addition to those required by these regulations. By transmitting additional CSMs, the carrier authorizes CBP to access and use those data. In order to minimize the cost to carriers whose volume of business does not justify the creation of CSMs, CBP is declining to impose an obligation upon carriers to create or collect any CSM data pursuant to this rule.

Comments Regarding Scope of Requirements for CSMs

Some questioned whether CSMs are required for empty containers since as proposed, 19 CFR 4.7d would require CSMs for containers laden with cargo destined to arrive within the limits of a port in the United States from a foreign port by vessel. For each CSM, however, it seems that the "status of the container (empty or full)" must be reported. Others observed that some of the events for which CSMs are required are not reported via CSMs in all instances. For example, carriers may not create or collect CSMs when bookings are confirmed, when a container enters or exits a facility, when a vessel departs or arrives, when a container undergoes an intra-terminal movement, or when a container is

ordered stuffed or stripped or confirmed stuffed or stripped. In addition, loaded containers are not ``shopped for heavy repairs.'' Others noted that since CSMs are not created to meet regulatory requirements a vessel operating carrier should not be responsible for inaccuracies or incompleteness. In addition, there should not be an obligation to ensure that each of the six data elements is in each CSM since there is ``no requirement that a carrier create or collect any CSM data.''

CBP Response

CSMs are required for all containers, including empty containers, destined to arrive within the limits of a port in the United States from foreign by vessel (if the carrier creates or collects a CSM in its equipment tracking system). As commenters pointed out, each CSM must include the status of the container as either empty or full. The reference in the NPRM to containers ``laden with cargo destined to arrive within the port limits in the United States'' was intended to differentiate those containers that are destined for the United States from containers that are not destined to arrive within the limits of a port in the United States. Section 4.7d has been amended to clarify that CSMs are required for all containers destined to arrive within the limits of a port in the United States. It remains CBP's position at this time to minimize the cost to carriers whose volume of business does not justify the creation of CSMs by only requiring a carrier to submit CSMs if the carrier creates or collects a CSM in its equipment tracking system. Nevertheless, CBP believes that every CSM for containers laden with cargo destined to arrive within the limits of a port in the United States from foreign by vessel, by their very nature, must contain the six required elements. Accordingly, while there is no requirement that carriers create or collect any CSMs pursuant to this rule, every CSM submitted to CBP must contain the six required elements with the exception of the ``vessel identification associated with the message.'' This element is not required when a container has not yet been associated with a specific vessel.

Comments Regarding Procedures

When the NPRM refers to ``loaded on'' and ``unloaded from'' messages, is CBP referring to CSMs generated when a container is loaded or unloaded to or from a vessel or to or from a rail carrier? CBP should also clarify whether the ``date and time of the event being reported'' refers to the date and time when the event occurred in real-time and not when it was entered into a carrier's equipment tracking system and whether CBP will accept the carrier's definition of location where the event took place as currently reported in their equipment system. CBP should clarify what type of identification should be transmitted for the ``vessel identification associated with the message''--i.e., should this be a vessel name, number, IMO, vessel operator, or other

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identification? In addition, some CSMs will be created before there is a vessel associated with the message. Commenters also stated that CBP should clarify when a container is considered to have been ``confirmed stuffed or stripped,''--i.e., will it be left up to the carrier's discretion to define when they deem a booking has reached a ``confirmed'' status? A date should be optional for this CSM since stuffing and stripping of containers is generally not performed by the carrier. Finally, commenters questioned whether a do not load (DNL) should be issued; whether an importer's cargo would be subject to increased scrutiny if the carrier fails to submit a vessel stow plan or container status messages; whether the Importer Security Filing filer will be notified if a DNL is issued in this instance; and whether the importer be liable for vessel stow plan and CSM related errors (e.g., when a carrier ``rolls over'' a container to another vessel and fails to report this to CBP).

CBP Response

CSM events include messages about movements such as when a container, which is destined to arrive within the limits of a port in the United States by vessel, is loaded on or unloaded from any conveyance. This includes vessel, feeder vessel, barge, rail, and truck movements. The date and time when the event actually occurred should be reported. The location as recorded in the carrier's equipment tracking system should be reported. For purposes of the vessel identification, CBP will accept whatever unique identifier is used within the carrier's tracking system. CBP has changed the proposal in these interim final regulations to require the vessel identification associated with the message only if a container has been associated with a specific vessel. With regard to confirmation of stuffing, a booking is ``confirmed'' by a carrier's own booking system. Similarly, a container is confirmed stuffed or stripped by a carrier's own booking system. Accordingly, it is left up to the carrier's discretion to define when a booking is deemed confirmed and a container is confirmed stuffed or stripped. Finally, if a carrier fails to submit a vessel stow plan or container status messages, when a carrier is required to do so, CBP may take appropriate enforcement actions, including but not limited to, issuance of a DNL, a prelude to a denial of a permit to unlade the container(s) upon arrival in the United States. However, CBP will not notify the party who filed the Importer Security Filing regarding DNL messages not related to their Importer Security Filing. If parties wish to share these data, they will need to do so privately. Regarding vessel stow plan and CSM-related errors, the importer is not responsible for submitting stow plans and CSMs to CBP and is therefore not liable for inaccuracies or errors.

E. Public Comments; Carrier Requirements Generally

Comment

CBP should require the terminal operator to submit vessel stow plans and container status messages. The vessel operator should be responsible for filing CSMs and vessel stow plans when there is a vessel sharing or space charter agreement. In the alternative, carriers should be able to designate a third party to submit CSMs and the vessel stow plan on the carrier's behalf.

CBP Response

CBP disagrees that terminal operators should be required to submit vessel stow plans and container status messages. The vessel operator is responsible for the submission of the vessel stow plan because it is the party operating the vessel and transporting the cargo to the United States. All vessel operating carriers who create or collect CSMs for cargo that is destined to enter the limits of a port in the United States, including slot and other vessel sharing partners, are

responsible for the submission of CSMs. In response to requests from the trade, CBP will allow the responsible carrier to designate a third party agent to transmit stow plans and CSMs. However, the obligation and liability for those requirements remains with the carrier.

VI. Discussion of Comments Regarding Proposed Importer Requirements for Vessel Cargo Destined to the United States

A. Overview; Proposed Importer Requirements

Pursuant to the authority of section 343(a) of the Trade Act of 2002, as amended by MTTA, and section 203 of the SAFE Port Act, in order to enhance the security of the maritime environment, CBP proposed to require importers, as defined in the proposal, or their agents, to transmit an Importer Security Filing to CBP, for cargo other than FROB, no later than 24 hours before cargo is laden aboard a vessel destined to the United States. Because FROB is frequently laden based on a last-minute decision by the carrier, the Importer Security Filing for FROB was to be required any time prior to lading. Under the proposed regulations, an Importer Security Filing was required for each shipment, at the lowest bill of lading level (i.e., at the house bill of lading level, if applicable). It is information from the relevant house bill that CBP proposed to collect.

Under the proposed regulations, importers, as defined in the proposal, or their agents, would be required to transmit the Importer Security Filing via a CBP-approved electronic data interchange system. The proposal stated that the current approved electronic data interchange systems for the Importer Security Filing was ABI and vessel AMS and that, if CBP approves a different or additional electronic data interchange system in the future, CBP would publish notice in the Federal Register.

Under the proposed regulations, the party who filed the Importer Security Filing would be required to update the Importer Security Filing if, after the filing and before the goods arrive within the limits of a port in the United States, there were changes to the information filed or more accurate information becomes available.

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goods intended to be "transported" as IE or T&E in-bond shipments.

Under the proposal, for FROB, the importer would be construed as the international carrier of the vessel arriving in the United States. For IE and T&E in-bond shipments, the importer was construed as the party filing the IE or T&E documentation with CBP.

1. Shipments Other Than FROB, IE Shipments, and T&E Shipments

Under the proposed regulations, for the Importer Security Filing for shipments other than those consisting entirely of FROB and goods intended to be "transported" in-bond as an IE or T&E, 10 elements were required, unless specifically exempted. The manufacturer (or supplier) name and address, country of origin, and commodity Harmonized Tariff Schedule of the United States (HTSUS) number were to be linked to one another at the line item level.

The 10 proposed required elements were:

(1) Manufacturer (or supplier) name and address. Name and address of the entity that last manufactures, assembles, produces, or grows the commodity or name and address of the supplier of the finished goods in the country from which the goods are leaving. In the alternative, the name and address of the manufacturer (or supplier) that is currently required by the import laws, rules and regulations of the United States (i.e., entry procedures) may be provided (this is the information that is used to create the existing manufacturer identification (MID) number for entry purposes).

(2) Seller name and address. Name and address of the last known entity by whom the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the name and address of the owner of the goods must be provided.

The party required for this element is consistent with the information required on the invoice of imported merchandise. See 19 CFR 141.86(a)(2).

(3) Buyer name and address. Name and address of the last known entity to whom the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the name and address of the owner of the goods must be provided.

The party required for this element is consistent with the information required on the invoice of imported merchandise. See 19 CFR 141.86(a)(2).

(4) Ship to name and address. Name and address of the first deliver-to party scheduled to physically receive the goods after the goods have been released from customs custody.

(5) Container stuffing location. Name and address(es) of the physical location(s) where the goods were stuffed into the container. For break bulk shipments, the name and address(es) of the physical location(s) where the goods were made "ship ready" must be provided.

(6) Consolidator (stuffer) name and address. Name and address of the party who stuffed the container or arranged for the stuffing of the container. For break bulk shipments, the name and address of the party who made the goods "ship ready" or the party who arranged for the goods to be made "ship ready" must be provided.

(7) Importer of record number/FTZ applicant identification number. Internal Revenue Service (IRS) number, Employer Identification Number (EIN), Social Security Number (SSN), or CBP assigned number of the entity liable for payment of all duties and responsible for meeting all statutory and regulatory requirements incurred as a result of importation. For goods intended to be delivered to an FTZ, the IRS number, EIN, SSN, or CBP assigned number of the party filing the FTZ documentation with CBP must be provided. The importer of record number for Importer Security Filing purposes is the same as "importer number" on CBP Form 3461.

(8) Consignee number(s). Internal Revenue Service (IRS) number, Employer Identification Number (EIN), Social Security Number (SSN), or CBP assigned number of the individual(s) or firm(s) in the United States on whose account the merchandise is shipped. This element is the same as the "consignee number" on CBP Form 3461.

(9) Country of origin. Country of manufacture, production, or growth of the article, based upon the import laws, rules and regulations of the United States. This element is the same as the "country of origin" on CBP Form 3461.

(10) 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 is required to be provided to the six-digit level. The HTSUS number may be provided up to the 10-digit level. This element is the same as the "H.S. number" on CBP Form 3461 and can only be used for entry purposes, if it is provided at the 10-digit level or greater.

2. FROB, IE Shipments, and T&E Shipments

Under the proposed regulations, for the Importer Security Filing for shipments consisting entirely of FROB and shipments consisting entirely of goods intended to be "transported" in-bond as an IE or T&E, five elements were to be provided in order to enhance the security of the maritime environment.

The five proposed required elements were:

(1) Booking party name and address. Name and address of the party who is paying for the transportation of the goods.

(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 name and address. Name and address of the first deliver-to party scheduled to physically receive the goods after the goods have been released from customs custody.

(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 up to the 10-digit level.

Four of the proposed Importer Security Filing elements are identical to elements submitted for entry (CBP Form 3461) and entry summary (CBP Form 7501) purposes. These elements are the importer of record number, consignee number, country of origin, and commodity HTSUS number when provided at the 10-digit level. CBP proposed to allow an importer to submit these elements once to be used for both Importer Security Filing and entry/entry summary purposes. Under the proposed regulations, if an importer chooses to have these elements used for entry/entry summary purposes, the Importer Security Filing and entry/entry summary must be self-filed by the importer or filed by a licensed customs broker in a single transmission to CBP. In addition, the HTSUS number would be required at the 10-digit level.

As proposed, two of the Importer Security Filing elements are identical to elements submitted for application to admit goods to an FTZ (CBP Form 214). These elements are the country of origin and commodity HTSUS number when provided at the 10-digit level. CBP proposed to allow a filer to submit the Importer Security Filing and CBP Form 214 in the same electronic transmission to CBP and to submit the country of origin and commodity HTSUS number once to be used for both Importer Security Filing and FTZ admission purposes. If the party submitting the Importer Security Filing chose to have this element used for FTZ admission purposes, the HTSUS number would be required at the 10-digit level.

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B. Public Comments; Responsible Party

Comment

Under section 343(a) of the Trade Act of 2002, as amended, the requirement to provide information to CBP is generally to be imposed upon the party likely to have direct knowledge of the required information. Although CBP has identified the importer (as defined in the NPRM) as the party to send the data, it has not demonstrated that the importer is in fact that party. The supplier, freight forwarder, and/or carrier actually may have the most direct knowledge of the required information. For example, some suppliers arrange their own carriage and, therefore, the importer will not have the information necessary to submit the Importer Security Filing. Similarly, the importer may not even be aware that the merchandise has been shipped until it arrives in the United States. CBP should require the party with the best knowledge of the shipment to submit the Importer Security Filing. Commenters suggested that CBP not create a new definition of "importer" for Importer Security Filing purposes only, but rather adopt an alternate term. This party should be defined to include the "importer" (as defined in 19 CFR 101.1) or the duly authorized agent of that party, and should include the traditional importer of record as listed on the CBP Form 7501. In the alternative, the definition of "importer" should be the "principal party of interest" as that term is used for the Shipper's Export Declaration or parties as defined for Incoterms.

CBP Response

Based on CBP's experience in the movement of goods in international trade, there is one party that is ultimately interested in and responsible for causing goods to arrive in the United States. CBP has determined that the party most likely to have direct knowledge of the required information, and therefore, the party considered to be the ISF Importer, is the party causing the goods to enter the limits of a port in the United States. CBP also has determined that such party must be the owner, purchaser, consignee or their agent (such as a licensed broker) who as a result of this rulemaking will now have an obligation to ascertain and report the data elements that CBP is requiring under this rule to enhance its ability to target high risk cargo destined for the United States. However, in recognition that there may be circumstances where the ISF Importer may not reasonably be able to verify the information, these regulations allow this party to submit the information on the basis of what it reasonably believes to be true. For FROB cargo, the ISF Importer is construed as the carrier. For IE and T&E in-bond shipments, and goods to be delivered to an FTZ, the ISF Importer is construed as the party filing the IE, T&E, or FTZ documentation. For other types of shipments, this party will usually be the importer of record. However, the party causing the goods to enter the limits of a port in the United States may be different parties to a transaction depending on the terms of the transaction and the parties involved, and this party may be a party other than the importer of record (e.g., for "to order" shipments). Therefore, requiring the importer of record to submit the Importer Security Filing in all instances would be inappropriate.

Comment

An international carrier may not have house bill of lading level information for Importer Security Filings for FROB shipments because NVOCCs may not provide the information to the vessel operating carriers. Therefore, CBP should make the NVOCC responsible for Importer Security Filings in these situations. In addition, NVOCCs do not generate unique sub-house bills and, therefore, in order to comply with the Importer Security Filing requirements, NVOCCs will need six months to convert their systems. If the sub-house bill of lading number is required for the Importer Security Filing, this should also be required for AMS.

CBP Response

CBP disagrees that NVOCCs should be required to submit Importer Security Filings. The obligation for the Importer Security Filing for FROB remains with the vessel operating carrier because this is the party choosing to transport the cargo to the United States. CBP understands the house bill of lading level information may belong to the NVOCCs. Therefore, CBP clarifies that the NVOCC can submit the Importer Security Filing directly to CBP, if it does so as the vessel operating carrier's agent. CBP is requiring an Importer Security Filing at the lowest level to the house bill of lading level, if applicable. CBP is not requiring Importer Security Filings for sub-house bills.

Comment

For FTZ goods, CBP should require the "applicant on the FTZ documentation filed with CBP" to file the Importer Security Filing rather than the "party filing the FTZ documentation with CBP." For IE and T&E shipments, commenters questioned whether the party required to submit the Importer Security Filing is the party named on the CBP Form 7512 or the party that submits the CBP Form 7512. Who is responsible for filing the Importer Security Filing for personal/household goods and military/government shipments? Who is the responsible party for delivered duty paid (DDP) shipments where the Importer Security Filing "importer" can be the overseas shipper? Commenters asked how NVOCCs will comply with the Importer Security Filing requirements.

CBP Response

For IE and T&E in-bond shipments and goods to be delivered to an FTZ, the ISF Importer is the party filing the documentation with CBP and not merely a party delivering the form to CBP. For shipments, including personal/household goods, military/government shipments, and DDP shipments that are intended to be entered into the United States, the ISF Importer would be the owner, purchaser, consignee, or agent such as a licensed customs broker, as the party causing the goods to enter the limits of the United States. If an NVOCC is the party required to submit an Importer Security Filing on its own behalf, or as an agent for another party, the NVOCC will need to submit the Importer Security Filing pursuant to these regulations.

Comment

CBP should expand the manifest filing to include elements such as the container stuffing location and consolidator (stuffer) rather than require a separate Importer Security Filing submission. CBP should require entry, with additional elements, be made prior to lading in lieu of requiring a separate Importer Security Filing.

CBP Response

CBP disagrees that the advance cargo declaration filing should be expanded. The data elements for the advance cargo declaration and the Importer Security Filing are required pursuant to two distinct statutory obligations, each with its own enforcement mechanism. With regard to the container stuffing location and consolidator (stuffer), CBP believes that the "importer," as the party that ultimately has an interest in the goods and the responsibility for causing the goods to be placed on a vessel for delivery to the United States, has the most control over the underlying transaction so the importer can require this information be received by it more than 24 hours prior to lading as part of terms and conditions of purchase

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contracts. However, in response to requests from the trade, CBP will allow carriers to submit an Importer Security Filing for IE, T&E, or FROB cargo and the advance cargo declaration via the same electronic transmission. CBP also disagrees that entry should be required, with additional elements, prior to lading. CBP is not requiring that entry be made 24 hours prior to lading. There are only four data elements on the current entry (CBP Form 3461) and entry summary (CBP Form 7512) that are among the 10 additional data elements CBP deems necessary for high risk targeting enhancement under this rule. However, in response to requests from the trade, CBP will allow an importer to submit the entry or entry/entry summary data via the same electronic transmission as the Importer Security Filing. If an importer chooses to do so, transmission must be made by the party entitled to make entry pursuant to 19 U.S.C. 1484 on its own behalf or a licensed customs broker.

Comment

In the NPRM, CBP stated that "one party must aggregate and submit all required elements." Does one party need to aggregate and submit

all elements per bill of lading, for each origin port, or for each importer at all origin ports? CBP should aggregate portions of a single Importer Security Filing, linked by the bill of lading, from multiple parties (similar to the Automated Export System (AES)).

CBP Response

One party must aggregate and submit all required elements for each individual Importer Security Filing. CBP will not aggregate portions of a single Importer Security Filing because it would be overly burdensome and costly for CBP to administer such a system. However, in response to requests from the trade, CBP will allow ISF Importers to designate an agent to submit the filing on behalf of the importer. While CBP understands that some business practices may need to be altered (e.g., amendment of shipping documents) to obtain the required information at an earlier point, CBP does not anticipate that these changes will be unduly burdensome, especially given the one-year delayed compliance period and other flexibilities that CBP is providing. See the "Structured Review and Flexible Enforcement Period" section of this document for further discussion regarding the delayed compliance period and flexibilities. CBP's ATDI testing has demonstrated that, in many cases, importers were able to collect this information from manufacturers, suppliers, and shippers at an earlier point by requiring the container stuffing location and consolidator name and address be provided as part of the regular commercial documentation.

C. Public Comments; Agents

Comment

Commenters stated that CBP should only allow U.S.-based entities or Customs-Trade Partnership Against Terrorism (C-TPAT) members to act as an agent for Importer Security Filing purposes. CBP should require authorized agents, including foreign parties, to meet the standards required of customs brokers when filing the Importer Security Filing, including standards relating to security. Commenters also stated that importers should be able to designate filers with CBP and Importer Security Filings submitted by undesignated parties should be rejected. Commenters asked what the liability would be for a party who misrepresents that they are sending data on behalf of an importer.

CBP Response

CBP will not create functionality whereby an ISF Importer can authorize alternate parties with CBP to file on their behalf. Nor will CBP create functionality to document unauthorized parties. CBP does not do this in its systems for other purposes and believes that it is best for private parties to manage these types of business relationships to allow for maximum flexibility. In order to provide this functionality, CBP would need to create and maintain a system cross-referencing millions of relationships between importers and their agents. This type of functionality would be extremely costly to set up and maintain and the potential advantages of such a system do not outweigh these costs.

In response to requests from the trade, an ISF Importer may, as a business decision, designate an agent to file the Importer Security Filing on the ISF Importer's behalf. CBP is not requiring the use of an agent and the ISF Importer is ultimately responsible for the timely, accurate, and complete submission of the Importer Security Filing. In order to act as an agent for purposes of filing the Importer Security Filing, a party must obtain access to ABI or AMS. CBP disagrees that agents should be limited to U.S.-based entities or C-TPAT members. Doing so would greatly limit the flexibility of ISF Importers in selecting agents for Importer Security Filing purposes. The accuracy and timeliness of Importer Security Filings is secured by a bond. An agent can file the Importer Security Filing under the ISF Importer's bond or, if the ISF Importer does not possess a required bond, the ISF Importer may choose to designate a bonded agent to file the Importer Security Filing under the agent's bond if the agent agrees to do so in writing.

Comment

CBP should require the Importer Security Filing filer, when the filer is an agent, to furnish the importer with a copy of the Importer Security Filing submitted on the importer's behalf.

CBP Response

CBP disagrees. CBP believes that this is a matter between private parties and, therefore, is not requiring the Importer Security Filing to be shared among private parties.

Comment

Commenters asked whether an importer will be held liable if an agent experiences problems with its systems resulting in a late, incomplete, or inaccurate Importer Security Filing. Commenters also stated that agents should not be liable for any lack of compliance with vessel stow plans, container status messages, or Importer Security Filings that are submitted on behalf of another party.

CBP Response

The ISF Importer is ultimately responsible for the timely, accurate, and complete submission of the Importer Security Filing, regardless of the cause for a late, inaccurate, or incomplete filing. After analyzing the results of tests performed through ATDI and in response to requests from the trade, CBP will allow ISF Importers and carriers to use agents to submit Importer Security Filings, vessel stow plans, and container status messages. However, the ISF Importer is ultimately liable for the timely, accurate, and complete submission of the Importer Security Filing and the carrier is ultimately responsible for the timely, accurate, and complete submission of the vessel stow plan and container status messages.

Comment

Because AMS users must be licensed by the Federal Maritime Commission, this will severely limit the choices for filers, driving self filers and brokers to utilize the Automated Broker Interface.

CBP Response

CBP disagrees that AMS users must be licensed by the Federal Maritime Commission. Any party will be able to

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obtain access to ABI or AMS, with CBP approval, for purposes of filing an Importer Security Filing.

Comment

CBP has proposed to require a power of attorney to file an Importer Security Filing on another's behalf, but did not specify a particular form, the required language, the length of time, or the manner in which powers of attorney must be stored. Under what authority will CBP require production of power of attorney records? Is there a penalty for not having a power of attorney on file? Will CBP allow an exemption to

the power of attorney requirement for goods consigned to the military, the government, or for household/personal goods?

CBP Response

CBP is not requiring a particular form for a power of attorney for Importer Security Filing purposes. However, 19 CFR 141.32 contains an example of an acceptable general power of attorney with unlimited authority. CBP has revised the regulations under this interim final rule to require that powers of attorney must be in English. Pursuant to 19 U.S.C. 1508(a), CBP has also clarified in the regulations that powers of attorney must be retained until revoked, and revoked powers of attorney and letters of revocation must be retained for five years after the date of revocation. Finally, CBP will not allow an exemption to the power of attorney requirement for goods consigned to the military, the government, or for personal/household goods. An exemption is not merited as there is no less of a security risk associated with these shipments. CBP still requires the certainty that powers of attorney provide when parties are interacting with CBP.

D. Public Comments; Customs Business

Comment

Commenters stated that the Importer Security Filing, including providing the HTSUS number (even at the six-digit level), importer of record number, and consignee number, is ``customs business.'' Therefore, the Importer Security Filing should be restricted to licensed Customs brokers. Other commenters stated that classification at the 10-digit level is ``customs business'' and, therefore, when the Importer Security Filing and entry are filed via the same electronic transmission (unified filing), this submission constitutes ``customs business.'' Non-brokers should be limited to the filing of the Importer Security Filing alone.

CBP Response

``Customs business'' does not involve the mere electronic transmission of data received for transmission to CBP, but does involve classification for entry purposes. See 19 CFR 111.1. The six-digit HTSUS number is intended exclusively for ensuring cargo safety and security, and not for determining merchandise entry procedures that fall within the scope of customs business. However, a 10-digit HTSUS number is needed and is used for merchandise entry purposes and, therefore, classification at the 10-digit level is considered customs business. CBP disagrees that providing the importer of record number and consignee number falls within the definition of customs business in 19 CFR 111.1. Pursuant to this interim final rule, if the Importer Security Filing and entry or entry summary are provided via a single electronic transmission to CBP, the party making the transmission must be an importer acting on its own behalf or a licensed customs broker.

E. Public Comments; Bills of Lading

Comment

Commenters asked CBP to clarify whether the bill of lading number (house and/or master) is a required data field, and whether the house or master bill number is required. If the bill of lading number is required, CBP should only require the house bill of lading number and it should be added as an additional required data element for the Importer Security Filing. Other commenters stated that carriers may not generate bill of lading numbers early enough for an importer to submit this information for Importer Security Filing purposes. Therefore, CBP should require the bill of lading number prior to arrival in the United States rather than 24 hours prior to lading. In the alternative, CBP should require carriers to make the bill of lading number available no later than 48 hours prior to lading the vessel or CBP should allow the use of booking number in lieu of the bill of lading number. In any event, the importer should not be penalized for a late Importer Security Filing when a carrier fails to provide the bill of lading number early enough. Commenters asked whether multiple Importer Security Filings will be required when one bill of lading covers multiple shipments. Commenters also stated that CBP should allow an importer to file one Importer Security Filing for all bills of lading in a shipment where the manufacturer, country of origin, and HTSUS numbers are the same. Lastly, commenters asked how the Importer Security Filing will be handled if the goods are divided and sold in transit to at least two separate parties, resulting in two new bills of lading.

CBP Response

A bill of lading number is integral to the Importer Security Filing and therefore, must be provided with the Importer Security Filing. The bill of lading number is not a data field, but an identifier which will be provided in the header information. However, after further consideration, CBP is requiring only the number for the bill of lading at the lowest level (i.e., the regular straight/simple bill of lading or house bill of lading) and not the master bill of lading number. Under existing 24 Hour Rule requirements, the bill of lading number is required for containerized cargo 24 hours prior to lading. For bulk cargo and exempted break bulk cargo, the carrier must submit the bill of lading number 24 hours prior to arrival. Under this interim final rule, for containerized cargo, the Importer Security Filing is also required 24 hours prior to lading. For break bulk cargo that is exempted for 24 Hour Rule purposes, the Importer Security Filing is required 24 hours prior to arrival. For bulk cargo, an Importer Security Filing is not required. Accordingly, the bill of lading number will be available for Importer Security Filing purposes, and has always been a part of the transaction identification. CBP understands that business processes may need to be changed to ensure that the importer, as defined for these regulations, has the bill of lading number in a timely fashion. Regarding bills of lading covering multiple shipments, CBP has the capability to accept multiple Importer Security Filings per bill of lading. CBP will issue a unique identification number for each separate, not unified, Importer Security Filing as part of the acceptance/rejection acknowledgment response. Modification of a particular Importer Security Filing will be possible using the unique identification number. Under this interim final rule, one Importer Security Filing can satisfy multiple bills of lading. However, the manufacturer (or supplier), country of origin, and commodity HTSUS number elements must be linked to one another at the line item level. Lastly, when a shipment is divided into a new or multiple new shipments, each with its own house bill of lading number, the original Importer Security Filing will need to be amended. In addition, a new Importer Security Filing will be required for each new bill of lading number.

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F. Public Comments; Required Elements

1. Manufacturer (or Supplier)

Comment

Commenters stated that, in some cases, there may be no manufacturer or the manufacturer may not be known. This may be the case for personal effects entered on a CBP Form 3299, for antiques, or when the importer purchases goods from a party who is not willing to provide the identity of their supplier due to business confidentiality concerns. Commenters also stated that the MID should be accepted for the manufacturer (or supplier). If the MID is not accepted, CBP should set up a registration system like the U.S. Food and Drug Administration (FDA) did for bioterrorism purposes. Commenters asked which law, rule, or regulation CBP was referring to in the NPRM which states that the name and address of the manufacturer (or supplier) that is currently required by the import laws, rules, and regulations of the United States may be provided. Commenters stated that the supplier of the goods may not be located in the "country from which the goods are leaving" and, therefore, this element should be changed accordingly. Commenters stated that the manufacturer (or supplier) requirements are inconsistent with merchandise produced under Outward Processing Arrangements (OPAs), for which importers must construct the MID based on the origin conferring manufacturer. Commenters asked which address should be used when a manufacturer has more than one address, including a corporate address.

CBP Response

CBP recognizes that, in some cases, the manufacturer's identity may be unavailable to the party responsible for filing the Importer Security Filing. Accordingly, CBP is requiring the identity of the manufacturer or the supplier of the finished goods if the actual manufacturer is unknown. CBP disagrees that the MID should be accepted for the manufacturer (or supplier). In general, the MID does not include the complete address of the manufacturer. CBP believes that the complete manufacturer's (or supplier's) name and address is a critical piece of information to effectively target high risk cargo. Since the current MID has limited targeting utility, CBP will not accept the current MID as an alternative to the complete name and address of the manufacturer. However, CBP will allow the trade to provide widely recognized commercially accepted identification numbers such as Dun and Bradstreet Data Universal Numbering System (DUNS) numbers as an alternative. When referring to previously existing laws and regulations, CBP is referring to title 19 of the United States Code Annotated and title 19 of the Code of Federal Regulations. CBP agrees that the supplier may not be located in the same country where the goods are leaving. In this interim final rule, CBP clarifies that this is the party supplying the finished goods in the country from which the goods are leaving. In many instances, this party will be located in the country from which the goods are leaving. In instances where the MID for the origin conferring manufacturer is currently supplied for entry purposes, the identity for this party should be provided in the Importer Security Filing. When a manufacturer has more than one address, CBP would like the address where the goods were actually manufactured. CBP understands that, in certain cases, this address may not be known to the ISF Importer and, therefore, will accept the corporate address for the manufacturer or supplier.

2. Buyer

Comment

The buyer's identity may not be available at the time of shipment and, when available, may not be applicable to each individual carton in a shipment. This data element, as well as the ship to party, should not be required prior to shipment, but at the time of the filing of the entry. What party's identity should be provided for multi-tier transactions, "sold in shipments," and shipments involving a buying agent? What if merchandise is sold in transit?

CBP Response

The Importer Security Filing elements must be reported at the lowest bill of lading level. At this level, the buyer's identity should be applicable to the entire shipment. If the buyer's name and address is not available at the time of shipment, the identity of the owner, consignee, or the buyer's agent should be provided instead on the Importer Security Filing. For "buying agent" transactions, the buying agent should be provided for the buyer element and the party who sold the goods to the buying agent should be provided for the seller element. If, after the filing is submitted and before the goods enter the limits of a port in the United States, any of the information submitted in an Importer Security Filing changes or more accurate information becomes available, including changes to the buyer's identity, the ISF Importer must update the filing.

3. Ship to Party

Comment

Commenters stated that the ship to party should not be required because this party will be the importer of record. In addition, the physical location where the container will arrive does not pose a security risk as much as who is the party that caused the importation to the United States. If the ship to party is required, CBP should accept the identity of the importer or consignee as indicated on the bill of lading when the ship to party is unknown when the Importer Security Filing is submitted. Commenters also stated that the ship to party should be kept confidential because it could be used by competitors. Commenters also asked whether the "ship to name" needs to be the name of a legal business entity. Can the importer transmit the name of its distribution center, even though the distribution center is not a separate legal entity in its own right? Will CBP accept Facilities Information and Resources Management System (FIRMS) codes in lieu of the name and address for the ship to party? Lastly, commenters asked which address should be used when a ship to party has more than one address, including a corporate address. Does a container freight station constitute the first ship to party?

CBP Response

CBP has determined, as the result of internal and external analysis, including analysis of ATDI testing, that the ship to party's identity and address will allow CBP to more effectively assess the risk of cargo destined for the United States. In some instances, the ship to party may also be the importer of record or consignee. However, this is not always the case. In addition, the importer of record's and consignee's corporate offices usually differ from the actual delivery address which is required for this element. Therefore, both parties'

identities are necessary for effective risk assessment. If the party scheduled to physically receive the goods after the goods will be released from CBP custody is unknown 24 hours prior to lading (e.g., ``to order'' shipments), the filer must provide the identity of the facility where the goods will be unladen. The filer must update this element if, after the filing is submitted and before the goods enter the limits of a port in the United States, the party scheduled to physically receive the goods becomes known. All elements of the Importer Security Filing, including

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the ship to party information, will be kept confidential as per the statutory requirements within the SAFE Port Act of 2006 and section 343(a) of the Trade Act of 2002. The ISF Importer must identify the ship to party, regardless of whether that party is a separate legal entity. However, CBP will accept a widely recognized commercially accepted identification number such as the DUNS number or FIRMS code, when applicable, for the ship to party. The first deliver-to party scheduled to physically receive the goods after the goods have been released from customs custody must be provided. A container freight station can be the ship to party if it meets the parameters of the definition in this rule that it is the first place of delivery after the goods have been released from customs custody.

4. Container Stuffing Location

Comment

Commenters stated that importers do not know the container stuffing location, except in the case of repetitive movements. Commenters also stated that providing the container stuffing location would be redundant in cases where shipments are stuffed by the manufacturer. Commenters asked which location should be reported when multiple containers are included on one bill of lading, and thus one Importer Security Filing contains multiple containers stuffed in multiple locations. Also, in some cases, there may be multiple stuffing locations, such as for ``Less than Container Load'' (LCL) shipments. Commenters also stated that CBP should accept the ``scheduled'' stuffing location in lieu of the actual stuffing location because the actual location cannot be confirmed until stuffing is completed, particularly in cases involving the use of a container freight station. The container stuffing location may change at the last minute for legitimate reasons. Lastly, commenters asked CBP to define ``ship ready'' with regard to container stuffing location and consolidator (stuffer) for break bulk cargo.

CBP Response

If an ISF Importer does not know an element, including container stuffing location, this party must take steps necessary to obtain the information. Where the ISF Importer receives any of the required information, including container stuffing location, from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, that party acquired the information, and whether and how the importer is able to verify the information. If the container is sealed at the manufacturer or factory facility, as is the case for a factory load, this location should be provided for the container stuffing location. CBP is aware that the same entity may be provided for more than one element. In cases where the consolidator has subcontracted out, or arranged a third party to do the actual stuffing, the name and address of the party at whose location the container was stuffed should be provided. When a container is stuffed at more than one location and/or more than one container is on a single bill of lading, all of the stuffing locations for the goods listed on the bill of lading must be provided. However, an ISF Importer is not required to submit container numbers and, when container numbers are reported, an ISF Importer is not required to report which container was stuffed at which location. CBP agrees that the ``scheduled'' stuffing location should be accepted. The ISF Importer is required to report the container stuffing location 24 hours prior to lading based on the ISF Importer's knowledge at that time. However, the ISF Importer must update the filing if, after the filing is submitted and before the goods enter the limits of a port in the United States, any of the information submitted changes or more accurate information, including container stuffing location, becomes available. Regarding break bulk cargo, break bulk cargo is made ``ship ready'' when the cargo is palletized, lashed, wrapped, or otherwise prepared to be laden on a vessel.

5. Consolidator (Stuffer)

Comment

The consolidator (stuffer) element should only be required when a container is stuffed by a consolidator because the container stuffing location already spells out the location where the physical container will be stuffed.

CBP Response

CBP disagrees with the comment that the consolidator (stuffer) element should be conditional. CBP is aware that the same entity may be provided for more than one element. If an element is not provided, CBP would have no way of knowing whether the element is not provided because the same information is provided for another element or because the ISF Importer merely failed to provide the information. In addition, when the same information is provided for more than one element, the additional burden on the trade should be minimal.

Comment

The ``last known'' consolidator should be required for the consolidator (stuffer) element.

CBP Response

Even if there are multiple stuffing locations, there should only be one party per bill of lading who stuffed the container or arranged for the stuffing of the container.

6. Importer of Record Number/FTZ Applicant Identification Number

Comment

The importer of record number is not always known. For example, what number should be provided for household goods and personal effects where a foreign party without one of the required unique identification numbers is importing their own goods?

CBP Response

The ISF Importer must submit the IRS number, EIN, SSN, or CBP assigned number of the entity liable for payment of all duties and responsible for meeting all statutory and regulatory requirements incurred as a result of importation. For goods intended to be delivered to an FTZ, the IRS number, EIN, SSN, or CBP assigned number of the party filing the FTZ documentation with CBP must be provided. If this party does not have an IRS number, EIN, SSN, or CBP assigned number

when the Importer Security Filing is submitted, this party must obtain one. For household goods and personal effects where a foreign party without one of the required unique identification numbers is importing their own goods, the ISF Importer may provide the importer of record's passport number, country of issuance, and date of birth.

Comment

The importer of record number should not be required prior to shipment, but at the time of the filing of the entry.

CBP Response

CBP disagrees. In order for CBP to effectively target cargo before it is loaded, the Importer Security Filing, including the importer of record number or FTZ applicant identification number, must be received by CBP 24 hours prior to lading (any time prior to lading for FROB). CBP notes that section 203 of the SAFE Port Act requires that this information be provided prior to lading of cargo at foreign seaports.

Comment

The importer of record may not always be the party responsible for

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filing the Importer Security Filing and, therefore, CBP should clarify that penalties and other liabilities will be applicable to the party required to file the Importer Security Filing pursuant to proposed 19 CFR 149.1.

CBP Response

CBP recognizes that the importer of record may not always be the party responsible for filing the Importer Security Filing. The ISF Importer is required to post their bond to secure the timely, accurate, and complete Importer Security Filing. When necessary, CBP will issue penalties and claims for liquidated damages against that party.

7. Consignee Number(s)

Comment

The consignee number(s) may not be known prior to shipment from overseas. What should be submitted for the consignee number(s) when a shipment cannot be consigned to the importer at the time of filing? For example, some shipments are consigned to a factory or a vendor's negotiating bank. What number should be provided for household goods and personal effects where a foreign party without one of the required unique identification numbers is importing their own goods?

CBP Response

CBP understands that business practices may need to change in order for the ISF Importer to determine who the consignee in the United States is for a shipment 24 hours prior to lading. For example, for shipments that are consigned to the importer, a factory, or vendor's negotiating bank, where those parties will not be the actual consignee if the goods are not consigned before arrival in the United States, the ISF Importer may need to designate a warehouse in the United States to receive the goods and, therefore, to be listed as the consignee. For household goods and personal effects where a foreign party without one of the required unique identification numbers is importing their own goods, the ISF Importer may provide the importer of record's passport number, country of issuance, and date of birth.

Comment

Can the unique identification number for a nominal consignee be provided for the consignee number element?

CBP Response

Yes, the unique identification number for a nominal consignee may be provided for the consignee number(s) element.

Comment

CBP should accept the name and address of the consignee in lieu of the consignee number because of the sensitive nature of the consignee number.

CBP Response

CBP disagrees. Based on external and internal analysis, CBP has determined that the consignee number will provide more visibility into the parties involved in a transaction than the name and address.

Comment

CBP should allow the use of the ACE ID or other universal participating government agency (PGA) identifiers.

CBP Response

CBP disagrees because these identifiers do not currently exist in the CBP systems. CBP will continue to explore the potential use of the ACE ID and PGA identifiers in the future and as ACE is developed.

Comment

The consignee number(s) element should be consistent with the party submitted to CBP on the CBP Form 3461 pursuant to 19 CFR 142.3(a)(6).

CBP Response

The party required for the consignee number(s) element is the same party provided on the CBP Form 3461.

8. Country of Origin

Comment

The importer may not have direct knowledge of the country of origin.

CBP Response

Where the ISF Importer receives any of the information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the ISF Importer acquired such information, and whether and how that party is able to verify this information. Where that party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what the party reasonably believes to be true.

9. Commodity HTSUS Number

Comment

The precise manifest description should be accepted in lieu of the HTSUS number. The ISF Importer may lack the expertise to classify merchandise and/or the ISF Importer may not know the HTSUS number prior to lading. If CBP does require the HTSUS number, the HTSUS number should be limited to the four-digit level because the four-digit number provides sufficient information to properly assess risk factors.

CBP Response

CBP disagrees. Based on external and internal analysis, CBP has determined that the six-digit HTSUS number will provide more visibility into cargo imported into the United States than the four-digit HTSUS number or a textual description because the six-digit number provides a more specific classification of the cargo. Furthermore, the tariff schedule is harmonized internationally to the six-digit level. If an ISF Importer does not know an element that is required pursuant to the regulations, including the HTSUS number at the six-digit level, the ISF Importer must take steps necessary to obtain the information. CBP

recognizes that, for most importers, this information is known well before the placement of the order for their goods because of the need to determine duty cost and admissibility status prior to finalizing the purchase contract or shipment contract.

Comment

CBP should allow the submission of the 10-digit HTSUS code regardless of whether the Importer Security Filing is combined with the entry. The HTSUS number is subject to change (e.g., based on the quota fill status at the date of entry).

CBP Response

CBP agrees. While CBP is not requiring the HTSUS number at the 10-digit level unless the Importer Security Filing is submitted via the same electronic transmission as entry or entry/entry summary, CBP will accept the HTSUS number at the 10-digit level if the Importer Security Filing is submitted in a separate transmission. The ISF Importer must update the filing if, after the filing is submitted and before the goods enter the limits of a port in the United States, any of the information submitted changes or more accurate information, including HTSUS number, becomes available.

Comment

Will CBP compare the HTSUS data submitted in the Importer Security Filing with the HTSUS data used at entry?

CBP Response

Yes. CBP will use the information available, including entry data, to

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analyze and assess risk and to validate Importer Security Filing data.

Comment

The HTSUS and country of origin do not have any security value to CBP. In addition, this information is already required under the 24 Hour Rule.

CBP Response

CBP is requiring this information pursuant to Section 203 of the SAFE Port Act, which requires the electronic transmission prior to lading of additional data elements, including appropriate security elements of entry data, as determined by the Secretary of Homeland Security. Based on external and internal analysis, CBP has determined that the HTSUS and country of origin will allow CBP to more accurately assess risk. CBP is aware that some information is also provided at other times and by other parties, such as for entry purposes on CBP Forms 3461 and 7501. However, this information is often submitted after the cargo departs on a vessel destined for the United States and, in many cases, after the cargo arrives in the United States. By collecting this information at an earlier point, CBP will be able to more effectively target cargo prior to it being laden on a vessel at a foreign port and prior to its arrival in the United States. In addition, CBP is collecting supply chain information from more than one party in order to more effectively validate the information.

Comment

Can an importer provide a single HTSUS number for multiple parts when the number is the same at the six-digit level (i.e., as reported on the CBP Form 7501)?

CBP Response

The HTSUS number is required to be provided to the six-digit level and, therefore, a single HTSUS number may be provided for multiple parts when the numbers are the same at the six-digit level.

Comment

Carriers are unable to provide the HTSUS number because they do not see the invoice details. The six-digit HTSUS number should be an optional element when a carrier submits an Importer Security Filing for FROB, IE, and T&E cargo as it is for manifest filings for U.S. import cargo. The precise cargo description should be accepted in lieu of the HTSUS number.

CBP Response

CBP disagrees. The six-digit HTSUS number is sometimes provided by members of the trade community on T&E and IE in-bond movements. CBP understands that, in some cases, business practices may have to be altered to obtain the required information in a timely fashion (e.g., requiring the information on commercial documents).

10. Booking Party

Comment

The definition of the booking party does not meet commercial practices because the carrier may not know the party "paying for the transportation of the goods" at the time of filing and there may be more than one party that is paying for the transportation. CBP should amend the definition of this element to be "the party who initiates the reservation of the cargo space for the shipment." In addition, the booking party should only be required when it is available to the carrier.

CBP Response

In response to comments and in an effort to align this element with commercial practices, CBP has changed the definition for booking party to be "the party who initiates the reservation of the cargo space for the shipment."

11. Foreign Port of Unlading

Comment

CBP should accept Bureau of Census Schedule K port codes for the foreign port of unlading element. When designating a source for port codes, CBP should consider that the foreign port of unlading could be an air or land port for cargo that is transferred to another mode.

CBP Response

CBP agrees. CBP will accept Bureau of Census Schedule K port codes for the foreign port of unlading element.

12. Place of Delivery

Comment

Is the "place of delivery" the place of delivery under the terms of the carrier's contract of carriage? CBP should accept port codes in lieu of city codes for this element.

CBP Response

The place of delivery is the foreign location where the carrier's responsibility for the transport of the goods terminates. CBP will allow the use of UN Locodes or Schedule K codes, when applicable, for this element.

G. Public Comments; Technical Issues

Comment

CBP should include the actual data fields that will need to be

submitted in the interim final rule. CBP should establish a guide for developers that will include sample record sets for different business scenarios. A test system and a technical FAQ should be made available to developers.

CBP Response

CBP has amended the guides for developers, including the CATAIR, CAMIR, and X.12 transaction messages, providing the technical requirements necessary for submitting Importer Security Filings. These documents include the actual data fields, and have been posted to the ``Automated Systems'' section of the CBP Web site. An electronic FAQ will also be posted to the CBP Web site. In addition, the ability to submit data to a test system and receive responses will be provided.

Comments

CBP should work with the trade to identify the mechanisms that are needed for all parties to manage the Importer Security Filing. Importers should receive a timely confirmation message, including a unique identification number, indicating that the Importer Security Filing has been received and accepted by CBP (or rejected listing errors). Unique identifiers should also be created for amendments and deletions.

CBP Response

CBP will send a response message to the Importer Security Filing filer indicating whether an Importer Security Filing has been accepted or rejected by CBP's systems. The response message will contain a unique number generated by CBP. The ISF Importer may choose to share this Importer Security Filing number with other parties. However, CBP will not issue a new unique identifier when an Importer Security Filing is amended or deleted.

Comment

How will a carrier validate that an Importer Security Filing has been filed? Carriers should be notified through AMS. The filer should also be able to identify additional parties to be notified of the acknowledgement message.

CBP Response

AMS creates notifications of the status of the bill that go back to the filer and any other parties nominated on the bill to receive such notification. CBP will notify the filer of the bill of lading that

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an Importer Security Filing has been received for the bill of lading through this process.

Comment

How long will carrier submissions remain in the CBP data system without being reconciled with Importer Security Filing submissions?

CBP Response

The carrier's advance cargo declaration is submitted pursuant to a different regulatory requirement and is not dependent upon the submission of Importer Security Filings.

Comment

How must the Importer Security Filings, vessel stow plans, and container status messages be transmitted to CBP? The CAMIR should be modified accordingly.

CBP Response

Importer Security Filings, stow plans, and container status messages (CSMs) must be submitted via a CBP-approved electronic interchange system. The current approved electronic interchange systems for Importer Security Filings are the vessel AMS and ABI. CBP has re-evaluated the electronic interchange systems that will best allow the trade to submit vessel stow plans and container status messages and has determined that stow plans must be submitted through vessel AMS, secure file transfer protocol (sFTP), or email, and CSMs may be submitted through sFTP. CBP will publish a notice in the Federal Register if different or additional electronic data interchange systems are approved in the future. CBP has amended the CATAIR, CAMIR, and X.12 transaction messages, providing the technical requirements necessary for submitting Importer Security Filings. These documents have been posted to the ``Automated Systems'' section of the CBP Web site.

Comment

The Importer Security Filing should be deemed to have taken place upon submission, not CBP receipt.

CBP Response

CBP agrees. This provision of the regulatory text has been changed accordingly. In the absence of specific evidence to the contrary, however, the time of CBP's receipt of the Importer Security Filing will be evidence of the time of submission by the filer. In response to requests from the trade, CBP will transmit an acknowledgement to the filer to confirm that CBP has received an Importer Security Filing. CBP will publish FAQs regarding protocols for when an approved electronic interchange system is experiencing technical difficulties (e.g., for scheduled maintenance).

Comment

Importers may not possess the technology to transmit these data directly to CBP.

CBP Response

If an ISF Importer does not possess the technology to transmit the Importer Security Filing data to CBP, the importer can either obtain the necessary technology or use an agent to submit the Importer Security Filing on the ISF Importer's behalf.

Comment

CBP should allow a filer to initially submit a ``shell record'' of partial Importer Security Filing data that can be subsequently amended by multiple parties.

CBP Response

CBP disagrees. A shell record would not serve any targeting or risk assessment purposes. Records of this type that could subsequently be amended by multiple parties would create numerous problems, including a lack of finality (CBP would not know when the final Importer Security Filing information has been submitted and/or amended), security and privacy issues (who will determine which parties can amend which information), and cost (such a system would be expensive to develop and maintain). The ISF Importer is ultimately responsible for the timely, accurate, and complete submission of the Importer Security Filing. In response to requests from the trade, an ISF Importer can designate an agent to submit the filing on behalf of the ISF Importer. While CBP understands that some business practices may need to be altered to obtain the required information at an earlier point, CBP does not anticipate that these changes will be unduly burdensome.

Comment

Importers should be allowed a review period before the Importer

Security Filing must be filed if it is filed by an agent.

CBP Response

The Importer Security Filing must be filed no later than 24 hours prior to lading (any time prior to lading for FROB). However, see the "Structured Review and Flexible Enforcement Period" section of this document for flexibilities related to timing for certain Importer Security Filing elements. If an ISF Importer chooses to use an agent, the ISF Importer may choose to include a "review period" as part of their contract with their agent.

Comment

CBP should transmit an electronic acknowledgement to the filer after an Importer Security Filing is received. This acknowledgement should include a unique number which can be used by other parties to verify that an Importer Security Filing has been filed. The importer should be able to designate multiple parties to receive the acknowledgement. Parties should also be able to query previously submitted Importer Security Filings.

CBP Response

CBP will transmit an electronic acknowledgement to the filer only when CBP receives an Importer Security Filing. The acknowledgement will include a unique identification number. This number cannot be used to perform a query in ABI or AMS. However, the party who submits the advance manifest information and any notify party on the bill of lading in AMS will receive all status notifications posted to that bill, including the notification that an Importer Security Filing was accepted for the bill of lading.

Comment

What will the procedures be when the Importer Security Filing system is down? Will CBP's systems be able to handle the exponential increase in data that will result from this rule?

CBP Response

CBP has planned for the expected increase of data that will result from this rule. However, CBP will publish FAQs regarding protocols for when an approved electronic interchange system is experiencing technical difficulties (e.g., for scheduled maintenance).

Comment

The technical detail of the construct of the Importer Security Filing should be developed consistent with CATAIR and CAMIR standards. CBP should immediately release, and accept additional comments on, the data formats for the new requirements, including templates and instructions relating to the following: data type for each element (alphanumeric, numeric, etc.), length for each element, address information format, element definitions, hierarchy of message, and what validations for existing data will be performed for these filings.

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CBP Response

CBP has amended the CATAIR, CAMIR, and X.12 transaction messages, providing the technical requirements necessary for submitting Importer Security Filings. These documents have been posted to the "Automated Systems" section of the CBP Web site. CBP disagrees that any further notice and comment is necessary for technical changes.

Comment

CBP should codify all elements that require a name and address and assign a unique identification number to each entity, or CBP should accept widely recognized commercially acceptable identification numbers such as DUNS numbers in lieu of the name and address.

CBP Response

CBP disagrees that a unique identifier number should be assigned to each party listed in the Importer Security Filing because, at this time, CBP is not technologically prepared to create such a system and such a system would be unduly burdensome and expensive. However, CBP will continue to explore the potential development and use of the ACE ID in the future as ACE is developed. In response to requests from the trade, CBP has changed the proposal in this interim final rule so that widely recognized commercially accepted identification numbers (such as DUNS numbers) will be accepted in lieu of the name and address.

Comment

CBP should provide a source, such as United Nations Location Codes (UN Locodes), for city codes that are required for the "place of delivery" element. An ABI query would be helpful to maintain the list as updates are made to add or delete items on the list.

CBP Response

CBP agrees and, where applicable, such as "place of delivery," CBP has adopted the use of UN Locodes and Schedule K codes. However, CBP will not provide a table of codes in ABI or AMS that the trade can query because these are available from other sources.\9\

 \9\ UN Locodes are available on the United Nations Web site at http://www.uncece.org/cefact/codesfortrade/codes_index.htm. Schedule K codes are available on the U.S. Army Corps of Engineers Web site at <http://www.iwr.usace.army.mil/NDC/wcsc/scheduleK/schedulek.htm>.

Comment

CBP should adopt standards for address information, such as the use of Global Location Number (GLN) standards. Such standards should be harmonized on a global basis.

CBP Response

In response to requests from the trade, CBP has changed the regulations, as proposed, so that widely recognized commercially accepted identification numbers (such as DUNS numbers) will be accepted in lieu of the name and address. At this time, however, CBP will not accept the GLN because it is unclear whether the GLN is a widely recognized and commercially accepted number. However, CBP will continue to work with the trade to evaluate existing identification numbers such as the GLN to determine which of these are appropriate for Importer Security Filing purposes. CBP will also continue to explore the potential development and use of the ACE ID in the future as ACE is developed. CBP will continue to update the trade regarding acceptable numbers in the form of FAQs, postings on the CBP Web site, and other outreach to the trade. The technical requirements necessary for submitting Importer Security Filings, including guidance relating to the submission of address information, has been added to the CATAIR, CAMIR, and X.12 transaction messages. These documents have been posted to the "Automated Systems" section of the CBP Web site.

H. Public Comments; Update and Withdrawal of Importer Security Filing

Comment

The requirement that the party who initially filed the Importer Security Filing must update the filing does not take into consideration the dynamic nature of international trade. For example, goods may be sold in transit. In addition, the SAFE Port Act and the Trade Act of 2002 do not contemplate an ongoing duty to update information on a post loading basis. Any authorized party should be able to update the filing.

CBP Response

The ISF Importer, as the party who causes the goods to enter the limits of a port in the United States, submits (or uses an agent to submit) the Importer Security Filing, and posts their bond. Therefore, it is ultimately responsible for updating the Importer Security Filing if, after the filing is submitted and before the goods enter the limits of a port in the United States, any of the information submitted changes or more accurate information becomes available. However, that party may use an agent to update the Importer Security Filing. If goods are sold in transit, the original Importer Security Filing filer must notify CBP that the goods have been sold, including the party to whom the goods have been sold.

Comment

The final importer should be able to see and update the Importer Security Filing.

CBP Response

CBP disagrees. Importers will not be able to access specific Importer Security Filing elements in CBP systems. Such functionality would be too costly and raises security concerns. If an ISF Importer wants to access Importer Security Filings that are submitted on their behalf by an agent, the ISF Importer should obtain the information from their agent.

Comment

How will a filer designate an update so that it is applied to the correct Importer Security Filing, particularly in the case where there are multiple filings for a single bill of lading?

CBP Response

CBP will issue a CBP-generated unique identifier for each Importer Security Filing it receives. That unique number can be used by the Importer Security Filing filer to amend an Importer Security Filing.

Comment

What if cargo is diverted while in transit, due to shifting inventory/distribution needs? Will an Importer Security Filing need to be updated if a shipment is split after the initial Importer Security Filing has been filed?

CBP Response

Pursuant to this interim final rule, the Importer Security Filing must be updated if, after the filing and before the goods enter the limits of a port in the United States, there are changes to the information filed, including when cargo is diverted into a shipment for which a different number of elements is required (5 elements to 10 elements or 10 elements to 5 elements). In addition, when a shipment is split resulting in (a) new bill of lading number(s), a new Importer Security Filing must be filed for each new bill of lading because each Importer Security Filing is associated with a bill of lading.

Comment

Does an Importer Security Filing need to be updated if a shipment is rolled to a different vessel?

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CBP Response

If the bill of lading number remains the same, a new Importer Security Filing is not required, nor is an amendment required. However, if a new bill of lading is issued or the bill number changes, a new Importer Security Filing must be filed.

Comment

If a party reported on an Importer Security Filing remains the same, but the address for that party changes, is an amendment required?

CBP Response

The Importer Security Filing must be amended if any of the information submitted, including the address of a party, changes or more accurate information becomes available.

Comment

The NPRM states that an Importer Security Filing must be amended if there is a change ``before the goods enter the limits of a port in the United States.'' Does ``port'' refer to the first port of arrival or the port of discharge or the port of destination on the ocean bill of lading?

CBP Response

The Importer Security Filing must be amended if there is a change before the goods enter the limits of a port in the United States. For goods that will be unladen in the United States, the Importer Security Filing must be updated if there is a change before the goods enter the port of discharge.

Comment

When an Importer Security Filing is submitted in the same electronic transmission as entry, will both need to be amended independently?

CBP Response

When an Importer Security Filing is initially submitted in the same electronic transmission as entry, both can be amended via the same electronic transmission. CBP has amended the CATAIR, CAMIR, and X.12 transaction messages, providing the technical requirements necessary for amending Importer Security Filings. These documents have been posted to the ``Automated Systems'' section of the CBP Web site. CBP will continue to conduct outreach with the trade, fulfilling its regulatory and statutory obligations, both during the delayed compliance period and thereafter, via FAQs, postings on the CBP Web site, and other outreach.

Comment

CBP should accept the entry information submitted on CBP Forms 3461, 7501, and 214 as an update of the Importer Security Filing.

CBP Response

CBP disagrees. Entry information will not be accepted in lieu of an Importer Security Filing update. Entry is governed by a different statutory provision, 19 U.S.C. 1484, and serves a much different function. It is a well settled area of law that has distinct limitations as to who may make entry, and what constitutes the act of making entry on another's behalf, with its own discrete regulations and limitations. Furthermore, most of the Importer Security Filing elements

are not current entry data elements nor is the totality of what constitutes an entry necessarily compatible with what constitutes an Importer Security Filing.

I. Public Comments; In-Bond Shipments

Comment

For shipments consisting entirely of FROB and shipments intended to be transported in-bond as an IE or a T&E, does the IE or T&E in-bond need to be created before an Importer Security Filing is submitted?

CBP Response

No. Parties are not required to file an in-bond document prior to submission of an Importer Security Filing.

Comment

The submission of an Importer Security Filing consisting of 10 elements should serve as the request for permission to convert a shipment from an IE or T&E shipment into a shipment that will be entered into the United States. If CBP declines to accept the full Importer Security Filing as the request for permission, permission should be required from the port director of the original port of entry or the port of entry filing. How will CBP indicate that permission has been granted?

CBP Response

The ISF Importer must submit the complete Importer Security Filing to CBP consisting of 10 elements as soon as a decision is made to change the disposition of the cargo. However, CBP disagrees that this submission should serve as the request for permission to convert an IE or T&E shipment into a shipment that will be entered into the United States. Instead, the party wishing to divert the cargo, must present the request to CBP in writing at the original port of unloading and CBP will indicate permission on the documentation.

Comment

CBP should clarify the application of proposed 19 CFR 18.5, which would require permission to "divert" in-bond shipments regarding IE in-bond shipment since IE shipments are retained within the port of unloading. Will affirmative permission be required for such changes and, if so, what is the purpose of such permission and on what basis would CBP refuse permission?

CBP Response

For in-bond shipments which, at the time of transmission of the Importer Security Filing are intended to be entered as an IE or T&E shipment, 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. Since IE shipments cannot be diverted, an ISF Importer will need permission to change an IE entry to a consumption entry or other type of entry.

Comment

Will an importer who submitted an Importer Security Filing consisting of 10 elements, because the importer intended to enter the shipment into the United States or deliver the goods to an FTZ, need to file an Importer Security Filing consisting of five elements if the shipment is changed to an IE, T&E, or FROB?

CBP Response

If an Importer Security Filing consisting of 10 elements pursuant to new 19 CFR 149.3(a) was initially submitted for a shipment and the shipment is changed to an IE, T&E, or FROB, the Importer Security Filing must be updated pursuant to new Sec. 149.2(d). This update must be performed by submission of an Importer Security Filing consisting of five elements as listed in section 149.3(b) because these elements are necessary to better assess the security risk of IE, T&E, and FROB shipments.

Comment

CBP should ensure the regulations and AMS permit filing of an in-bond request and issuance of an immediate transportation (IT) number prior to loading at the foreign port.

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CBP Response

CBP disagrees. CBP is not changing the protocols for filing in-bond requests and issuing IT numbers because an IT number is not a required data element of the Importer Security Filing and, therefore, amending the in-bond system is unnecessary.

Comment

How will an importer request permission to divert an IE or T&E shipment to a port other than the listed port of destination or export?

CBP Response

Pursuant to existing regulations, IE shipments may not be diverted. The shipper must submit a request to divert a T&E shipment to a port other than the listed port of destination or export to the port director of the port of origin either in writing or, when the function is available, electronically.

\10\ See 19 CFR 18.25. See also Policy and Procedures Manual Supplement 3285-02 (February 22, 1982), Customs Directive 3280-01 (November 25, 1983), and HQ Ruling 113946 (July 7, 1997).

Comment

The importer's (or, truck/rail carrier's) failure to obtain permission should not subject an ocean carrier's bond to liability.

CBP Response

The ISF Importer must provide a bond (or use an agent's bond) when the original Importer Security Filing is submitted. This party is liable for the accuracy of that Importer Security Filing, including any failure to obtain permission for diversion of the cargo as required by Sec. 18.5, as amended by this interim final rule. The party requesting permission must submit a new Importer Security Filing consisting of 10 elements and must provide a bond at that time. The party submitting the new Importer Security Filing consisting of 10 elements will be liable for the accuracy of that Importer Security Filing.

Comment

Will CBP create special provisions for IT shipments which will be cleared at an inland destination? If not, brokers located at inland ports will be placed at a disadvantage.

CBP Response

CBP will not create special provisions for IT shipments that are cleared at an inland destination.

J. Public Comments; Importer Security Filing, Entry, and Application for FTZ Admission

Comment

CBP should finish its targeting and pre-clear shipments prior to the shipment's arrival in port when entry or an application for admission to an FTZ are filed at an earlier point (i.e., when entry, entry summary, or FTZ application documentation are submitted via a single electronic transmission as the Importer Security Filing).

CBP Response

CBP disagrees. CBP is not amending, at this time, the procedures generally governing entry release and FTZ admission of imported goods. The laws governing entry release and FTZ admission are governed by different statutory authorities and were enacted for a variety of purposes, such as commercial enforcement and preventing fraud, that are distinct from assessing security risk. However, CBP will carefully consider the merits of completing targeting and pre-clearance at an earlier point in the vessel mode in the near future.

Comment

The Importer Security Filing is duplicative because it is basically collecting entry data at an earlier point in time.

CBP Response

Pursuant to section 203 of the SAFE Port Act, the Secretary of Homeland Security, acting through the Commissioner of CBP, must promulgate regulations to require the electronic transmission of additional data elements for improved high-risk targeting, including appropriate security elements of entry data. While CBP recognizes that several of the data elements are repeated in both the Importer Security Filing and the entry documents, each of these submissions has a different purpose. Pursuant to section 343(a) of the Trade Act of 2002, "the use of the additional information collected pursuant to these regulations is to be only for ensuring cargo safety and security and preventing smuggling and not for determining merchandise entry or for any other commercial enforcement purposes." However, in response to requests from the trade, CBP will allow an importer to submit the entry or entry/entry summary data via the same electronic transmission as the Importer Security Filing, in which case an importer is only required to provide the four common elements (importer of record number, consignee number, country of origin, and HTSUS number if provided at the 10-digit level) one time to be used for Importer Security Filing, entry, or entry/entry summary purposes. If an importer chooses to submit the Importer Security Filing and entry or entry/entry summary via the same electronic transmission, CBP may use these four elements for commercial enforcement purposes.

Comment

It would be commercially unfeasible to accomplish both entry and the Importer Security Filing via the same electronic transmission in many instances since brokers may not submit entry from outside of the United States.

CBP Response

In response to requests from the trade, CBP will allow an importer to submit the entry or entry/entry summary data via the same electronic transmission as the Importer Security Filing. CBP is not requiring this unified filing. If an importer chooses to do so, the consolidated submission of both the Importer Security Filing and entry must be filed by the party entitled to make entry pursuant to 19 U.S.C. 1484 on its own behalf or a licensed customs broker. All existing requirements regarding entry must still be met. CBP is not amending, at this time, the regulations generally governing entry of imported goods.

Comment

Will a modification to the Importer Security Filing affect the entry summary and impact the examination of the merchandise?

CBP Response

Whether filed as an initial submission or as a modification in a unified filing, the Importer Security Filing or the entry/entry summary will be accepted or rejected individually as separate and distinct filings. The Importer Security Filing information, including updates, will be used exclusively for ensuring cargo safety and security and preventing smuggling and will not be used for determining merchandise entry or for any other commercial enforcement purposes.

Comment

The importer should be able to submit the CBP Form 7501 along with the Importer Security Filing 24 hours prior to lading.

CBP Response

Pursuant to this interim final rule, the Importer Security Filing must be submitted 24 hours prior to lading (any

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time prior to lading for FROB). Entry summary can also be submitted 24 hours prior to lading, either individually or via the same electronic transmission as the Importer Security Filing.

Comment

In addition to the country of origin and the HTSUS number, the manufacturer, ship to party, and consignee number elements for FTZ goods are also duplicative with the information collected on CBP Form 214. The filer should only be required to submit these five elements one time.

CBP Response

In an effort to minimize the redundancy of data transmitted to CBP, this interim final rule allows a filer to submit the Importer Security Filing and CBP Form 214 in the same electronic transmission to CBP and to submit the country of origin and commodity HTSUS number once to be used for both Importer Security Filing and FTZ admission purposes. If the party submitting the Importer Security Filing chooses to have these elements used for FTZ admission purposes, the HTSUS number must be provided at the 10-digit level. CBP disagrees that the manufacturer, ship to party, and consignee number are collected on CBP Form 214.

K. Public Comments; Requests for Special Treatment

Comment

How does CBP plan to address holds and DNLs on agricultural products, where delay could result in irreparable damage to an importer's relationship with its buyer(s)?

CBP Response

CBP will not institute special procedures for agricultural products. DNLs are placed for security reasons and the status of a shipment as "perishable" or "non-perishable" does not necessarily

indicate increased or decreased security risk. In all instances, CBP will work with the trade to communicate holds and DNLs as quickly as possible. It is the responsibility of the ISF Importer to resolve Importer Security Filing issues that result in a hold or DNL.

Comment

CBP should exempt from the Importer Security Filing requirements cargo that is refused admission or for another reason is returned from a foreign country after having been exported from the United States.

CBP Response

CBP disagrees. Cargo refused admission at a foreign port is not exempt from these regulations if that cargo will enter the limits of a port in the United States via vessel. This cargo has been out of the control of the exporter and CBP and, therefore, poses a possible security risk.

Comment

CBP should exempt carnets from the Importer Security Filing requirements because they are covered by an international convention. If carnets are not exempted, CBP must gain acceptance from the international convention that governs carnets prior to enforcement. At a minimum, the HTSUS number should not be required for carnet shipments.

CBP Response

CBP disagrees. Carnet shipments are not exempt from these regulations if the cargo will enter the limits of a port in the United States via vessel. These shipments are not inherently less of a risk than other shipments.

Comment

CBP should exempt temporary importation bond (TIB) shipments from the Importer Security Filing requirements.

CBP Response

CBP disagrees. An Importer Security Filing is required for TIB shipments that will enter the limits of a port in the United States via vessel. These shipments are not inherently less of a risk than other shipments.

Comment

CBP has already vetted the supply chains of C-TPAT members and, therefore, the Importer Security Filing requirements are duplicative for C-TPAT members. Therefore, C-TPAT members, specifically tier three members, should be exempt from the Importer Security Filing requirements, especially when shipments have been subject to pre-export scanning at a CSI port. C-TPAT members, including tier two and three members, should be permitted to file on an account basis rather than on a per-shipment basis (e.g., annual blanket filings). In the alternative, C-TPAT members should be subject to a phase-in period, permitted to submit fewer than all of the required Importer Security Filing elements, permitted to submit the Importer Security Filing 12 hours prior to lading, and/or subject to reduced penalties.

CBP Response

CBP disagrees. CBP will use the Importer Security Filing to assess the risk of individual shipments. For purposes of this rule, all cargo arriving to the United States by vessel, regardless of the parties involved, will be subject to the Importer Security Filing requirements. CBP is not allowing exemption from, or alteration of, the requirement that C-TPAT partners submit Importer Security Filing information in advance of arrival. CBP believes that compliance with these regulations complements supply chain security and efficiency procedures being implemented by C-TPAT partners. Furthermore, it is emphasized that C-TPAT membership will continue to be viewed in a positive light for targeting purposes. It is more likely that shipments made by C-TPAT members will be readily and expeditiously cleared, and not be delayed for greater scrutiny. Other related advantages of C-TPAT partnership may include essential security benefits for suppliers, employees, and customers, such as a reduction in the number and extent of border inspections and eligibility for account-based processes.

Comment

Shipments that transit through CSI ports should be exempt from the Importer Security Filing requirements.

CBP Response

CBP disagrees. This rule is one part of CBP's layered approach to cargo security. CBP's comprehensive strategy includes CSI, the 24 Hour Rule, C-TPAT, and the Importer Security Filing. Importer Security Filing data are particularly useful for cargo that transits through a CSI port because CSI ports provide CBP the opportunity to review cargo before it is laden on a vessel destined for the United States.

Comment

Shipments intended for a duty-free warehouse should be exempt from the Importer Security Filing requirements. For duty-free stores, vendors may ship directly to the manufacturer's site, yet later issue the invoice from the United States or other location. In these circumstances, the shipper only has a packing list or no invoice and there is no way to determine the HTSUS number and country of origin at the time of shipping.

CBP Response

CBP disagrees that an exemption is warranted. An Importer Security Filing is required for merchandise destined for a duty-free warehouse. These shipments

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are not inherently less of a risk than other shipments. CBP is aware that business practices may need to change (e.g., amendment of shipping documents) to obtain this information 24 hours prior to lading. Where the party is not reasonably able to verify the information 24 hours prior to lading, the regulations allow the party to submit the information on the basis of what it reasonably believes to be true. If any of the information changes or more accurate information becomes available before the goods enter the limits of a port in the United States, the Importer Security Filing must be updated.

Comment

CBP should allow an exemption for shipments originally destined for a foreign port (with the intent to remain foreign) that are diverted to the United States because of an emergency. CBP should also allow an exemption for shipments diverted to the United States that were originally destined for a foreign sea port to be loaded on a rail car or truck destined for the United States, in cases where the vessel is diverted because of emergency.

CBP Response

CBP disagrees that a regulatory exemption is warranted. If an emergency arises regarding cargo that was never intended to enter the limits of a port in the United States for which an Importer Security

Filing was not filed, the ISF Importer is required to file an Importer Security Filing. If an event occurs, including an emergency, affecting cargo for which an Importer Security Filing was submitted, and the event results in changes to any of the elements for that filing, the ISF Importer is required to immediately amend the Importer Security Filing. The ISF Importer will still be liable for enforcement actions resulting from the late Importer Security Filing submission. However, CBP will consider the totality of the circumstances surrounding the event before any further CBP actions are taken.

Comment

CBP should allow an exemption for ferries or barges, especially when merchandise is diverted to a ferry or barge when the land border crossing is down.

CBP Response

An Importer Security Filing is not required if the movement of the cargo by ferry or barge is considered to have crossed a "land border" crossing for CBP purposes. However, an Importer Security Filing is required for cargo that is transported on a vessel that is required to make formal vessel entry pursuant to 19 U.S.C. 1434 (see also 19 U.S.C. 1441 for vessels exempted from vessel entry).

Comment

FROB should be exempted from these requirements because, at the time of loading, whether a cargo is destined to be FROB may not be known or may be subject to change due to changes in port destinations or due to last minute cargo being loaded which is destined for the United States after cargo for other countries has been loaded.

CBP Response

CBP disagrees. If the cargo is known to be FROB prior to lading, the ISF Importer must submit an Importer Security Filing consisting of five elements. If the cargo is not known to be FROB (or an IE or T&E shipment) and the cargo is intended to enter the limits of a port in the United States 24 hours prior to lading, the importer must submit an Importer Security Filing consisting of 10 elements. If an event occurs (e.g., an emergency) affecting cargo for which an Importer Security Filing was submitted, and the event results in changes to any of the elements for that filing, the ISF Importer is required to immediately amend the Importer Security Filing. If an Importer Security Filing was not filed because the cargo was not intended to enter the limits of a port in the United States by vessel, and the cargo will enter the limits of a port in the United States, the importer must immediately file an Importer Security Filing. In this case, the ISF Importer will still be liable for enforcement actions resulting from the late Importer Security Filing submission.

Comment

CBP should clarify that FROB cargo does not include U.S. export cargo or foreign-to-foreign cargo.

CBP Response

U.S. export cargo that was not laden at a foreign port is outside of the scope of this rule.

Comment

Will an Importer Security Filing be required for goods that are discharged in a foreign port and transshipped via truck/rail into the United States?

CBP Response

No. This rule only applies to cargo arriving in the limits of a port in the United States by vessel.

Comment

Cargo that is imported by the Department of Defense should be exempt from the Importer Security Filing requirements.

CBP Response

CBP agrees. If cargo arrives on a vessel for which vessel entry and a manifest is required, an Importer Security Filing must be submitted. However, if Department of Defense cargo arrives on a government vessel as per 19 CFR 4.5 for which vessel entry and a manifest is not required, an Importer Security Filing is not required.

Comment

The HTSUS number, manufacturer (or supplier), and seller should not be required for personal effects.

CBP Response

CBP disagrees. The ISF Importer must submit an Importer Security Filing for shipments consisting of personal effects. These shipments are not inherently less of a risk than other shipments. All data elements are required regardless of whether the parties identified in the data elements are private or commercial.

Comment

Ship's equipment and carrier's inter-company moves should be exempt from the Importer Security Filing requirements.

CBP Response

An Importer Security Filing is not required for ship's equipment. However, unless otherwise exempted, the ISF Importer must submit an Importer Security Filing for inter-company moves.

 \11\ CBP is not amending existing advance manifest information requirements in 19 CFR Part 4.

Comment

Why is CBP exempting instruments of international trade (IITs) from the Importer Security Filing requirements?

CBP Response

CBP is requiring that IITs be reported via vessel stow plans and container status messages. However, many of the Importer Security Filing elements are not applicable to IIT shipments and CBP has determined that the additional information would be of limited targeting value.

Comment

CBP should not require Importer Security Filings for shipments arriving in the United States via inland waterways, such as the Great Lakes.

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CBP Response

CBP disagrees. The SAFE Port Act of 2006 requires data elements for cargo destined to the United States by vessel prior to loading of such cargo on vessels at foreign seaports. Accordingly, the ISF Importer must submit an Importer Security Filing for cargo arriving in the United States via inland waterways.

Comment

CBP should clarify that these rules are not applicable to cargo being returned to the United States from any vessel or outer continental shelf (OCS) facility positioned over the U.S. OCS for the purposes of engaging in OCS activities, as defined in 33 CFR 140.10. CBP should carefully consider the fundamental difference between cargoes returned to the United States from offshore locations and cargoes imported to the United States from foreign countries in the application of this rule. The cargoes shipped (returned) from offshore locations to the United States have never made what CBP has in the past referred to as "a meaningful departure" from the United States. In the NPRM, CBP uses the term "foreign port" to determine the applicability of reporting. The use of the term is significant and correct so long as it is clearly defined as meaning the foreign port of lading of a cargo container for transport to the United States. The term "foreign port" has at times been used to include operations involving the carriage of cargo to/from "Hovering Vessels." However, vessels positioned over the OCS to conduct OCS activities are clearly not "Hovering Vessels." In addition, the information required by these regulations is, in some instance inapplicable to the OCS (e.g., port codes) and would provide no tangible benefit to CBP. The same logic used for the Western Hemisphere Travel Initiative whereby persons traveling to/from mobile offshore drilling units located on the OCS are not required to present a passport to enter/re-enter the U.S. should be applied to cargo for these requirements and the regulations should exempt cargoes transported to/from the OCS. CBP should exempt equipment brought into the United States from an OCS facility, whether the equipment is new, unused, or damaged. CBP should exempt such equipment as merchandise pursuant to 49 U.S.C. 55102, or as bulk cargo. CBP should clarify whether foreign merchandise arriving at an OCS facility within the coastwise waters of the United States is subject to the Importer Security Filing requirement. CBP should clarify whether equipment transported from the customs territory of the United States to an OCS facility to be used for repair or emergency work, having already been entered or is otherwise domestic, is subject to the Importer Security Filing.

CBP Response

Domestic cargo (whether of U.S. origin, or of foreign origin and having been formally entered), including cargo intended for repair or emergency work, that is transported between CBP ports, or other places within the customs territory of the United States, including an OCS facility, is not subject to Importer Security Filing requirements. Whether any piece of equipment, new, unused, or damaged, is either considered an OCS facility or device attached to an OCS facility, or is subject to the provisions of 46 U.S.C. 55102, is decided on a case-by-case basis. We note here, however, that a vessel that is positioned over the OCS and is either anchored or moored to the seabed is considered an OCS facility. Conversely, the party causing foreign cargo, including cargo intended for repair or emergency work, to be brought into the customs territory of the United States, whether it is a CBP port or any other point within the customs territory of United States, including an OCS facility, from a foreign port or place must comply with Importer Security Filing requirements. The party causing foreign cargo to arrive at an OCS facility must comply with Importer Security Filing requirements using the port code of the nearest CBP service port. CBP will consider the exigent circumstances surrounding such transportation in the assessment of any liquidated damages claim or other enforcement action.

Comment

Low risk repetitive shipments should be exempt from the Importer Security Filing requirements. In the alternative, CBP should consider an alternative data submission procedure which would take into account repetitive shipments in which the content varies little from shipment to shipment.

CBP Response

CBP disagrees. Repetitive shipments are not inherently of less risk than other shipments. CBP will use the Importer Security Filing to assess the risk of individual shipments and, therefore, no exemptions to the Importer Security Filing requirements will be given for repetitive shipments.

Comment

Roll on/roll off cargo should be exempt from the Importer Security Filing requirements.

CBP Response

CBP disagrees. Roll on/roll off cargo is not inherently less of a risk than other shipments. Therefore, an Importer Security Filing is required for all cargo other than bulk cargo destined to enter the limits of a port in the United States, including roll on/roll off cargo.

Comment

Samples and trade show displays should be exempt from the Importer Security Filing requirements. In the alternative, manufacturer (or supplier) and country of origin should not be required for these shipments.

CBP Response

CBP disagrees. Samples and trade show displays are not inherently less of a risk than other shipments. Therefore, a complete Importer Security Filing is required for samples and trade show displays.

Comment

Goods being imported into the U.S. Virgin Islands should be exempt from the Importer Security Filing, stow plan, and CSM requirements.

CBP Response

The U.S. Virgin Islands are not part of the customs territory of the United States and are, therefore, outside of the scope of this rule.

Comment

CBP should maintain a list of break bulk cargo for which an Importer Security Filing is required 24 hours prior to arrival. Specifically, new and used vehicles and ISO tanks should be considered break bulk.

CBP Response

For purposes of this interim final rule, break bulk cargo is defined in new Sec. 149.1(d) as "cargo that is not containerized, but which is otherwise packaged or bundled." CBP does not maintain a list of break bulk cargo. Rather, CBP considers applications for exemption from the timing requirement under the 24 Hour Rule and the Importer Security Filing requirements on a case-by-case basis. Regarding vehicles, if vehicles are non-containerized, they are considered break bulk for purposes of this rule. Bulk cargo is defined in new Sec. 149.1(c) as "homogeneous cargo that is stowed loose in the hold and is not enclosed in any container such as a box, bale, bag, cask, or the

like. * * * Specifically, bulk cargo is composed of either: (1) Free flowing articles such as oil, grain, coal, ore, and the like, which can be pumped or run through a chute or

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handled by dumping; or (2) Articles that require mechanical handling such as bricks, pig iron, lumber, steel beams, and the like.''
Regarding ISO tanks, a container that carries liquids is still a container for purposes of this rule.

L. Public Comments; Importer Security Filing, Other Comments

Comment

Providing essentially the same information on a shipment-by-shipment basis, albeit in different combinations and permutations will not increase security. Instead, importers should be allowed and/or required to provide a profile of suppliers, ship-to locations, etc.

CBP Response

It is unlikely that every element will be one hundred percent identical in different shipments. CBP will use the Importer Security Filing to assess the risk of individual shipments and, therefore, an Importer Security Filing is required for each shipment. For purposes of this rule, all cargo arriving to the United States by vessel, unless specifically exempt, is subject to the Importer Security Filing requirements.

Comment

The Importer Security Filing requirements are duplicative with FDA submissions. DHS and the FDA should collect this information through one submission.

CBP Response

CBP disagrees. These submissions are authorized by different laws with different responsible parties and enforcement actions for failure to comply. However, CBP will continue to evaluate all submissions and ways to reduce the burden on the trade through eliminating redundant submissions.

Comment

If CBP proceeds before ACE is fully functional, CBP should wait until ACE is available before requiring linking of the manufacturer name and address, country of origin, and HTSUS number. CBP should also fulfill its commitment to integrating this data submission process with the future ongoing development work and implementation of ACE. The record formats should be compatible with those that will be required in ACE without further changes in order to avoid additional programming requirements for the trade.

CBP Response

CBP disagrees that the linking requirement should be postponed until ACE is fully functional. The linking of the required data is required at the entry level and not necessarily at the bill of lading or invoice level. This is a process that is already required upon cargo arrival for entry purposes on CBP Form 3461. The linking of the required data will allow CBP to more effectively target high risk shipments. Absent the linking of the data, CBP would need to consider every possible permutation of the data and would, therefore, be forced to designate cargo as high risk when it may not, in fact, be high risk. As stated previously, CBP will take into account systems changes made by the trade to comply with this rule as ACE is developed.

Comment

CBP will need to allow the filer the ability to designate an Importer Security Filing as relating to either a consumption entry or FTZ shipment; or an IE, T&E, or FROB shipment.

CBP Response

CBP agrees. The Importer Security Filing submission must indicate whether the submission is for: (1) A shipment intended to be entered into the United States or a shipment intended to be delivered to a foreign trade zone, requiring an Importer Security Filing consisting of 10 elements; or (2) an IE, T&E, or FROB shipment, requiring an Importer Security Filing consisting of five elements.

Comment

The NPRM did not propose to require container number as part of the Importer Security Filing. How will CBP target containers for examination when there are multiple containers on one bill of lading?

CBP Response

An ISF Importer will be given the option to provide container numbers as part of the Importer Security Filing. If the ISF Importer chooses to have one bill of lading cover multiple containers, all of those containers will be subject to the same risk assessment.

Comment

Each Importer Security Filing filer should be issued a unique ``filer'' number.

CBP Response

Any party not already an ABI or AMS participant intending to transmit Importer Security Filings through ABI or AMS will be issued a filer code when they obtain ABI or AMS access to uniquely identify them as the filer of the transmission.

Comment

Importers, and other designated parties, should be able to access past Importer Security Filings.

CBP Response

CBP disagrees. Importers and other designated parties will not be able to access past Importer Security Filings in CBP systems. As discussed in response to another comment, such functionality would be too costly and raises security and privacy concerns. However, CBP will continue to evaluate this possibility as ACE is developed.

Comment

The requirement to request a ruling when an element does not exist will jeopardize supply chain efficiency. When an element is unknown, the importer should be allowed to leave a field blank or provide a code indicating lack of knowledge without penalty. In the alternative, CBP should provide for an expedited ruling procedure when an importer believes that a required data element does not exist for a non-exempt transaction type.

CBP Response

First, CBP is not requiring that the ISF Importer seek a ruling when a data element is unknown. If an ISF Importer does not know an element that is required pursuant to this interim final rule, the ISF Importer must take steps necessary to obtain the information. If the ISF Importer believes that a required data element does not exist for a non-exempt transaction type, the ISF Importer should request a ruling prior to the time required for the Importer Security Filing. The

advance rulings procedures found in 19 CFR part 177 remain available to the public for this purpose. CBP disagrees that separate special ruling procedures for Importer Security Filing are necessary because the part 177 procedures are sufficient to handle all questions that may arise.

Comment

CBP should not require importers to provide data of which they do not have direct knowledge or cannot reasonably be expected to obtain. CBP should have flexibility to identify appropriate alternatives to elements that are unknown at the time of filing.

CBP Response

CBP believes that, in most cases, the Importer Security Filing information is available to the party causing the goods to enter the limits of a port in the United States. However, CBP is aware that business practices may need to change (e.g., amendment of shipping

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documents) to obtain this information 24 hours prior to lading. Where the ISF Importer is not reasonably able to verify the information, the regulations allow the party to submit the information on the basis of what it reasonably believes to be true. In addition, as discussed in the "Structured Review and Flexible Enforcement Period" section of this document, this rule provides flexibilities with respect to certain elements of Importer Security Filings such as the ability to provide a range of possible responses based on the best data available in lieu of a single specific response.

Comment

The importer should not be required to link the manufacturer (or supplier), country of origin, and commodity HTSUS number. This requirement is not included in the SAFE Port Act. Instead, CBP should manipulate the data through the use of an improved algorithm, as required by the SAFE Port Act, to best achieve effective security screening.

CBP Response

Pursuant to section 203 of the SAFE Port Act, this interim final rule requires the submission of additional data elements for improved high-risk targeting, including appropriate security elements of entry data. Importers are already required to link data in this way for entry purposes and CBP currently uses these data to target. The line-item linking will provide CBP with specific information about the origin of the goods, the manufacturer/supplier of the goods and an accurate description of the goods. For example, manhole covers, in and of themselves are relatively benign. Goods with a specific country of origin may not merit any special consideration. But manhole covers coming from a specific manufacturer in a specific country of origin have been found to be contaminated with radioactive waste.

Comment

Do the manufacturer (or supplier), country of origin, and commodity HTSUS number need to be linked to one another at the invoice line item level or the entry line item level?

CBP Response

The manufacturer (or supplier), country of origin, and commodity HTSUS number must be linked to one another at the entry line level and not at the invoice line item level. This is consistent with what the trade provides to CBP for entry purposes and will allow CBP to better assess the risk of cargo destined for the United States.

Comment

How will items with multiple HTSUS numbers be linked (e.g., a suit could have up to four different 10-digit HTSUS numbers)?

CBP Response

Multiple HTSUS numbers will be linked at the line item level with country of origin, and manufacturer. This will be similar to the current CBP Form 3461 entry procedures.

Comment

CBP should wait until ACE is available before requiring linking of data.

CBP Response

CBP disagrees. After careful consideration, DHS has determined that immediate action is necessary to increase the security of cargo entering the United States by vessel by improving CBP's risk assessment capabilities. Existing CBP systems are prepared to receive the manufacturer (or supplier), country of origin, and commodity HTSUS number linked to one another. CBP will take into account systems changes made by the trade to comply with this rule as ACE is developed.

Comment

CBP should require the same 10 elements that are required for shipments intended to be entered into the United States for FROB cargo.

CBP Response

CBP disagrees. Several of the elements (e.g., importer of record and consignee number) are not applicable to FROB shipments. Therefore, CBP is requiring five elements which are applicable to FROB shipments.

Comment

CBP should require that an Importer Security Filing be filed 24 hours prior to lading for all cargo, including FROB.

CBP Response

Because FROB cargo is frequently laden based on a last-minute decision by the carrier, the Importer Security Filing for FROB is not required 24 hours prior to lading. Rather, the Importer Security Filing for FROB is required any time prior to lading. Therefore, a carrier may submit the Importer Security Filing for FROB cargo 24 hours prior to lading if the carrier chooses to do so.

Comment

Carriers would be in the position of non-compliance when cargo is transformed into FROB while en route, when cargo that was originally intended to remain onboard the vessel (i.e., FROB) will be unladen in the United States, or when additional cargo is booked at the last minute.

CBP Response

An Importer Security Filing must be submitted to CBP no later than 24 hours before cargo that is intended to enter the limits of a port in the United States is laden. See the "Structured Review and Flexible Enforcement Period" section of this document for flexibilities related to timing for certain Importer Security Filing elements. For FROB, the Importer Security Filing must be submitted prior to lading. The ISF Importer must update the filing if, before the goods enter the limits of a port in the United States, any of the information submitted changes or more accurate information becomes available, including when cargo is transformed into FROB. CBP acknowledges the wide range of logistical issues that carriers face that may change vessel patterns and ultimately cargo status. The change in status of cargo needs to be

communicated to CBP as soon as that decision is made and Importer Security Filing filings must be submitted immediately. However, the ISF Importer will still be liable for enforcement actions resulting from late Importer Security Filing submissions.

VII. Discussion of Comments Regarding Proposed Amendments to Bond Requirements and Enforcement

In order to provide a clear enforcement mechanism for the proposed requirements, CBP proposed to amend the regulations covering certain bond conditions to include agreements to pay liquidated damages for violations of the new proposed regulations. CBP also proposed to amend the bond conditions for violations of the advance cargo information requirements under the Trade Act regulations in order to make the liquidated damages amounts for those violations consistent with the liquidated damages amounts for violations of the proposed requirements.

A. Overview; Bond Conditions and Enforcement Related to the Proposed Importer Security Filing, Vessel Stow Plan, and Container Status Message Requirements

CBP will enforce the Importer Security Filing, vessel stow plan, and container status message requirements

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through the assessment of liquidated damages, in addition to penalties applicable under other provisions of law.

CBP proposed to add a new condition to those provisions in 19 CFR 113.62 required to be included in a basic importation and entry bond. Specifically, CBP proposed to amend 19 CFR 113.62 to include a condition whereby the principal agrees to comply with the proposed Importer Security Filing requirements. Under the proposed condition, if the principal fails to comply with the proposed Importer Security Filing requirements, the principal and surety (jointly and severally) would pay liquidated damages equal to the value of the merchandise involved in the default.

CBP also proposed to amend those provisions in 19 CFR 113.64 required to be included in an international carrier bond. Specifically, CBP proposed to amend 19 CFR 113.64 to include three new conditions. First, a new condition would be added whereby the principal agrees to comply with the proposed Importer Security Filing requirements if the principal elects to provide the Importer Security Filing on behalf of an importer, as defined in the proposal. If the principal fails to comply with the proposed Importer Security Filing requirements, the principal and surety (jointly and severally) would agree to pay liquidated damages equal to the value of the merchandise involved in the default. Second, a new condition would be added whereby the principal agrees to comply with the proposed vessel stow plan requirements. If the principal fails to comply with the proposed vessel stow plan requirements, the principal and surety (jointly and severally) would agree to pay liquidated damages of \$50,000 for each vessel arrival. Third, a new condition would be added whereby the principal agrees to comply with the proposed container status message requirements. If the principal fails to timely provide CSMs for all events that occur relating to a container, for which the carrier creates or collects CSMs in its equipment tracking system, the principal and surety (jointly and severally) would pay liquidated damages of \$5,000 for each violation, to a maximum of \$100,000 per vessel arrival.

Lastly, CBP proposed to amend those provisions in 19 CFR 113.73 required to be included in a foreign trade zone operator bond. Specifically, CBP proposed to amend 19 CFR 113.73 to include a condition whereby the principal agrees to comply with the Importer Security Filing requirements. Under the proposed condition, if the principal fails to comply with the proposed Importer Security Filing requirements, the principal and surety (jointly and severally) would pay liquidated damages equal to the value of the merchandise involved in the default.

B. Public Comments; Bond Conditions and Enforcement Related to the Proposed Importer Security Filing, Vessel Stow Plan, and Container Status Message Requirements

Comment

When an agent submits an Importer Security Filing on behalf of an importer, both parties should not be required to obtain bonds. If both parties are required to have a bond, CBP should clarify who will be responsible for liquidated damages. Will both parties be responsible? Will an additional bond (or a separate bond rider) be required for the Importer Security Filing and, if so, which type of bond (or rider)?

CBP Response

CBP agrees. The regulations have been changed to remove the requirement that the filer have a separate bond. The ISF Importer, as defined for purposes of these regulations, is ultimately liable for the timely, accurate, and complete submission of the Importer Security Filing. The regulations have also been changed to include a new importer security filing bond and to allow the ISF Importer to use a basic custodial bond or new importer security filing bond in addition to the bond types included in the proposal. Therefore, the ISF Importer must possess a basic importation and entry bond containing all the necessary provisions of 19 CFR 113.62, a basic custodial bond containing all the necessary provisions of 19 CFR 113.63, an international carrier bond containing all the necessary provisions of 19 CFR 113.64, a foreign trade zone operator bond containing all the necessary provisions of 19 CFR 113.73, or an importer security filing bond as provided in Appendix D to part 113 of 19 CFR. If the ISF Importer does not have one of these bonds, the party must obtain a bond or designate a bonded agent to file under the agent's bond if the agent agrees in writing.

Comment

Licensed customs brokers should be exempt from bond requirements with regard to the Importer Security Filing.

CBP Response

A customs broker who submits an Importer Security Filing on behalf of another party must do one of the following: (1) Submit the filing under its own bond; or (2) at an ISF Importer's direction, submit the filing under that party's bond.

Comment

The requirement that the Importer Security Filing filer have a bond

will ensure a high degree of diligence and perfection, especially when the filer is a foreign entity.

CBP Response

CBP will enforce the Importer Security Filing, vessel stow plan, and container status message requirements through the assessment of liquidated damages, in addition to penalties applicable under other provisions of law. CBP agrees that the requirement that a bond be posted for the Importer Security Filing will ensure a high degree of diligence. However, under this interim final rule, if the ISF Importer does not have one of the required bonds, the importer may designate a bonded agent to file under the agent's bond if the agent agrees in writing.

Comment

Will a continuous or single transaction bond be required?

CBP Response

Generally, continuous bonds will be accepted for the Importer Security Filing. Continuous bonds are verifiable electronically and will give CBP more transparency into the party and bond's existence. Requests to file single transaction bonds for Importer Security Filings will be evaluated by CBP on a case-by-case basis consistent with current practices.

Comment

How can an importer use an importation and entry bond for the Importer Security Filing because an importer's liability under an importation and entry bond attaches at the time of entry? Moreover, liability attaches based on conditions that are beyond the importer's control.

CBP Response

An ISF Importer will obligate its bond for purposes of submission of the importer security filing. Not all basic importation bond obligations attach at entry (for example, the obligation to comply with airport security requirements.) An ISF Importer must possess a basic importation and entry bond containing all the provisions of 19 CFR 113.62, a basic custodial bond containing all the provisions of 19 CFR 113.63, an international carrier bond containing all the provisions of 19 CFR 113.64, a foreign trade zone operator

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bond containing all the provisions of 19 CFR 113.73, or an importer security filing bond as provided in Appendix D of part 113 of 19 CFR in order to submit an importer security filing. CBP has amended the relevant bond provisions to provide that the principle agrees to comply with Importer Security Filing requirements. CBP has also amended the international carrier bond provisions to provide that the principle agrees to comply with vessel stow plan and container status message requirements.

Comment

If NVOCCs are excluded from the vessel stow plan and CSM requirements, will CBP differentiate between International Carrier Bonds required for vessel operating common carriers (VOCCs) and NVOCCs.

CBP Response

NVOCCs are not required to submit vessel stow plans and CSMS. The responsible party's bond will be subject to liquidated damages. Therefore, an NVOCC should not be subject to liquidated damages for violations of the vessel stow plan and CSM requirements unless the NVOCC posts its bond for this purpose (e.g., if the NVOCC submits a vessel stow plan or CSMS on behalf of a vessel operating carrier).

Comment

Will CBP change the required bond amounts? If so, how will the bond amount be calculated? The ability to obtain bonds for Importer Security Filings would be undermined by an inability to quantify and underwrite risks, which would limit importer and broker access to viable customs bond providers. Furthermore, the ability to underwrite a foreign company is very limited. In addition, some importers and carriers may no longer qualify for the required bond because sureties may increase their thresholds as a result of these new requirements. In any event, the inclusion of liquidated damages provisions will result in a significant increase in customs bonds costs. This increased cost has not been quantified.

CBP Response

CBP is not increasing bond amounts through this rulemaking. If CBP does increase bond amounts in the future, it will do so through established procedures.

Comment

CBP should clarify that a bond must be in place at the time of submission of the Importer Security Filing.

CBP Response

Pursuant to new 19 CFR 149.5, to be qualified to file Importer Security Filing information, an ISF Importer must possess a bond or, if an ISF Importer does not have a required bond, the ISF Importer can have the agent submitting the Importer Security Filing post the agent's bond.

Comment

Liquidated damages are inappropriate because they are not related to the security goals of this rule and because the Importer Security Filing is not "customs business." In addition, CBP did not consult with the trade regarding the proposed liquidated damages and bond provisions and CBP has not offered a rational basis for the use of liquidated damages in lieu of other deterrents, including the following: Rejection of the Importer Security Filing, do not load messages at the port of export, examination of the cargo, and detention of the cargo at the port of entry for examination. CBP should only use monetary penalties for Importer Security Filing violations.

CBP Response

The provisions of 19 U.S.C. 1623 authorize CBP to require such bonds as deemed necessary to assure compliance with any provision of law the CBP may be authorized to enforce. See 19 CFR 113.1. The fact that the Importer Security Filing is not "customs business" is not relevant to this statutory authorization. Liquidated damages for breaches of bond conditions are appropriate for violations of the Importer Security Filing.

Other enforcement actions, such as DNL messages and general cargo examination authorities, may also be applicable and within the discretion of CBP. Liquidated damages will allow for appropriate enforcement in lieu of monetary penalties.

Comment

The proposed inclusion of provisions relating to the Importer Security Filing requirements is contrary to the entry (commercial) purposes of the basic importation and entry bond.

CBP Response

In an effort to minimize the burden on the trade, CBP is allowing the use of the basic importation and entry bond, as modified by this rulemaking, for Importer Security Filing purposes. The ISF Importer may also obtain a basic custodial bond, an international carrier bond, a foreign trade zone operator bond, or an importer security filing bond. CBP disagrees that the inclusion of provisions relating to the Importer Security Filing in the basic importation and entry bond is inappropriate because, inasmuch as the obligation to provide this information vests with the importer, it is reasonable to establish a condition in the importer's bond to guarantee performance of that obligation.

Comment

Can a carrier be indemnified for liquidated damages for loading a container if the carrier can provide a valid Importer Security Filing number and the bond ID of the filer?

CBP Response

ISF Importers are required to submit Importer Security Filings. A carrier's ability to seek indemnification for liquidated damages from another party for loading a container with an Importer Security Filing-related problem is a private matter best handled by private parties (i.e., through contractual instruments).

Comment

There does not appear to be any risk assessment associated with the proposed liquidated damage amounts. Liquidated damages should be a set amount per container rather than the value of the merchandise as proposed.

CBP Response

After review of the comments and further consideration, CBP has changed the liquidated damage amount for failure to timely, accurately, and completely file an Importer Security Filing. If a party who is responsible for filing the Importer Security Filing fails to timely, accurately, and completely submit the Importer Security Filing, that party will be subject to a claim for liquidated damages in the amount of \$5,000 per Importer Security Filing. Any demand for liquidated damages will be subject to mitigation on a case-by-case basis. However, mitigation will be the exception and not the rule for violations of these requirements.

Comment

Why are liquidated damages amounts different for importers and carriers under the proposed regulations?

CBP Response

In determining liquidated damages amounts, CBP considered the nature of the obligation that vests for the bond principal. The obligation to submit a vessel stow plan, which is submitted once per vessel voyage, versus the obligation to submit Importer Security Filings, which are submitted once per

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bill of lading, and container status messages, which may be submitted numerous times per container, provide different risk levels to CBP that are treated differently when a breach of the obligation occurs. CBP does not consider the identity of the bond principal when calculating those risks and determining liquidated damages amounts.

Comment

The proposed liquidated damages provisions do not adhere to section 343(a)(3)(F) of the Trade Act of 2002 which states that "[t]he information collected pursuant to the regulations shall be used exclusively for ensuring cargo safety and security and preventing smuggling and shall not be used for determining merchandise entry or for any other commercial enforcement purposes" because the enforcement provisions are consistent in scope with 19 U.S.C. 1592, which is for commercial enforcement.

CBP Response

CBP will not use the information collected pursuant to these regulations for determining entry or for any other commercial enforcement purposes, such as for assessment of a penalty pursuant to 19 U.S.C. 1592. The liquidated damages provisions are completely separate authorities granted to CBP to provide a contractual remedy for any actions taken in violation of the customs laws for which a customs bond is required to be in place, including Importer Security Filing provisions. See 19 U.S.C. 1623 and the implementing regulations contained in 19 CFR part 113. The mere similarity in enforcement provisions will not affect CBP's ability to enforce provisions relating to bonds.

Comment

CBP fails to link the nature of the violation with the party responsible for the breach.

CBP Response

The party who posts their bond does so for the purpose of securing the Importer Security Filing. Obligations that vest under the terms and conditions of the bond are the responsibility of the bond principal. When those obligations are breached, the bond principal and surety are liable, jointly and severally, for any resultant liquidated damages. It is, therefore, appropriate for CBP to hold these parties liable for any breach of the bond conditions.

Comment

The proposed penalties are unreasonable and should be reduced, capped, or eliminated. Penalties are unnecessary if other avenues such as "no load" messages are utilized. DNLs are sufficient and the imposition of fines of any sort is administratively burdensome and actually less effective than other means. If CBP does utilize penalties or liquidated damages, CBP should publish revised mitigation guidelines governing the failure to comply with the Importer Security Filing requirements and should only issue penalties in cases of willful or repeat serious violations.

CBP Response

CBP disagrees. DNL holds are issued by CBP to alleviate risk. Penalties and liquidated damages are appropriate responses for breaches of the bond conditions or obligations imposed by law or regulation. If the Importer Security Filing requirements are not met, CBP reserves the right to use any enforcement remedy available in this rule, including, but not limited to, the assessment of liquidated damages and penalties. CBP will be issuing mitigation guidelines for these claims.

Comment

The proposed enforcement provisions should require a finding of culpability. CBP should consider the party's intent and severity of the violation when issuing penalties, and determining the penalty amounts, for violations of these regulations. In addition, CBP should issue one

penalty if multiple violations result from the same fundamental error. Importers should not be held accountable for the accuracy of a data element they do not own or control. Fines should only be issued when false data are knowingly reported, not for failure to file.

CBP Response

CBP may issue claims if an Importer Security Filing is not filed in a timely, accurate, and complete manner. Failing to file is a serious violation in that it deprives CBP of the ability to analyze and assess the risk with regard to loading the cargo for transport to the United States. If an ISF Importer does not know an element that is required pursuant to the regulations, the importer must take steps necessary to obtain the information. While CBP will not consider levels of culpability in claim assessment, the agency will issue mitigation guidelines for violations of these regulations.

Comment

Pursuant to the proposed regulations, ``where the presenting party is not reasonably able to verify the [Importer Security Filing] information, CBP will permit the party to electronically present the information on the basis of what the party reasonably believes to be true.'' Clarification is needed on what constitutes that the filer is ``reasonably able to verify'' and which situations will result in a penalty.

CBP Response

CBP will issue penalties for violations of these regulations in accordance with established penalty guidelines. However, where the party electronically presenting to CBP the Importer Security Filing receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what the party reasonably believes to be true. CBP will make this determination on a case-by-case basis.

Comment

The proposed amendment to 19 CFR 113.62 whereby the principle agrees to ``comply with all Importer Security Filing requirements'' is inappropriate.

CBP Response

CBP disagrees. The amendment to 19 CFR 113.62 is not intended to recite the specific obligations, but merely enable CBP to enforce the new requirements by allowing CBP to assess liquidated damages for failure to comply with the bond provisions. Therefore, CBP believes that changing the bond to reflect new obligations in this manner is appropriate and allows for existing bonds to be used, thereby reducing redundancy and burden for CBP and the trade.

Comment

Who will receive DNL messages resulting from Importer Security Filing problems? CBP should add a mandatory field to the existing 24 Hour Rule for an Importer Security Filing confirmation number and should timely issue a DNL to the carrier against the AMS manifest filing when a number is not present or when there are problems with the Importer Security Filing. CBP should also transmit DNLs to the importer so that Importer Security Filing-related DNLs can be resolved.

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CBP Response

Consistent with current practice, DNL messages will be sent to the AMS filer of the associated bill of lading and any ``secondary notify party'' associated with the bill of lading. CBP will also communicate electronically to the filer of the Importer Security Filing when there are Importer Security Filing-related inaccuracies. In addition, CBP will send a status notification message to the AMS filer and any ``secondary notify party'' when an Importer Security Filing has been submitted and matched by CBP with a bill of lading. CBP has not added a field to the 24 Hour Rule manifest filing for an Importer Security Filing confirmation number because the ISF Filer is not required to submit the Importer Security Filing before the carrier submits the 24 Hour Rule advance cargo information.

Comment

Will CBP issue ``no load'' directives to carriers and terminal operators in the case of failure to file timely and/or complete Importer Security Filings?

CBP Response

CBP has issued internal directives for port personnel in order to harmonize actions within CBP. However, CBP will not issue separate ``no load'' directives to carriers and terminal operators for Importer Security Filing-related DNLs. CBP has adopted a delayed compliance period following the effective date of this rule, during which CBP will work with the trade to assist them in achieving full compliance, thereby minimizing the issuance of DNLs. See the ``Structured Review and Flexible Enforcement Period'' section of this document for further discussion regarding the delayed compliance period.

Comment

CBP should issue a DNL for any bill of lading that does not have the Importer Security Filing on file at the time the carrier files the 24 Hour advance manifest data.

CBP Response

It would be inappropriate and premature for CBP to issue an Importer Security Filing-related DNL when the carrier files the 24 Hour Rule advance manifest data because the Importer Security Filing is required 24 hours prior to lading (any time prior to lading for FROB). Therefore, CBP will not issue DNL messages for missing Importer Security Filings until the Importer Security Filing time period has passed (i.e., 24 hours prior to lading for cargo other than FROB and any time prior to lading for FROB).

Comment

An importer's goods that are part of a consolidated shipment may be delayed if the Importer Security Filing by one of the other parties in the consolidated shipment is not timely filed, resulting in a DNL for the container. CBP should permit the portion of a consolidated shipment for which an Importer Security Filing has been received to split from the shipment.

CBP Response

CBP will follow existing DNL procedures for Importer Security Filing-related DNLs.

Comment

CBP should provide an affirmative message that specific cargo is approved to be laden.

CBP Response

CBP disagrees. CBP will continue to follow existing DNL procedures and will not issue affirmative load messages.

Comment

What are the carrier's responsibilities with regard to the Importer Security Filing and loading of containers onboard a vessel? Carriers should not be impacted in any way, including liability under the carrier bond, if there are shipments onboard where a filing was not done.

CBP Response

The ISF Importer is required to submit the Importer Security Filing. For FROB, the ISF Importer is construed as the carrier because there is no importer of record and the carrier is the party causing the goods to enter the limits of a port in the United States by transporting the goods to the United States. For IE and T&E in bond shipments, and goods to be delivered to an FTZ, the ISF Importer is construed as the party filing the IE, T&E, or FTZ documentation because there is no importer of record and this is the party principally causing the goods to enter the limits of a port in the United States. CBP will issue a DNL to instruct a carrier not to load specific cargo, including cargo for which a complete and accurate Importer Security Filing has not been filed. Vessel operating carriers are prohibited from loading such cargo. If a carrier is the party required to submit the Importer Security Filing (i.e., FROB cargo), the carrier will be liable for the timeliness and accuracy of the Importer Security Filing.

C. Overview; Bond Conditions Related to the Trade Act Regulations

CBP proposed to amend the liquidated damages amounts for violations of the advance cargo information requirements under 19 CFR 4.7 and 4.7a to be \$5,000 for each violation of the advance cargo information requirements, to a maximum of \$100,000 per conveyance arrival.

D. Public Comments; Bond Conditions Related to the Trade Act Regulations

Comment

CBP's proposal to amend 19 CFR 4.7, 4.7a, and 113.64 to assess liquidated damages in the amount of \$5,000 for each violation of the advance cargo information requirements, to a maximum of \$100,000 per conveyance arrival, would have a significant impact on other modes of transportation besides vessel.

CBP Response

CBP agrees that there will be an unintended impact on other modes through this regulatory amendment in that there will be a \$100,000 damage cap on vessel conveyance arrivals which does not exist for arrivals in other transportation modes. Accordingly, to make assessment consistent, CBP is amending the provisions of newly redesignated 19 CFR 113.64(d) to provide for the \$100,000 cap on all other conveyance arrivals.

VIII. Discussion of Comments Regarding the Cost, Benefit, and Feasibility Study

Comment

Commenters stated that the Regulatory Assessment underestimates costs because it did not account for delay to coordinate data collection among relevant parties nor did it account for increased infrastructure costs to house delayed goods. Commenters cited an economic study (See David Hummels, Time as a Trade Barrier (July 2001) (unpublished paper, Purdue University) (on file with author).) which estimated that a day of delay is approximately equivalent to a one percent tariff on imported goods and that this rule will result in a reduced demand for imports.

CBP Response

Based on the public comments, CBP has revised its cost and benefit analysis, a summary of which is presented below. The revised analysis includes a new methodology for estimating the costs due to potential delays in the supply chain by estimating the economic

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welfare losses to U.S. importers. These estimated losses sufficiently account for costs associated with these delays, including additional inventory carrying costs, the costs to hold larger buffer-stock inventories to accommodate variation in arrival time, depreciation in shipment value, and storage and security costs. The analysis relies on the economic study that estimated the value of a one-day delay to be equivalent to approximately a one percent tariff, however we apply more precise percentages obtained directly from the study's author for each relevant category of imported goods. Furthermore, our revised analysis appropriately includes only consumer surplus lost to U.S. importers, whereas the commenters' estimate results in an overestimate of the total loss that is greater than the sum of both consumer surplus lost to U.S. importers and producer surplus lost to foreign manufacturers, suppliers, and distributors.

Comment

Commenters stated that costs of delay should be applied to all shipments, not just consolidated shipments.

CBP Response

CBP's revised cost and benefit analysis, a summary of which is presented below, includes unconsolidated or full container shipments in the estimation of welfare losses to U.S. importers arising from potential delays in the supply chain.

Comment

Commenters stated that a risk assessment was not conducted and that this rule will not reduce risk. Commenters also asked how the filing of the Importer Security Filing would deter terrorist attacks. Lastly, commenters stated that CBP did not provide any evidence of a benefit from the rule if promulgated.

CBP Response

The purpose of the rule is to improve CBP's ability to prevent smuggling and ensure cargo safety and security. The additional cargo information will assist CBP in focusing its security resources on those shipments that pose the highest risk. In the "break-even" analysis presented in the Regulatory Assessment, CBP described several terrorist attack scenarios that could potentially be affected by the rule. The break-even analysis is not intended to measure the risk of attack that will occur with implementation of the rule; rather, the break-even analysis is intended to inform the reader of the absolute reduction in baseline risk that would have to occur in order for the annualized costs of the rule to equal the benefits. CBP cannot determine if this risk reduction will occur or if this level of risk reduction is achievable through implementation of this rule.

Comment

Commenters stated that increased bond costs, liquidated damages, and penalty costs were not accounted for in the Regulatory Assessment.

CBP Response

CBP agrees. The economic analysis assumes that parties subject to the requirements of the rule will comply with those requirements. During the one-year delayed enforcement period, CBP will work with the trade to assist them in achieving compliance with this rule.

Comment

The Regulatory Assessment did not estimate the costs and benefits of requiring data elements to be linked at the line-item level.

CBP Response

CBP agrees. CBP is not able to isolate estimates of costs or benefits at this very specific level of detail. The cost estimated for a security filing is intended to cover the range of potential activities involved with collecting and compiling the data for an Importer Security Filing, including the costs of linking data.

Comment

The Regulatory Assessment did not account for all of the elements of an importer's supply chain and the economic analysis did not account for start-up costs.

CBP Response

CBP agrees. However, CBP could not realistically account for the tens of thousands of possible supply chain relationships that include importers. In addition, many of the supply chain entities are based overseas (foreign), and therefore their compliance costs do not represent the incremental costs borne by U.S. entities. Instead, through conversations with trade representatives, CBP developed a range of costs in the form of an Importer Security Filing transaction fee that is intended to include any costs incurred by the various parties within the supply chain that are then ultimately passed on to the importers. CBP's revised cost and benefit analysis, a summary of which is presented below, includes an estimate of the start-up or initial costs incurred by importers or their designated filing agents to implement the rule's requirements.

Comment

The Regulatory Assessment should account for two days of delay in the supply chain as a result of this rule.

CBP Response

CBP agrees. CBP has revised the cost and benefit analysis, a summary of which is presented below, by assuming two or three days of delay during the first year of implementation. For subsequent years, however, the analysis assumes a decrease in delay to one day, based on conversations with trade representatives who were drawing on their experience with the 24 Hour Rule. Generally, representatives were in agreement that initial implementation of the 24 Hour Rule's requirements caused some delays in the supply chain, which decreased noticeably in subsequent years as they adapted to the new requirements. CBP expects a similar situation upon implementation of this rule, and notes that CBP has adopted a delayed compliance period following the effective date of this rule. See the "Structured Review and Flexible Enforcement Period" section of this document for further discussion regarding the delayed compliance period.

Comment

The Regulatory Assessment understated recurring costs for large importing operations.

CBP Response

CBP acknowledges that the recurring costs for a particular importer to comply with this rule will be driven largely by factors such as the number of Importer Security Filings the importer has to complete, the complexity of the importer's supply chain and business style, and the level of the importer's sophistication. However, we do not have the data or information to characterize each of the estimated 200,000 to 750,000 unique importers by these factors or to quantify the extent to which the recurring costs would reliably change with these factors. Due to limitations in the available data, we varied the recurrent, transaction costs for Importer Security Filings based on importer transaction volume (e.g., highest volume importers have the lowest recurrent transaction costs). The trade representatives most commonly cited transaction volume as a factor in determining the transaction costs. From their experience with entry filing or manifest fees charged by brokers or carriers, brokers and carriers are likely

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to charge lower security filing fees to their customers importing a large number of shipments on an annual basis. The transaction costs applied in the Regulatory Assessment are consistent with quantified per transaction cost estimates provided by other commenters.

Comment

The annual recordkeeping burden estimated was too low.

CBP Response

CBP disagrees. The annual recordkeeping burden of 52.3 hours per importer is intended to represent the average burden for all importers, ranging from those that have very few shipments per year to those that have more than a thousand shipments per year. The Regulatory Assessment finds that most importers are small; specifically, in 2005, more than 70 to 85 percent of all importers imported fewer than 12 shipments. We believe that most of these smaller importers will have a burden lower than the 52.3 hours we estimated.

Comment

The trade representatives interviewed in conjunction with the Regulatory Assessment were not a representative sample.

CBP Response

CBP disagrees. CBP interviewed more than 20 representatives from a broad range of the parties likely to be affected by the interim final rule, including small and large importers, vessel and non-vessel operating common carriers, freight forwarders, brokers, trade groups and consultants, and trade software providers. In addition, CBP considered the additional input expressed by the trade in their public comments to the proposed rule during its revision of the cost and benefit analysis, a summary of which is presented below.

Comment

Commenters stated that the Regulatory Assessment was ``unreliable'' and ``flawed.'' The costs of the rule cannot be known until CBP releases the data formats that will be required for the Importer Security Filing.

CBP Response

While these commenters were dissatisfied with the economic analysis, they did not submit specific information that would enhance the current analysis. These commenters did not submit alternative analyses that more robustly considered the impacts on affected entities. CBP is required to prepare an economic analysis to be considered as part of the NPRM. The analysis prepared for the NPRM was reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866 and OMB Circular A-4. According to OMB Circular A-4, a good regulatory analysis should include: (1) A statement of the need for the proposed action, (2) an examination of alternative approaches, and (3) an evaluation of the benefits and costs--quantitative and qualitative--of the proposed action and the main alternatives identified by the analysis.

Comment

Customs brokers would incur additional costs as a result of this rule and these costs would be passed on to the importer.

CBP Response

CBP agrees with this comment, and the cost and benefit analysis does assume that any costs, both initial and recurring, incurred by brokers to comply with the rule's requirements would be passed on to the importers in the form of an Importer Security Filing transaction fee.

IX. Adoption of Proposal

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, CBP has concluded that the proposed regulations with the modifications discussed above should be adopted as follows:

The requirements in section 149.2(b) regarding the timing of transmission for 6 of the 10 Importer Security Filing elements (Container stuffing location, Consolidator (stuffer), Manufacturer (or supplier), Ship to party, Country of origin, and Commodity HTSUS number) and section 149.2(f) regarding the flexible requirements for 4 of the elements (Manufacturer (or supplier), Ship to party, Country of origin, and Commodity HTSUS number) are adopted as an interim final rule. CBP invites comments on these requirements.

All other requirements in this rule are adopted as a final rule. CBP is not inviting comments on these requirements.

X. Regulatory Analyses

A. Executive Order 12866

This rule is considered to be an economically significant regulatory action under Executive Order 12866 because it may result in the expenditure of over \$100 million in any one year. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB). The following summary presents the costs and benefits of the rule plus a range of alternatives considered. (The ``Regulatory Assessment'' can be found in the docket for this rulemaking: <http://www.regulations.gov>; see also <http://www.cbp.gov>).

In the analysis that follows, CBP has estimated the costs of the rule assuming that all affected entities are compliant upon the effective date of the rule, which likely overstates costs. Additionally, our analysis presents a low and high cost estimate. The costs for the high scenario incorporate potential supply chain delay impacts of 1 to 3 days. We analyzed the potential for supply chain delays based on our interviews with trade representatives and comments to the NPRM. As stated previously, CBP is committed to ensuring that its trade partners are positioned to successfully implement the requirements of this rule and will work with the trade during the delayed compliance period and thereafter. Based on the magnitude of the impact of potential delay in the high-cost scenario, estimated at billions of dollars annually, CBP has determined that a 12-month delayed compliance period for the rule and flexible requirements for 6 of the 10 Importer Security Filing elements are prudent and necessary steps to minimize the delay costs that could result from the rule and to ensure that these high costs are not, in fact, realized. See the ``Structured Review and Flexible Enforcement Period'' section of this document for further discussion regarding the delayed compliance period and flexibilities. CBP believes that the direct result of these modifications and the extensive outreach initiative will be a positive downward pressure on supply chain delay costs, and the true impacts of this rule are much more likely to be reflected in the low-cost scenario presented, where no supply chain delays are assumed.

In this analysis, we first estimate current and future baseline conditions in the absence of the rule using 2005 shipping data. In this baseline analysis, we characterize and estimate the number of unique shipments, carriers, and vessel-trips potentially affected by the rule. We then identify the incremental measures that importers and carriers will take to meet the requirements of the rule and estimate the costs of these activities, as well as the cost to CBP of implementing the rule. Next, relying on published literature, we identify hypothetical

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scenarios describing representative terrorist attacks potentially prevented by this regulation and estimate the economic costs (i.e., the consequences) of these events. We compare these consequences to the costs of the regulation and estimate the reduction in the probability of a successful terrorist attack resulting from the regulation that would be required for the benefits of the regulation to equal the costs of the regulation.

As of the projected effective date of the regulation, we estimate that approximately 11 million import shipments conveyed by 1,000

different carrier companies operating 37,000 unique voyages or vessel-trips for delivery to between 200,000 and 750,000 ISF Importers in the United States will be subject to the rule. Table 1 summarizes the results of the regulatory analysis. We consider and evaluate the following four alternatives:

Alternative 1 (the chosen alternative): Importer Security Filings and Additional Carrier Requirements are required. Bulk cargo is exempt from the Importer Security Filing requirements; \12\

\12\ For each alternative, the Additional Carrier Requirements apply only to containerized cargo.

Alternative 2: Importer Security Filings and Additional Carrier Requirements are required. Bulk cargo is not exempt from the Importer Security Filing requirements;

Alternative 3: Only Importer Security Filings are required. Bulk cargo is exempt from the Importer Security Filing requirements; and,

Alternative 4: Only the Additional Carrier Requirements are required.

We estimate costs separately for the Importer Security Filing requirements (up to 10 importer data elements) and the Additional Carrier Requirements (Vessel Stow Plans and CSMS). The estimated costs for the Importer Security Filing requirements are developed on a per-importer and per-shipment basis and applied to the estimated number of importers and shipments annually for a period of 10 years (2009 through 2018). In addition, we estimate the welfare losses to U.S. importers arising from potential delays in the supply chain that may result from having to meet the required filing deadline of 24 hours prior to lading at the foreign port. The estimated costs for the Additional Carrier Requirements are developed on a per-carrier and per-vessel trip basis and applied to the estimated number of carriers and vessel trips in each year of the 10-year analysis period.

Table 1--Summary of Findings

Discount rate	Annualized costs (2009-2018, \$2008)	Terrorist attack scenario	Percent reductions in baseline risk that must be achieved for benefits to equal costs		Comments
			Absolute reduction in baseline risk required	Number of these events that must be avoided for benefits to equal costs	
Alternative 1 (chosen alternative): Importer Security Filings and Additional Carrier Requirements, bulk cargo exempt					
3%	\$890 million to \$6.6 billion.	Actual West Coast Port Shutdown (12-days).	0.59 to 4.38....	One event in 3 months to 2 years.	Preferred Alternative: Most favorable combination of cost and stringency.
		Hypothetical Nuclear Attack.	< 0.01 to 0.02..	One event in 60 to 500 years.	
		Hypothetical Biological Attack.	0.02 to 0.15....	One event in 7 to 50 years.	
7%	\$990 million to \$7.0 billion.	Actual West Coast Port Shutdown (12-days).	0.66 to 4.64....	One event in 3 months to 2 years.	
		Hypothetical Nuclear Attack.	< 0.01 to 0.02..	One event in 60 to 400 years.	
		Hypothetical Biological Attack.	0.02 to 0.16....	One event in 6 to 50 years.	
Alternative 2: Importer Security Filings and Additional Carrier Requirements, bulk cargo not exempt					
3%	\$890 million to \$6.6 billion.	Actual West Coast Port Shutdown (12-days).	0.59 to 4.39....	One event in 3 months to 2 years.	More stringent than Alternative 1, but limited expected additional benefit for increased cost.
		Hypothetical Nuclear Attack.	< 0.01 to 0.02..	One event in 60 to 500 years.	
		Hypothetical Biological Attack.	0.02 to 0.15....	One event in 7 to 50 years.	
7%	\$990 million to \$7.0 billion.	Actual West Coast Port Shutdown (12-days).	0.66 to 4.65....	One event in 3 months to 2 years.	
		Hypothetical Nuclear Attack.	< 0.01 to 0.02..	One event in 60 to 400 years.	
		Hypothetical Biological Attack.	0.02 to 0.16....	One event in 6 to 50 years.	

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Alternative 3: Importer Security Filings only, bulk cargo exempt

3%	\$890 million to \$6.6 billion.	Actual West Coast Port Shutdown (12-days).	0.59 to 4.37....	One event in 3 months to 2 years.	Similar cost to Alternative 1 with decreased effectiveness. Importer Security Filings and Additional Carrier Requirements are not working in tandem.
		Hypothetical Nuclear Attack.	< 0.01 to 0.02..	One event in 60 to 500 years.	
		Hypothetical Biological Attack.	0.02 to 0.15....	One event in 7 to 50 years.	

7%	\$990 million to \$7.0 billion.	Actual West Coast Port Shutdown (12-days).	0.66 to 4.63....	One event in 3 months to 2 years.	
		Hypothetical Nuclear Attack.	< 0.01 to 0.02..	One event in 60 to 400 years.	
		Hypothetical Biological Attack.	0.02 to 0.16....	One event in 6 to 50 years.	
----- Alternative 4: Additional Carrier Requirements only -----					
3%	\$2 million to \$11 million.	Actual West Coast Port Shutdown (12-days).	< 0.01 to 0.01..	One event in 100 to 700 years.	Least cost, but also least effective alternative. Does not meet the statutory requirements of Section 203 of the SAFE Port Act nor provide data on shipment history. Importer Security Filings and Additional Carrier Requirements are not working in tandem.
		Hypothetical Nuclear Attack.	< 0.01.....	One event in 40,000 to 200,000 years.	
		Hypothetical Biological Attack.	< 0.01.....	One event in 4,000 to 20,000 years.	
7%	\$2 million to \$12 million.	Actual West Coast Port Shutdown (12-days).	< 0.01 to 0.01..	One event in 100 to 600 years.	
		Hypothetical Nuclear Attack.	< 0.01.....	One event in 30,000 to 200,000 years.	
		Hypothetical Biological Attack.	< 0.01.....	One event in 4,000 to 20,000 years.	

The annualized cost range presented in each cell results from varying assumptions about the estimated initial and transaction costs for Importer Security Filings, the potential for supply chain delays, and the estimated costs to transmit Vessel Stow Plans and CSMs to CBP.

To estimate the full range of the total costs for complying with the rule, for the four alternatives we develop a high cost scenario and a low cost scenario by assuming certain values for the key cost factors. Annualized costs for Alternatives 1 through 3 range from \$890 million to \$7.0 billion, depending on the discount rate applied, the cost scenario, whether or not bulk shipments are exempt, and whether or not the Additional Carrier Requirements are required. The annualized costs for Alternative 4 are substantially lower, ranging from \$2 million to \$12 million. However, this alternative is the least stringent and effective option because it only collects data on the conveyance of the shipment.

Ideally, the quantification and monetization of the benefits of this regulation would involve estimating the current level of risk of a successful terrorist attack, absent this regulation, and the incremental reduction in risk resulting from implementation of the rule. We would then multiply the change by an estimate of the value individuals place on such a risk reduction to produce a monetary estimate of direct benefits. However, existing data limitations and a lack of complete understanding of the true risks posed by terrorists prevent us from establishing the incremental risk reduction attributable to this rule. As a result, we undertake a break-even analysis to inform decision-makers of the necessary incremental change in the probability of such an event occurring that would result in direct benefits equal to the costs of the rule.

In the break-even analysis, we identify three types of terrorist attack scenarios that may be prevented by the regulation and obtain cost estimates of the consequences of these events from publicly available literature. The analysis compares the annualized costs

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of the regulation to the avoided costs of each event to estimate the reduction in the probability of such events (also presented in terms of "odds," e.g., a 0.25 reduction in the probability of an event occurring in a single year implies that one additional event must be avoided in a four-year period) that must be achieved for the benefits of the regulation to equal the costs. The reduction in the odds of terrorist events are rough estimates that do not take into account changes in risk through time or factors that may affect willingness to pay to avoid the consequences of these events, such as changes in income.

For each attack scenario, Table 1 indicates what would need to occur for the costs of each alternative to equal its benefits, assuming the alternative only reduces the risk of a single event of that type of attack. As summarized in Table 1, the break-even risk reductions for Alternative 4 are significantly lower than the other three alternatives, reflecting the significantly lower costs associated with requiring only the Additional Carrier Requirements. The breakeven results for the remaining three alternatives are similar because the costs of these options are not very different. For the most severe attack scenario (a hypothetical nuclear attack in a major city), the rule must result in the avoidance of one such event in a time period of 60 to 500 years for the benefits of the regulation to equal the costs. For the least severe of the three hypothetical attack scenarios (costs of the actual 12-day West Coast port shutdown), the estimated costs of a single incident are closer in value to the annualized costs of the rule. As a result, if the rule only reduced the risk of a single attack on a port, a shutdown would need to be avoided at a rate of once in three months to two years for the benefits of the rule to equal costs. The results expressed as absolute reductions in baseline risk also show higher reductions needed if port attacks only are mitigated (about 0.59 to 4.65) and lesser reductions associated with prevention of the more catastrophic events. We note that this analysis is highly sensitive to

the chosen incident scenarios.

Total present value costs of the rule are presented in Table 2, based on the cost projections we estimate for the 10-year analysis period, 2009 through 2018. Applying a discount rate of three percent, the total costs of Alternatives 1, 2, and 3 are projected to range from \$7.6 billion to \$56 billion over 10 years depending on the cost scenario, whether or not bulk shipments are exempt, and whether or not Additional Carrier Requirements are required. If a discount rate of seven percent is applied instead, total costs range from \$7.0 billion to \$49 billion. Under Alternative 2, which requires Importer Security Filings for both non-bulk cargo and bulk cargo, costs are not significantly higher because the number of bulk shipments is relatively small compared to the number of non-bulk shipments. Under Alternative 3, costs are not significantly lower because the estimated costs for the Additional Carrier Requirements are relatively small compared to the estimated costs for the Importer Security Filings. The present value costs for Alternative 4 are significantly lower than the other three alternatives, ranging from \$16 million to \$95 million.

As a result, the relatively large difference in values between the lower end (e.g., present value cost of \$7.6 billion at a discount rate of three percent) and higher end (\$56 billion) of the estimated total cost range for Alternatives 1, 2, and 3 is attributable primarily to the cost scenario and not on whether or not Importer Security Filings for bulk shipments or the Additional Carrier Requirements are required. The higher end of the estimated total cost range reflects the variations made for the high cost scenario, and more specifically, the assumption that delays in the supply chain would occur as a result of this rule. For the high cost scenario, our present value estimate of the welfare loss to U.S. importers arising from delays in the supply chain is approximately \$43 billion (at a discount rate of three percent).

Table 2--Total Present Value Costs, 2009-2018 \$2008

Discount rate	Present value costs
Alternative 1 (chosen alternative): Importer Security Filings and Additional Carrier Requirements, bulk cargo exempt	
3%.....	\$7.6 billion to \$56 billion.
7%.....	\$7.0 billion to \$49 billion.
Alternative 2: Importer Security Filings and Additional Carrier Requirements, bulk cargo not exempt	
3%.....	\$7.6 billion to \$56 billion.
7%.....	\$7.0 billion to \$49 billion.
Alternative 3: Importer Security Filings only, bulk cargo exempt	
3%.....	\$7.6 billion to \$56 billion.
7%.....	\$7.0 billion to \$49 billion.
Alternative 4: Additional Carrier Requirements only	
3%.....	\$0.02 billion to \$0.1 billion.
7%.....	\$0.02 billion to \$0.09 billion.

Again, the range presented in each cell results from varying assumptions about the estimated initial and transaction costs for Importer Security Filings, the potential for supply chain delays, and the estimated costs to transmit Vessel Stow Plans and CSMS to CBP.

Annual undiscounted costs of the regulation are presented in Table 3.

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Table 3--Annual Undiscounted Costs by Year, 2009-2018 (\$2008, in Millions)

Year	Alternative 1 (chosen alternative): importer security filings and additional carrier requirements, bulk cargo exempt	Alternative 2: importer security filings and additional carrier requirements, bulk cargo not exempt	Alternative 3: importer security filings only, bulk cargo exempt	Alternative 4: carrier requir
2009.....	\$1,900 to \$11,000.....	\$1,900 to \$11,000.....	\$1,900 to \$11,000.....	\$0.4 to \$14.
2010.....	1,900 to 7,100.....	1,900 to 7,100.....	1,900 to 7,100.....	0.4 to 14.
2011.....	1,900 to 7,300.....	1,900 to 7,300.....	1,900 to 7,300.....	0.4 to 14.
2012.....	290 to 4,600.....	290 to 4,600.....	290 to 4,600.....	0.3 to 7.
2013.....	310 to 4,800.....	310 to 4,800.....	310 to 4,800.....	0.3 to 7.
2014.....	320 to 5,100.....	330 to 5,100.....	320 to 5,100.....	0.3 to 7.
2015.....	340 to 5,300.....	340 to 5,300.....	340 to 5,300.....	0.3 to 7.
2016.....	360 to 5,600.....	360 to 5,600.....	360 to 5,600.....	0.3 to 7.
2017.....	380 to 5,900.....	380 to 5,900.....	380 to 5,900.....	0.3 to 7.
2018.....	400 to 6,200.....	400 to 6,300.....	400 to 6,200.....	0.4 to 7.

As shown in Table 3, annual discounted costs are highest in the first years of implementation, then decrease notably, then steadily increase for the remainder of the 10-year period of analysis. Costs are highest in the first year as the potential for supply chain delays are greatest during initial implementation of the rule. Also in the first years of implementation, we account for software costs incurred by those importers who import frequently to the United States. These software costs are amortized over the first three years (until 2011), not for the full 10 years of the analysis. Steady increases from 2012 to the end of the analysis period reflect our projected annual increases in the number of shipments, the value of shipments, and the vessel-trips into the United States.

The results indicate that Alternative 1 provides the most favorable combination of cost and stringency. While Alternative 2 might be considered more stringent because it does not exempt bulk cargo from the Importer Security Filing requirements, the impact of this is expected to be slight, because the number of bulk shipments is relatively small compared to the number of non-bulk shipments. Alternative 3 is expected to have costs similar to Alternative 1, but

will be less stringent because it only requires Importer Security Filings and does not include data that verify the information on the cargo manifest and identify and track the movement, location, and status of cargo (and in particular, containerized cargo) from the time its transport is booked until its arrival in the United States. Without the Additional Carrier Requirements, CBP will not be able to assess the specific risks associated with the many individual movements and transfers involved in shipping cargo to the United States. Thus, an important element of CBP's layered, risk-based approach to cargo security would, consequently, be omitted.

Alternatives 3 and 4 are not chosen, in part, because it is CBP's judgment that neither of these options will be as effective as the selected option. Specifically, the Importer Security Filing requirements and the Additional Carrier Requirements work in tandem. The Additional Carrier Requirements focus on the conveyance of the goods and are distinct from the Importer Security Filing elements, which are focused on the merchandise and the parties involved in the acquisition process. Specifically, Vessel Stow Plans will assist CBP in validating other advanced cargo information submissions by allowing CBP to, among other things, better detect unmanifested containers without relying on physical verification methods that are manpower intensive and costly. CSMS will provide CBP with additional transparency into the custodial environment through which inter-modal containers are handled and transported before arrival in the United States. Because CSMS are created independently of the manifest, CBP can utilize them to corroborate other advanced data elements, including Importer Security Filings and those elements related to container and conveyance origin. This corroboration with other advanced data messages, including Importer Security Filings, and an enhanced view into the international supply chain will contribute to the security of the United States and the international supply chain through which containers and imported cargo are shipped to U.S. ports.

Based on this analysis of alternatives, CBP has determined that Alternative 1 provides the most favorable balance between security outcomes and impacts to maritime transportation. As summarized in Table 4, the incremental costs of this regulation, on a per-shipment basis, is a small fraction of the value of a shipment. The relatively high cost of the rule over 10 years is driven by the large volume of shipments rather than high per-transaction costs. Shipment data indicate that the median value of a shipment of goods imported into the United States is approximately \$38,000. As shown in Table 4, the increase in costs of imported shipments will range from \$48 to \$390 per shipment, depending on the discount rate applied, the cost scenario, and whether or not bulk shipments are exempt. The added costs of this regulation are estimated to be only 0.13 percent to 1.03 percent of the median value of \$38,000 per shipment.

Table 4--Costs per Shipment, Median Value of Shipment, Vessel-Trip, and Carrier
[\$2008]

	3% discount rate	7% discount rate

Importer Security Filing Costs: Alternatives 1 and 3 (bulk cargo exempt)		
Total Present Value Cost.....	\$7.5 billion to \$56 billion.	\$6.9 billion to \$49 billion.
Number of shipments (10-year total).	144 million.....	144 million.
Equivalent per shipment cost....	\$52 to \$390.....	\$48 to \$341.
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Median value per shipment.....	\$37,900.....	\$37,900.
Cost per median value.....	0.14 to 1.03 percent.	0.13 to 0.90 percent.

Importer Security Filing Costs: Alternative 2 (bulk cargo not exempt)		
Total Present Value Cost.....	\$7.6 billion to \$56 billion.	\$7.0 billion to \$49 billion.
Number of shipments (10-year total).	145 million.....	145 million.
Equivalent per shipment cost....	\$52 to \$388.....	\$48 to \$339.
Median value per shipment.....	\$38,200.....	\$38,200.
Cost per median value.....	0.14 to 1.02 percent.	0.13 to 0.89 percent.

Vessel Stow Plan Costs: Alternatives 1, 2, and 4		
Total present value cost.....	\$3 million to \$27 million.	\$2 million to \$33 million.
Number of non-bulk vessel-trips, small and large carriers (10-year total).	294,000.....	294,000.
Equivalent per vessel-trip cost.	\$9 to \$90.....	\$8 to \$78.

Container Status Message Costs: Alternatives 1, 2, and 4		
Total present value cost.....	\$0.3 million to \$54 million.	\$0.3 million to \$48 million.
Number of container carriers, large.	74.....	74.
Equivalent per carrier cost....	\$3,900 to \$730,000	\$3,700 to \$650,000.

The rule may increase the time shipments are in transit, particularly for shipments conveyed in containers. Especially for shipments consolidated in containers, the supply chain is generally more complex and the importer has less control of the flow of goods and exchange of associated security filing information. Foreign cargo consolidators may be consolidating multiple shipments from one or more shippers in a container destined for one or more buyers or consignees. In order to ensure that the security filing data are provided by the shippers to the ISF Importers (or their designated agents) and is then transmitted to and accepted by CBP in advance of the 24 hour deadline, carriers and consolidators may advance their cut-off times for receipt of shipments and associated Importer Security Filing data.

These advanced cut-off times would help prevent a carrier or consolidator from having to unpack or unload a container in the event the security filing for one of the shipments contained in the container is inadequate or not accepted by CBP. For example, carriers or consolidators may require shippers to submit, transmit, or obtain CBP acceptance of their security filing data before their shipments are stuffed in the container, before the container is sealed, or before the container is delivered to the port for lading. In such cases, importers may experience additional delays in their supply chain to accommodate these advanced cut-off times imposed by their carriers or consolidators. The costs associated with these delays include: (1) Higher inventory carrying costs; (2) the need to hold larger buffer-stock inventories to accommodate variation in arrival time; (3) depreciation in shipment value; (4) costs of storage at the manufacturer, freight forwarder, consolidator, or port; and (5) costs for additional security to protect the freight from tampering. To capture all of these costs in our estimate of the impact of time delays, we estimate the welfare loss to U.S. importers by relying on estimates of the willingness to pay for reducing transit time. The high end of the cost ranges presented in Table 4 assumes an initial supply chain delay of three days (consolidated container shipments) or two days (unconsolidated or full container shipments) for the first year of implementation (2009) and a delay of one day for years 2 through 10 (2010-2018).

B. Regulatory Flexibility Act

In response to the requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) and Executive Order 13272, entitled "Proper Consideration of Small Entities in Agency Rulemaking," federal agencies must consider the potential distributional impact of rules on small businesses, small governmental jurisdictions, and small organizations during the development of their rules.

The types of entities subject to the rule's requirements include all importers receiving shipments via vessel and all vessel operating common carriers (VOCCs) transporting containerized shipments via vessel to the United States. One, the other, or both of the types of entities will be affected depending on the alternative under consideration. The results of our screening analysis indicated that the proposed rule may significantly impact a substantial number of small importers or carriers, and CBP conducted an Initial Regulatory Flexibility Analysis (IRFA) to further assess these impacts. The IRFA provided a detailed analysis of the potential impact of the proposed rule on small entities and was made available for public comment at the same time as the proposed rule on January 2, 2008.

At the publication of the interim final rule, if CBP still determines that it cannot certify the rule, then it must prepare and make available a Final Regulatory Flexibility Analysis (FRFA). As discussed below, CBP cannot certify that the rule will not have a significant impact on a substantial number of small importers. It can certify the rule relative to the impact on small carriers; however, for the purpose of simplicity, the FRFA presented here includes both importers and carriers. The following is a summary of the FRFA. For full details on the complete analysis, please refer to the Final Regulatory Flexibility Act analysis contained in the "Regulatory Assessment," which can be found in the

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docket for this rulemaking: <http://www.regulations.gov>; see also <http://www.cbp.gov>. CBP invites comments on this FRFA and will update it with the final rule.

A succinct statement of the objectives of, and legal basis for, the rule: Section 203(b) of the Security and Accountability for Every Port Act (SAFE Port Act) of 2006 states that the Secretary of Homeland Security "shall require the electronic transmission to the Department of additional data elements for improved high-risk targeting, including appropriate elements of entry data * * * to be provided as advanced information with respect to cargo destined for importation into the United States prior to loading of such cargo on vessels at foreign ports." The information required is that which is reasonably necessary to enable high-risk shipments to be identified so as to prevent smuggling and ensure cargo safety and security pursuant to the laws enforced and administered by CBP. In addition, section 343(a) of the Trade Act of 2002 states that the Secretary of Homeland Security "shall promulgate regulations providing for the transmission * * * of information pertaining to cargo destined for importation into the United States.* * *"

A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments: CBP received several comments specifically addressing impacts to small entities.

Comments suggested that CBP should consider an exemption of small business from some requirements of the rule. CBP believes that the language of the SAFE Port Act does not allow it to exempt small entities from the regulation. Furthermore, although we do not have explicit information regarding the portion of importers who are small entities, the information provided in the screening analysis suggests that the majority of affected entities are likely to be small businesses. Exempting most importers would significantly diminish the effectiveness of the rule.

Comments suggested that CBP attempt to calculate the number of entities that will cease operations as a result of the requirements of the rule. Data are not readily-available that would allow us to segregate all the importers in the PIERS dataset, which was the primary dataset used in the primary analysis (summarized in the previous section), the IRFA, and the FRFA by North American Industry Classification System (NAICS) code. This step is necessary to identify the proportion of small entities affected by the rule. Furthermore, we are unable to estimate a distribution of the number of shipments by industry and size category. As a result, given the currently available data, we are unable to estimate the magnitude of the impact to small entities in each industry and the number of businesses that may be forced to cease operations as a result of the rule.

Comments reported that the costs associated with software purchase were underestimated for small entities. In response to these comments, we revised the primary analysis and the FRFA to include initial, one-time costs of \$25,000 to address this perceived understatement of costs

in the Regulatory Assessment that accompanied the proposed rule. Note that we assume importers transporting only one shipment annually do not incur this cost.

Commenters suggested that CBP conduct a prototype test with small entity volunteers to better understand the potential impact to these businesses. CBP is adopting a delayed compliance period whereby CBP will work with the trade following the effective date of the interim final rule to assist them in achieving full compliance with minimal disruption. See the "Structured Review and Flexible Enforcement Period" section of this document for further discussion regarding the delayed compliance period. The interim final rule also provides flexibility with respect to certain elements of the Importer Security Filings. Additionally, as part of CBP's pre-existing Advance Trade Data Initiative (ATDI), CBP has worked with a wide variety of volunteers from the world trade community to test the trade's ability to provide data, including some elements of the Importer Security Filing, to CBP. ATDI has proven that the industry has access to the required data and can get the data to CBP.

A description of, and, where feasible, an estimate of the number of small entities to which the rule will apply: As discussed earlier, the interim final rule applies to all entities importing containerized, break-bulk, or Ro-Ro shipments into the United States. The regulation also applies to VOCCs transporting shipments via vessel to the United States. The majority of the affected entities are likely to be small. In the summary of impacts presented here, we focus on Alternative 1, the chosen alternative and the interim final rule. For the complete results for all alternatives, please refer to the detailed Final Regulatory Flexibility Act analysis, which is contained in the "Regulatory Assessment," which can be found in the docket for this rulemaking: <http://www.regulations.gov>; see also <http://www.cbp.gov>.

The regulation will affect importers in the form of initial, one-time costs and transaction fees for collecting and transmitting the security filing as well as consumer surplus losses if the rule delays the supply chain. For the purposes of our screening analysis, importers are not an industry as defined by SBA. Rather, many industries import goods subject to the rule. We must determine the number of importers that belong to each of these industries, and then determine the appropriate industry-specific measure of a "small entity."

Our PIERS dataset includes information on over 200,000 unique importers. We took a random sample of importers from the dataset and collected market data on the entities from Dun & Bradstreet until we had information describing 400 entities (a statistically significant sample, 5 percent margin of error). Table 5 details the top industries importing containerized cargo, identified by NAICS code, in our sample and ranks them by number of occurrences.

Table 5--Top Industries From Importers Sample (Containerized Cargo)

NAICS code	Number of occurrences	Percent of sample	Industry description
424900.....	20	5.00	Miscellaneous Nondurable Goods Merchant Wholesalers.
999990.....	19	.....	UNKNOWN INDUSTRY.
423830.....	13	3.25	Industrial Machinery and Equipment Merchant Wholesalers.
442110.....	11	2.75	Furniture Stores.
488510.....	10	2.50	Freight Transportation Arrangement.
423220.....	8	2.00	Home Furnishing Merchant Wholesalers.
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423120.....	7	1.75	Motor Vehicle Supplies and New Parts Merchant Wholesalers.
423710.....	7	1.75	Hardware Merchant Wholesalers.
424320.....	7	1.75	Men's and Boys' Clothing and Furnishings Merchant Wholesalers.
424330.....	7	1.75	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers.
424490.....	7	1.75	Other Grocery and Related Products Merchant Wholesalers.
423910.....	6	1.50	Sporting and Recreational Goods and Supplies Merchant Wholesalers.
326199.....	5	1.25	All Other Plastics Product Manufacturing.
423690.....	5	1.25	Other Electronic Parts and Equipment Merchant Wholesalers.
423990.....	5	1.25	Other Miscellaneous Durable Goods Merchant Wholesalers.
424310.....	5	1.25	Piece Goods, Notions, and Other

561499.....	5	1.25	Dry Goods Merchant Wholesalers.
423210.....	4	1.00	All Other Business Support Services.
423430.....	4	1.00	Furniture Merchant Wholesalers.
423440.....	4	1.00	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers.
423450.....	4	1.00	Other Commercial Equipment Merchant Wholesalers.
424460.....	4	1.00	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers.
424480.....	4	1.00	Fish and Seafood Merchant Wholesalers.
442299.....	4	1.00	Fresh Fruit and Vegetable Merchant Wholesalers.
453220.....	4	1.00	All Other Home Furnishings Stores.
236115.....	3	0.75	Gift, Novelty, and Souvenir Stores.
315191.....	3	0.75	New Single-Family Housing Construction (except Operative Builders).
325620.....	3	0.75	Outerwear Knitting Mills.
332510.....	3	0.75	Toilet Preparation Manufacturing.
333911.....	3	0.75	Hardware Manufacturing.
423320.....	3	0.75	Pump and Pumping Equipment Manufacturing.
423390.....	3	0.75	Brick, Stone, and Related Construction Material Merchant Wholesalers.
423940.....	3	0.75	Other Construction Material Merchant Wholesalers.
424130.....	3	0.75	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers.
424340.....	3	0.75	Industrial and Personal Service Paper Merchant Wholesalers.
441310.....	3	0.75	Footwear Merchant Wholesalers.
	207	51.75	Automotive Parts and Accessories Stores.
			ALL OTHER INDUSTRIES RECORDED IN SAMPLE.

In most industries, information on revenues or number of employees is used to define whether an entity is "small" for the purpose of RFA/SBREFE analyses. For the top ten industries appearing in our sample, Table 6 reports SBA's thresholds used to define "small" entities in each industry and the share of entities in the United States that meet that definition. For each industry, the share of entities considered small is at least 50 percent. For most industries, the share of entities considered small is at least 75 percent.

Table 6--Share of Small Entities in Each of the Top 10 Industries (Containerized Cargo)

NAICS code	Industry description	Percent of sample	"Small" threshold	Share of small entities in U.S. (percent)
424900.....	Miscellaneous Nondurable Goods Merchant Wholesalers.	5.00	100 employees.....	93
423830.....	Industrial Machinery and Equipment Merchant Wholesalers.	3.25	100 employees.....	92
442110.....	Furniture Stores.....	2.75	\$6.5 million.....	50
488510.....	Freight Transportation Arrangement.	2.50	\$6.5 million.....	75
423220.....	Home Furnishing Merchant Wholesalers.	2.00	100 employees.....	75
423120.....	Motor Vehicle Supplies and New Parts Merchant Wholesalers.	1.75	100 employees.....	71
423710.....	Hardware Merchant Wholesalers.	1.75	100 employees.....	86
424320.....	Men's and Boys' Clothing and Furnishings Merchant Wholesalers.	1.75	100 employees.....	83
424330.....	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers.	1.75	100 employees.....	100
424490.....	Other Grocery and Related Products Merchant Wholesalers.	1.75	100 employees.....	86

Table 7 reports summary statistics on our sample of 400 importers. For example, it shows that four industries appeared more than ten times in the sample, accounting for 54 individual firms. Within the United States, there are 81,923 entities in those four industries, and 96.4 percent of those businesses meet SBA's definition of a small entity.

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Table 7--Containerized Cargo Importers, Summary Statistics

Number of appearances in sample	Number of industries in sample	Number of firms in sample	Total number of entities in U.S.	Number of small entities in U.S.	Share small (percent)
10+.....	4	54	81,923	78,977	96.4
6-9.....	7	49	1,371,759	1,341,422	97.8
5.....	5	25	33,931	32,558	96.0
4.....	8	32	72,596	70,829	97.6
3.....	11	33	44,448	42,977	96.7
2.....	27	54	467,998	461,318	98.6
1.....	152	153	834,709	812,717	97.4
Total.....	214	400	2,907,364	2,840,798	97.7

Based on these summary statistics, we conclude that the majority of firms in industries conducting importing activities are likely to be small entities. Therefore, a substantial number of small entities are likely to be affected by the rule. Next, we estimate whether the costs to these importers of implementing the regulation are likely to be significant.

Typically, Federal agencies compare per-business compliance costs to annual revenues of small entities in various size classes to determine the impact of the regulation on small entities. For this rule, such a comparison requires a significant amount of data given that the rule potentially affects hundreds of industries. Annual compliance costs are driven by the number of shipments an importer makes security filings on each year. To estimate the number of shipments per small entity, we ideally would: (1) Take our PIERS dataset of shipments and group the shipments by business; (2) group the businesses by NAICS code; (3) determine the number of businesses in each NAICS code that meet the definition of a small entity; (4) and examine the number and value of shipments by those entities.

We have completed the first step: Identifying approximately 200,000 importers in our sample dataset. As discussed previously, we were able to use Dun and Bradstreet data to identify the appropriate NAICS code for 400 of these 200,000 importers. Next, we conservatively assume that the majority of importers in each NAICS code are small entities. However, estimating the typical number of shipments in each industry is problematic. In 75 percent of the industries identified in our sample of 400 importers, the number of entities affected is less than five. Although we have shipment data for these businesses, these data are unlikely to provide a meaningful sample of shipment volume or value on an industry by industry basis.

Alternatively, when we extrapolate our PIERS dataset to estimate shipments for the entire year, we are able to calculate lower and upper bound estimates of the number of importers and stratify these importers by shipping volume. However, we cannot reliably translate this stratification on a per-industry basis. More importantly, we do not believe that shipment volume is necessarily a good predictor of whether an entity is considered to be a small business in its industry. For example, a small entity with a business model that is heavily dependent on overseas manufacturers may import many shipments a month, while a large entity relying primarily on domestic suppliers may import only one shipment a year.

For these reasons, we are unable to estimate average shipment volume for small entities, preventing us from comparing compliance costs to importers' revenues. Instead, we compare per-shipment compliance costs to the average value of all affected shipments. This comparison may over- or understate small entities' per-shipment compliance costs if their shipment value is higher or lower than the average. In addition, the ratio of compliance costs to shipment value may under- or overstate the significance of the costs depending on the purpose of those shipments and their resale value in the United States.

We calculate information on the mean value of shipments from the PIERS database for all industries identified in our sample. We include all shipments associated with an entity identified within a certain industry. Table 8 presents the mean shipment value and the number of shipments for each of the top 10 industries. These mean values are provided simply for illustration of our data limitations and to provide a sense of the range of mean shipment values.

Table 8--Mean Value per Shipment in the Top 10 Industries (Containerized Cargo)

NAICS code	Number of importers	Total number of shipments	Mean value per shipment (\$)
424900.....	20	114	\$173,683
423830.....	13	51	47,250
442110.....	11	27	22,081
488510.....	10	175	107,828
423220.....	8	76	45,342
423120.....	7	60	72,895
424330.....	7	25	181,893
424320.....	7	121	130,213
423710.....	7	49	36,614
424490.....	7	10	18,354

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Table 9 reports the initial, one-time costs (reported on a per-shipment basis) and the security filing fee for importer frequency classes. In addition, the table reports the percentage share that the cost of the security filing requirements plays as a part of the mean value per shipment. In each case presented below, the security filing

cost represents an increase of less than 4.7 percent of the value of the shipment. We recognize that small entities' mean value per shipment may be higher or lower than \$103,164; therefore, the impact to small entities may be greater than the percentages reported in the table. The results suggest that costs of complying with the rule may be significant relative to the value of an affected shipment.

Table 9--Relative Cost of Security Filing Requirements (Containerized Cargo)

NAICS code	Number of entities	Number of shipments	Security filing fee	Initial, one-time fee (per entity per shipment)	To sha valu
Lower Bound Estimate:					
Once per year.....	0	0	\$75.00	.....
Twice yearly to less than monthly.....	134,000	697,000	60.00	\$4,817	
Monthly to less than weekly.....	44,100	1,230,000	45.00	900	
Weekly to less than daily.....	9,900	2,190,000	30.00	113	
Daily or greater.....	615	2,360,000	15.00	7	
Anonymous.....	38,000	1,300,000	22.50	730	
Upper Bound Estimate:					
Once per year.....	370,000	456,000	75.00	.....
Twice yearly to less than monthly.....	262,000	1,380,000	60.00	4,740	
Monthly to less than weekly.....	66,900	1,640,000	45.00	1,017	
Weekly to less than daily.....	18,100	1,810,000	30.00	250	
Daily or greater.....	1,480	1,180,000	15.00	31	
Anonymous.....	144,000	1,300,000	22.50	2,776	

In our upper-bound impact estimate, importers of containerized shipments may also experience a loss in consumer surplus associated with delays. While these losses represent lost value, they do not represent actual expenditures. The impact of these losses on small entities is unknown.

The PIERS dataset includes information on over 4,600 unique break-bulk importers. We took a random sample from that dataset and collected financial information on the entities from Dun & Bradstreet until we had data on 75 entities. Table 10 details the top industries in our sample ranked by number of occurrences.

Table 10--Top Industries From Importers Sample (Break-Bulk Cargo)

NAICS code	Number of occurrences	Percentage	Industry description
423510.....	8	10.67	Metal Service Centers and Other Metal Merchant Wholesalers.
423310.....	6	8.00	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers.
336611.....	4	5.33	Ship Building and Repairing.
999990.....	4	.....	UNKNOWN INDUSTRY.
424480.....	3	4.00	Fresh Fruit and Vegetable Merchant Wholesalers.
488510.....	3	4.00	Freight Transportation Arrangement.
423830.....	2	2.67	Industrial Machinery and Equipment Merchant Wholesalers.
424410.....	2	2.67	General Line Grocery Merchant Wholesalers.
424470.....	2	2.67	Meat and Meat Product Merchant Wholesalers.
424490.....	2	2.67	Other Grocery and Related Products Merchant Wholesalers.
424690.....	2	2.67	Other Chemical and Allied Products Merchant Wholesalers.
511110.....	2	2.67	Newspaper Publishers.
	39	52.00	ALL OTHER INDUSTRIES RECORDED IN SAMPLE.

We present the share of entities considered small in each of the top ten industries from our PIERS sample. Table 11 reports those definitions of "small" from the SBA and the share of entities that are small. For most industries, the share of entities considered small is at least 75 percent. Therefore, we assume that a substantial number of small break-bulk importers will be affected by the rule.

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Table 11--Share of Small Entities in the Top 10 Industries (Break-Bulk Cargo)

NAICS code	Industry description	Percent of sample	"Small" threshold	Sha
423510.....	Metal Service Centers and Other Metal Merchant Wholesalers.	10.67	100 employees.....	
423310.....	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers.	8.00	100 employees.....	
336611.....	Ship Building and Repairing.....	5.33	1,000 employees.....	
424480.....	Fresh Fruit and Vegetable Merchant Wholesalers....	4.00	100 employees.....	
488510.....	Freight Transportation Arrangement.....	4.00	\$6.5 million.....	
423830.....	Industrial Machinery and Equipment Merchant Wholesalers.	2.67	100 employees.....	
424410.....	General Line Grocery Merchant Wholesalers.....	2.67	100 employees.....	
424470.....	Meat and Meat Product Merchant Wholesalers.....	2.67	100 employees.....	
424490.....	Other Grocery and Related Products Merchant Wholesalers.	2.67	100 employees.....	
424690.....	Other Chemical and Allied Products Merchant Wholesalers.	2.67	100 employees.....	

Table 12 reports summary statistics on our sample of 75 break-bulk importers. Only two industries appeared in the sample more than five times, accounting for 14 firms. For all industries importing break-bulk shipments, over 93 percent of the firms in that industry are small entities.

Table 12--Break-Bulk Importers, Summary Statistics

Number of appearances in sample	Number of industries in sample	Number of firms in sample	Total number of entities in U.S.	Number of small entities in U.S.	S
6+.....	2	14	13,771	12,883	
5.....	0	0	.....	.....
4.....	1	4	1,670	1,642	

3.....	2	6	16,228	15,552
2.....	6	12	49,028	46,938
1.....	34	39	196,116	186,854
Total.....	45	75	276,813	263,869

\1\ Not applicable.

Table 13 details the mean shipment value and the number of shipments for each of the top 10 industries. These mean values are provided simply for illustration of our data limitations and to provide a sense of the range of mean shipment values.

Table 13--Mean Value per Shipment in the Top Ten Industries (Break-Bulk Cargo)

NAICS code	Number of importers	Total number of shipments	Mean value per shipment (\$)
423510.....	8	922	\$145,731
423310.....	6	28	303,095
336611.....	4	10	509,161
424480.....	3	238	77,106
488510.....	3	31	520,999
423830.....	2	2	743,823
424410.....	2	10	140,086
424470.....	2	16	40,493
424490.....	2	13	76,597
424690.....	2	68	56,595

Table 14 reports the initial, one-time costs (reported on a per-shipment basis) and the security filing fee for importer frequency classes. In addition, the table reports the percentage share that the cost of the security filing requirements plays as a part of the mean value per shipment. In each case presented below, the security filing cost represents an increase of less than 2 percent of the value of the shipment. In most cases, the security filing cost represents an increase of less than 0.4 percent of the value of the shipment. We recognize that small entities' mean value per shipment may be higher or lower than \$309,174; therefore, the filing costs may represent a smaller or larger percentage of the total value.

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Table 14--Relative Cost of Security Filing Requirements (Break-Bulk Cargo)

NAICS code	Number of entities	Number of shipments	Security filing fee	Initial, one-time fee (per entity per shipment)	To sh valu
Lower Bound Estimate:					
Once per year.....	0	0	\$75.00	.....
Twice yearly to less than monthly.....	2,740	11,400	60.00	6,013	
Monthly to less than weekly.....	693	15,700	45.00	1,104	
Weekly to less than daily.....	216	42,400	30.00	127	
Daily or greater.....	14	60,000	15.00	6	
Anonymous.....	272	9,630	22.50	707	
Upper Bound Estimate:					
Once per year.....	7,870	7,870	75.00	.....
Twice yearly to less than monthly.....	4,470	18,200	60.00	6,157	
Monthly to less than weekly.....	1,050	25,400	45.00	1,032	
Weekly to less than daily.....	490	56,100	30.00	218	
Daily or greater.....	30	21,900	15.00	35	
Anonymous.....	1,040	9,630	22.50	2,686	

The security filing cost as a share of the mean value of shipments made by other industries (outside of the top 10) is in many instances higher than 1 percent. Therefore, we would ideally compare each entity's total annual compliance costs to annual revenues. However, based on our 96-day PIERS data sample set, we are not able to predict the number of break-bulk shipments made each year by these entities. Therefore, we cannot predict annual compliance costs and are unable to make a determination as to whether the effects of the rule are significant for a substantial number of small break-bulk importers.

We do not complete the same analysis for roll-on/roll-off (Ro-Ro) cargo importers. We referenced Dun & Bradstreet for information on approximately 100 importers and found that information was only available for six entities. A closer examination of the 100 importers suggested that the majority are private individuals, which are not considered small entities.

According to the SBA-defined small business size standards for Vessel Operating Common Carriers (VOCCs), which fall under NAICS 483111 (Deep Sea Freight Transportation), firms with fewer than 500 employees are considered to be small entities. Dun and Bradstreet's Market Identifiers report 492 entities operating within NAICS 483111. Of these 492 entities, 477 are firms that report fewer than 500 employees.

We have concerns about the reliability of the Dun & Bradstreet data in the case of this particular business area. First, CBP's Vessel Automated Manifest System (Vessel AMS) database identifies 1,179 carriers importing shipments to the United States in 2005. This is more than double the number of entities identified in the Dun & Bradstreet list or the 487 entities identified by the U.S. Census Bureau. It would appear that a considerable number of VOCCs do not have deep sea cargo transportation as their primary area of business and that this NAICS classification is missing a significant number of entities. Second, we understand the focus of the RFA/SBREFA analysis to be on U.S., and not foreign, small businesses. There is no expeditious and economical method of assessing the corporate nationality of either the Vessel AMS or Dun & Bradstreet list of shipping companies. We are aware, however, that the majority of the shipping lines carrying containers into the United States, regardless of size, operate under foreign ownership.

In the absence of alternative data sources, we proceed to conduct the screening analysis relying on descriptive financial information about NAICS 483111 entities found in the Dun & Bradstreet database and the number of VOCCs identified in Vessel AMS. We also conclude that a substantial number of small entities are likely to be directly affected

by the regulation under the rule.

For data on revenues and employees, we use the Dun & Bradstreet data for the 477 entities with fewer than 500 employees. Table 15 summarizes the total annual average revenues (2004) for firms within NAICS 483111, organized by ranges of employee-size classes. Specifically, we organize the Dun & Bradstreet company data by the employee-size classes and then calculate the average revenue of companies within that size class. Businesses with zero to 100 employees have average annual revenues of \$6 million, those with 101 to 250 employees have average annual revenues of \$59 million, and those with 251 to 500 employees have average annual revenues of \$105 million.

Table 15--Average Annual Revenue Estimates (Carriers)

Carrier size	Number of business entities	Average annual revenues
0-100 employees.....	456	\$6,000,000
101-250 employees.....	13	59,000,000
251-500 employees.....	8	105,000,000
501-5,000 employees.....	15	450,000,000

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The first of the two Additional Carrier Requirements is the Vessel Stow Plan, which will be required of carriers carrying containerized cargo. Our calculations assume that the cost to a small entity of submitting a Vessel Stow Plan will depend on the number of vessel trips completed. Carriers that complete between one and 100 vessel trips per year are assigned a cost of \$50 per trip. Larger carriers (those that complete at least 101 vessel trips per year) are assigned a one-time fixed cost of \$50,000 and a variable cost of \$100 per trip. Because we do not know the number of vessel trips undertaken by carriers in the various size classes, we conservatively assume that for every trip volume, some of the carriers may be small entities.

We estimate that the average annual revenue of small carriers is \$9.1 million, which represents the average of the average annual revenues of small business entities identified in Table 15, weighted by the number of business entities. In Table 16, we present each category of carrier (based on the annual number of vessel trips) with their corresponding annual worst-case cost of submitting Vessel Stow Plans. We then divide these costs by the average annual revenue of \$9.1 million, and as shown in Table 16, we estimate that the average share of revenue of submitting Vessel Stow Plans for small carriers is 0.25 percent, which does not rise to the level of a significant cost to carriers.

Table 16--Vessel Stow Plan Costs

Vessel trips	Container carriers	Worst-case annual costs	Costs as share of revenue (percent)
1.....	51	\$50	0.00
2-10.....	116	500	0.01
11-100.....	183	5,000	0.05
101-1,000.....	70	116,667	1.28
1,001+.....	4	136,667	1.50
Total.....	424	22,851	0.25

The second of the two Additional Carrier Requirements is the Container Status Message (CSM), which will be required of carriers carrying containerized cargo, provided they already collect and maintain CSM data in their electronic equipment tracking systems. Our calculations assume that the cost to a small entity associated with submitting CSMs will depend on the number of vessel trips completed. Carriers that complete between one and 100 vessel trips per year will experience no cost associated with submitting CSMs. Larger carriers (those that complete at least 101 vessel trips per year) are assigned a one-time fixed cost of \$250,000 and a variable cost of \$55,000 per year. In Table 17, we present each category of carrier (based on the annual number of vessel trips) with their corresponding annual worst-case cost of submitting CSMs. We then divide these costs by the average annual small carrier revenue of \$9.1 million, as calculated previously for Vessel Stow Plans. As shown in Table 17, we estimate that the average share of revenue of submitting CSMs for small carriers is 0.16 percent, which again does not rise to the level of a significant cost to carriers.

Table 17--Container Status Message Costs

Vessel trips	Container carriers	Worst-case annual costs	Costs as share of revenue (percent)
1.....	58	\$0	0.00
2-10.....	162	0	0.00
11-100.....	175	0	0.00
101-1,000.....	45	138,333	1.52
1,001+.....	2	138,333	1.52
Total.....	442	14,710	0.16

The two costs for two additional carrier elements are additive for containerized cargo, so the average cost share would be 0.41 percent (0.25 percent plus 0.16 percent). Therefore, we conclude that the additional data elements required for the VOCCs are unlikely to result in a significant cost to small entities.

A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record: The requirements of the rule are expected to be submitted electronically by importers or VOCCs (or an agent representing either).

Professional skills necessary for preparation of the report or record include basic administrative and recordkeeping skills used to manage data transaction, shipment, manifest, security, and other data used in the commercial supply chain environment, along with a working knowledge of import shipment arrangements, brokerage, conveyance/shipping, and consolidation customs procedures and regulation.

A description of the steps the agency has taken to minimize the significant adverse economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the rule and why each of the other significant alternatives to the rule considered by the agency was rejected: We have previously described the alternatives and why Alternative 1 was ultimately

[[Page 71778]]

selected as the interim final rule. Given the prevalence of small entities conducting importing activities and the need for all entities to participate for the rule to be effective, CBP is not exempting small entities from the regulation.

Conclusion: In summary, because the interim final rule affects all importers and carriers bringing goods to the United States, it likely affects a substantial number of small entities in each industry conducting these activities. Based on the data limitations discussed above, we are uncertain whether these effects will be significant on a per-entity basis for importers. Therefore, based on the results of this analysis, CBP cannot certify that the rule will not have a significant impact on a substantial number of small importing entities. As a result, we have conducted a FRFA. Based on the analysis presented above, we believe that a substantial number of small VOCCs are not likely to be significantly affected.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) requires agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. The regulation is exempt from these requirements under 2 U.S.C. 1503 (Exclusions) which states that UMRA "shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress and any provision in a proposed or final federal regulation that is necessary for the national security or the ratification or implementation of international treaty obligations."

D. Paperwork Reduction Act

The collections of information encompassed within this interim final rule have been submitted to OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under OMB control number 1651-0001. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

There are three collections of information in this document. The collections are contained in 19 CFR 4.7c, 4.7d, and 149.2. This information will be used by CBP to further improve the ability of CBP to identify high-risk shipments so as to prevent smuggling and ensure cargo safety and security. The likely respondents and/or recordkeepers are individuals and businesses.

Under Sec. 4.7c, a vessel stow plan is required from a carrier when that carrier causes a vessel to arrive in the United States. Vessel stow plans are used to transmit information about cargo loaded aboard a vessel. The estimated average annual burden associated with the information collection in Sec. 4.7c is 102.6 hours per carrier.

Under Sec. 4.7d, container status messages are required from an incoming carrier for all containers destined to be transported by that carrier and to arrive within the limits of a port in the United States by vessel. Container status messages serve to facilitate the intermodal handling of containers by streamlining the information exchange between trading partners involved in administration, commerce, and transport of containerized shipments. The messages can also be used to report terminal container movements (e.g., loading and discharging the vessel) and to report the change in status of containers (e.g., empty or full). Container status messages will provide CBP with additional transparency into the custodial environment through which inter-modal containers are handled and transported before arrival and after unloading in the United States. This enhanced view (in corroboration with other advance data messages) into the international supply chain would contribute to the security of the United States and in the international supply chain through which containers and import cargos reach ports in the United States. The estimated average annual burden associated with the information collection in Sec. 4.7d is 91.3 hours per carrier.

Under Sec. 149.2, an Importer Security Filing, consisting of security elements of entry data for cargo destined to the United States, is required from the ISF Importer, as defined in these regulations. For shipments other than FROB cargo, IE and T&E in-bond shipments, and goods to be delivered to an FTZ, the ISF Importer will be the owner, purchaser, consignee, or agent such as a licensed customs broker. For FROB, the ISF Importer will be the carrier. 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. The estimated average annual burden associated with the information collection in Sec. 149.2 is 52.3 hours per respondent or recordkeeper.

Comments on the accuracy of these burden estimates and suggestions for reducing this burden should be sent to the Border Security Regulations Branch, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., (Mint Annex), Washington, DC 20229.

The list of approved information collections, contained in 19 CFR Part 178, is being amended as appropriate to reflect the approved information collections covered by this interim final rule.

XI. Signing Authority

The signing authority for these amendments falls under 19 CFR 0.1(b). Accordingly, this document is signed by the Secretary of Homeland Security (or his delegate).

XII. Coordination of Interim Final Rule With Congress

Pursuant to section 343(a)(3)(L) (19 U.S.C. 2071 note, section (a)(3)(L)), the required report regarding this interim final rule document has been timely made to the Committees on Finance and Commerce, Science, and Transportation of the Senate and the Committees on Ways and Means and Transportation and Infrastructure of the House of Representatives.

XIII. Regulatory Amendments

List of Subjects

19 CFR part 4

Customs duties and inspection, Freight, Maritime carriers, Reporting and recordkeeping requirements, Vessels.

19 CFR part 12

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR part 18

Common carriers, Customs duties and inspection, Freight, Penalties, Reporting and recordkeeping requirements, Surety bonds.

19 CFR part 101

Customs duties and inspection, Vessels.

19 CFR part 103

Administrative practice and procedure, Confidential business information, Courts, Freedom of information, Law enforcement, Privacy, Reporting and recordkeeping requirements.

19 CFR part 113

Common carriers, Customs duties and inspection, Freight, Reporting and recordkeeping requirements, Surety bonds.

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19 CFR part 122

Administrative practice and procedure, Customs duties and inspection, Penalties, Reporting and recordkeeping requirements.

19 CFR part 123

Customs duties and inspection, Freight, Reporting and recordkeeping requirements, Vessels.

19 CFR part 141

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR part 143

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR part 149

Arrival, Declarations, Customs duties and inspection, Freight, Importers, Imports, Merchandise, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR part 178

Reporting and recordkeeping requirements.

19 CFR part 192

Penalties, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

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Parts 4, 12, 18, 101, 103, 113, 122, 123, 141, 143, 149, and 192 of title 19, Code of Federal Regulations (19 CFR parts 4, 12, 18, 101, 103, 113, 122, 123, 141, 143, 149, 178, and 192), are amended as set forth below.

PART 4--VESSELS IN FOREIGN AND DOMESTIC TRADES

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1. The general authority citation for part 4 is revised, the relevant specific authority citations are revised, and the specific authority citation for sections 4.7c and 4.7d is added to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 60105;

* * * * *

Section 4.7 also issued under 19 U.S.C. 1581(a);

Section 4.7a also issued under 19 U.S.C. 1498, 1584;

* * * * *

Sections 4.7c and 4.7d also issued under 6 U.S.C. 943.

* * * * *

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2. Amend Sec. 4.7 by revising paragraph (b)(2); and

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a. In paragraph (e), by removing the phrase "in addition to penalties applicable under other provisions of law" at the end of the first sentence and adding in its place the phrase "in addition to damages under the international carrier bond of \$5,000 for each violation discovered"; and

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b. In paragraph (e), by removing the phrase ``', in addition to any other penalties applicable under other provisions of law'' at the end of the paragraph and adding in its place ``of \$5,000 for each violation discovered''.

The revised paragraph (b) (2) reads as follows:

Sec. 4.7 Inward foreign manifest; production on demand; contents and form; advance filing of cargo declaration.

* * * * *

(b) * * *

(2) In addition to the vessel stow plan requirements pursuant to Sec. 4.7c of this part and the container status message requirements pursuant to Sec. 4.7d of this part, subject to the effective date provided in paragraph (b)(5) of this section, and with the exception of any bulk or authorized break bulk cargo as prescribed in paragraph (b)(4) of this section, Customs and Border Protection (CBP) must receive from the incoming carrier, for any vessel covered under paragraph (a) of this section, the CBP-approved electronic equivalent of the vessel's Cargo Declaration (Customs Form 1302), 24 hours before the cargo is laden aboard the vessel at the foreign port (see Sec. 4.30(n)(1)). The current approved system for presenting electronic cargo declaration information to CBP is the Vessel Automated Manifest System (AMS).

* * * * *

Sec. 4.7a [Amended]

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3. Amend Sec. 4.7a(f) by:

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a. Removing the phrase ``in addition to penalties applicable under other provisions of law'' at the end of the first sentence and adding in its place ``in addition to damages under the international carrier bond of \$5,000 for each violation discovered''; and

0

b. Removing the phrase ``', in addition to other penalties applicable under other provisions of law'' at the end of the paragraph and adding in its place ``of \$5,000 for each violation discovered''.

0

4. Add a new Sec. 4.7c to read as follows:

Sec. 4.7c Vessel stow plan.

Vessel stow plan required. In addition to the advance filing requirements pursuant to Sec. Sec. 4.7 and 4.7a of this part and the container status message requirements pursuant to Sec. 4.7d of this part, for all vessels subject to Sec. 4.7(a) of this part, except for any vessel exclusively carrying break bulk cargo or bulk cargo as prescribed in Sec. 4.7(b)(4) of this part, the incoming carrier must submit a vessel stow plan consisting of vessel and container information as specified in paragraphs (b) and (c) of this section within the time prescribed in paragraph (a) of this section via the CBP-approved electronic data interchange system.

(a) Time of transmission. Customs and Border Protection (CBP) must receive the stow plan no later than 48 hours after the vessel departs from the last foreign port. For voyages less than 48 hours in duration, CBP must receive the stow plan prior to arrival at the first U.S. port.

(b) Vessel information required to be reported. The following information must be reported for each vessel:

(1) Vessel name (including international maritime organization (IMO) number);

(2) Vessel operator; and

(3) Voyage number.

(c) Container information required to be reported. The following information must be reported for each container carried on each vessel:

(1) Container operator;

(2) Equipment number;

(3) Equipment size and type;

(4) Stow position;

(5) Hazmat code (if applicable);

(6) Port of lading; and

(7) Port of discharge.

(d) Compliance date of this section. (1) General. Subject to paragraph (d)(2) of this section, all affected ocean carriers must comply with the requirements of this section on and after January 26, 2010.

(2) Delay in compliance date of section. CBP may, at its sole discretion, delay the general compliance date set forth in paragraph (d)(1) of this section in the event that any necessary modifications to the approved electronic data interchange system are not yet in place or for any other reason. Notice of any such delay will be provided in the Federal Register.

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5. Add a new section 4.7d to read as follows:

Sec. 4.7d Container status messages.

(a) Container status messages required. In addition to the advance filing requirements pursuant to Sec. Sec. 4.7 and 4.7a of this part and the vessel stow plan requirements pursuant to Sec. 4.7c of this part, for all containers destined to arrive within the limits of a port in the United States from a foreign port by vessel, the incoming carrier must submit messages regarding the status of the events as specified in paragraph (b) of this section if the carrier creates or

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collects a container status message (CSM) in its equipment tracking system reporting that event. CSMs must be transmitted to Customs and Border Protection (CBP) within the time prescribed in paragraph (c) of this section via a CBP-approved electronic data interchange system. There is no requirement that a carrier create or collect any CSMs under this paragraph that the carrier does not otherwise create or collect on

its own and maintain in its electronic equipment tracking system.

(b) Events required to be reported. The following events must be reported if the carrier creates or collects a container status message in its equipment tracking system reporting that event:

(1) When the booking relating to a container which is destined to arrive within the limits of a port in the United States by vessel is confirmed;

(2) When a container which is destined to arrive within the limits of a port in the United States by vessel undergoes a terminal gate inspection;

(3) When a container, which is destined to arrive within the limits of a port in the United States by vessel, arrives or departs a facility (These events take place when a container enters or exits a port, container yard, or other facility. Generally, these CSMS are referred to as "gate-in" and "gate-out" messages.);

(4) When a container, which is destined to arrive within the limits of a port in the United States by vessel, is loaded on or unloaded from a conveyance (This includes vessel, feeder vessel, barge, rail and truck movements. Generally, these CSMS are referred to as "loaded on" and "unloaded from" messages);

(5) When a vessel transporting a container, which is destined to arrive within the limits of a port in the United States by vessel, departs from or arrives at a port (These events are commonly referred to as "vessel departure" and "vessel arrival" notices);

(6) When a container which is destined to arrive within the limits of a port in the United States by vessel undergoes an intra-terminal movement;

(7) When a container which is destined to arrive within the limits of a port in the United States by vessel is ordered stuffed or stripped;

(8) When a container which is destined to arrive within the limits of a port in the United States by vessel is confirmed stuffed or stripped; and

(9) When a container which is destined to arrive within the limits of a port in the United States by vessel is stopped for heavy repair.

(c) Time of transmission. For each event specified in paragraph (b) of this section that has occurred, and for which the carrier creates or collects a container status message (CSM) in its equipment tracking system reporting that event, the carrier must transmit the CSM to CBP no later than 24 hours after the CSM is entered into the equipment tracking system.

(d) 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 if the container is associated with a specific vessel.

(e) A carrier may transmit other container status messages in addition to those required pursuant to paragraph (b) of this section. By transmitting additional container status messages, the carrier authorizes Customs and Border Protection (CBP) to access and use those data.

(f) Compliance date of this section. (1) General. Subject to paragraph (f)(2) of this section, all affected ocean carriers must comply with the requirements of this section on and after January 26, 2010.

(2) Delay in compliance date of section. CBP may, at its sole discretion, delay the general compliance date set forth in paragraph (f)(1) of this section in the event that any necessary modifications to the approved electronic data interchange system are not yet in place or for any other reason. Notice of any such delay will be provided in the Federal Register.

PART 12--SPECIAL CLASSES OF MERCHANDISE

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6. The general authority citation for part 12 and specific authority citation for Sec. 12.3 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;
* * * * *

Section 12.3 also issued under 7 U.S.C. 135h, 21 U.S.C. 381;
* * * * *

Sec. 12.3 [Amended]

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7. Amend Sec. 12.3(b)(2) and (c) by removing references to "Sec. 113.62(1)(1)" and adding in their place "Sec. 113.62(m)(1)".

PART 18--VESSELS IN FOREIGN AND DOMESTIC TRADES

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8. The general authority citation for part 18 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624;
* * * * *

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9. Amend Sec. 18.5 by:

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a. In paragraph (a), removing the reference to "paragraphs (c), (d), (e) and (f)" and adding in its place "paragraphs (c), (d), (e), (f), and (g)"; and

0

b. Adding a new paragraph (g).

The new paragraph (g) reads as follows:

Sec. 18.5 Diversion.

* * * * *

(g) For in-bond shipments which, at the time of transmission of the Importer Security Filing as required by Sec. 149.2 of this chapter, are intended to be entered as an immediate exportation (IE) or transportation and exportation (T&E) shipment, 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. Such permission would only be granted upon receipt by Customs and Border Protection (CBP) of a complete Importer Security Filing as required by part 149 of this chapter.

PART 103--AVAILABILITY OF INFORMATION

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10. The general authority citation for part 103 continues, and the specific authority citation for Sec. 103.31a is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

Section 103.31a also issued under 19 U.S.C. 2071 note and 6 U.S.C. 943;

* * * * *

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11. Revise Sec. 103.31a to read as follows:

Sec. 103.31a Advance electronic information for air, truck, and rail cargo; Importer Security Filing information for vessel cargo.

The following types of advance electronic information are per se exempt from disclosure under Sec. 103.12(d), unless CBP receives a specific request for such records pursuant to Sec. 103.5, and the owner of the information expressly agrees in writing to its release:

[[Page 71781]]

(a) Advance cargo information that is electronically presented to Customs and Border Protection (CBP) for inbound or outbound air, rail, or truck cargo in accordance with Sec. 122.48a, 123.91, 123.92, or 192.14 of this chapter;

(b) Importer Security Filing information that is electronically presented to CBP for inbound vessel cargo in accordance with Sec. 149.2 of this chapter;

(c) Vessel stow plan information that is electronically presented to CBP for inbound vessels in accordance with Sec. 4.7c of this chapter; and

(d) Container status message information that is electronically presented for inbound containers in accordance with Sec. 4.7d of this chapter.

PART 113--CUSTOMS BONDS

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12. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

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13. Amend Sec. 113.62 by:

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a. Redesignating paragraphs (j) through (l) as paragraphs (k) through (m);

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b. Adding new paragraph (j);

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c. In newly redesignated paragraph (k), removing the phrase ``\$5,000 for each regulation violated'' and adding in its place ``\$5,000 for each violation''.

0

d. In newly redesignated paragraph (m)(1), removing the reference to ``paragraphs (a), (g), (i), (j)(2), or (k)'' and adding in its place ``paragraphs (a), (g), (i), (j), (k)(2), or (l)'';

0

e. In newly redesignated paragraph (m)(4), replacing the reference to ``paragraph (l)(1)'' and adding in its place ``paragraph (m)(1)''; and

0

f. In newly redesignated paragraph (m)(5), removing the reference to ``paragraph (k)'' and adding in its place ``paragraph (l)''.

The new paragraph (j) reads as follows:

Sec. 113.62 Basic importation and entry bond conditions.

* * * * *

(j) The principal agrees to comply with all Importer Security Filing requirements set forth in part 149 of this chapter including but not limited to providing security filing information to Customs and Border Protection in the manner and in the time period prescribed by regulation. If the principal defaults with regard to any obligation, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation.

* * * * *

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14. Amend Sec. 113.63 by:

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a. Redesignating paragraphs (g) and (h) as paragraphs (h) and (i); and

0

b. Adding new paragraph (g);

The new paragraph (g) reads as follows:

Sec. 113.63 Basic custodial bond conditions.

* * * * *

(g) The principal agrees to comply with all Importer Security Filing requirements set forth in part 149 of this chapter including but not limited to providing security filing information to Customs and Border Protection in the manner and in the time period prescribed by regulation. If the principal defaults with regard to any obligation, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 per violation.

* * * * *

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15. Amend Sec. 113.64 by:

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a. Redesignating paragraphs (d) through (g) as paragraphs (h) through (k);

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b. Redesignating paragraph (c) as paragraph (d);

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c. Adding new paragraphs (c), (e), (f), and (g); and

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d. In newly redesignated paragraph (d), removing the phrase ``\$5,000 for each regulation violated'' and adding in its place ``\$5,000 for each violation, to a maximum of \$100,000 per conveyance arrival''.

New paragraphs (c), (e), (f), and (g) read as follows:

Sec. 113.64 International carrier bond conditions.

* * * * *

(c) Agreement to provide advance cargo information. The incoming carrier agrees to provide advance cargo information to CBP in the manner and in the time period required under Sec. Sec. 4.7 and 4.7a of this chapter. If the incoming carrier, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation, to a maximum of \$100,000 per conveyance arrival.

* * * * *

(e) Agreement to comply with Importer Security Filing requirements. If the principal elects to provide the Importer Security Filing information to Customs and Border Protection (CBP), the principal agrees to comply with all Importer Security Filing requirements set forth in part 149 of this chapter including but not limited to providing security filing information to CBP in the manner and in the time period prescribed by regulation. If the principal defaults with regard to any obligation, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation.

(f) Agreement to comply with vessel stow plan requirements. If the principal causes a vessel to arrive within the limits of a port in the United States, the principal agrees to submit a stow plan in the manner and in the time period required pursuant to part 4.7c of this chapter. If the principal defaults with regard to this obligation, the principal and surety (jointly and severally) agree to pay liquidated damages of \$50,000 for each vessel arrival.

(g) Agreement to comply with container status message requirements. If the principal causes a vessel to arrive within the limits of a port in the United States, the principal agrees to submit container status messages in the manner and in the time period required pursuant to part 4.7d of this chapter. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation, to a maximum of \$100,000 per vessel arrival.

* * * * *

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16. Amend Sec. 113.73 by:

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a. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e); and

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b. Adding a new paragraph (c).

The new paragraph (c) reads as follows:

Sec. 113.73 Foreign trade zone operator bond conditions.

* * * * *

(c) Agreement to comply with Importer Security Filing requirements. The principal agrees to comply with all Importer Security Filing requirements set forth in part 149 of this chapter including but not limited to providing security filing information to Customs and Border Protection (CBP) in the manner and in the time period prescribed by regulation. If the principal defaults with regard to any obligation, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation.

* * * * *

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17. Add a new Appendix D to part 113 to read as follows:

Appendix D to Part 113--Importer Security Filing Bond

Importer Security Filing Bond

KNOW ALL MEN BY THESE PRESENTS, that----- of -----, as principal having Customs and Border Protection (CBP) Identification Number -- ---- and -----, as surety are held and firmly bound unto the United States of America up to the sum of ----- dollars (\$-----) for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and

[[Page 71782]]

assigns, jointly and severally, firmly by these presents.

Whereas, the named principal (including the named principal's employees, agents and contractors) agrees to comply with all Importer Security Filing requirements set forth in 19 CFR part 149, including but not limited to providing security filing information to CBP in the manner and in the time period prescribed by regulation.

Whereas, if the named principal incurs any claim that relates to

any of the requirements set forth in 19 CFR part 149, the obligors (principal and surety, jointly and severally) agree to pay any amount prescribed by law or regulation upon demand by CBP.

This bond is effective -----, 20---, and remains in force for one year beginning with the effective date and for each succeeding annual period, or until terminated. This bond constitutes a separate bond for each period in the amount listed above for liabilities that accrue in each period. The intention to terminate this bond must be conveyed within the period and manner prescribed in the CBP Regulations.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

(Name)

(Address)

(Name)

(Address)

(Principal Name) (Seal)

(Principal Address)

(Surety Name) (Seal)
Surety No.-----

(Surety Mailing Address)
Surety Agent Name-----
Surety Agent ID Number-----

PART 122--AIR COMMERCE REGULATIONS

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18. The general authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.
* * * * *

Sec. 122.48a [Amended]

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19. Amend Sec. 122.48a(c)(2) by removing the reference to ``Sec. 113.62(j)(2)'' and adding in its place ``Sec. 113.62(k)(2)''.

PART 123--CUSTOMS RELATIONS WITH CANADA AND MEXICO

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20. The general authority citation for part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624, 2071 note.
* * * * *

Sec. 123.92 [Amended]

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21. Amend Sec. 123.92(c)(2) by removing the reference to ``Sec. 113.62(j)(2)'' and adding in its place ``Sec. 113.62(k)(2)''.

PART 141--ENTRY OF MERCHANDISE

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22. The general authority citation for part 141 and specific authority citation for Sec. 141.113 continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.
* * * * *
Section 141.113 also issued under 19 U.S.C. 1499, 1623.

Sec. 141.113 [Amended]

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23. Amend Sec. 141.113(b) by removing the reference to ``Sec. 113.62(l)(1)'' and adding in its place ``Sec. 113.62(m)(1)''.

PART 143--SPECIAL ENTRY PROCEDURES

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24. The general authority citation for part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

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25. Revise Sec. 143.1 to read as follows:

Sec. 143.1 Eligibility.

The Automated Broker Interface (ABI) is a module of the Customs Automated Commercial System (ACS) which allows participants to transmit data electronically to CBP through ABI and to receive transmissions through ACS. Its purposes are to improve administrative efficiency, enhance enforcement of customs and related laws, lower costs and expedite the release of cargo.

(a) Participants for entry and entry summary purposes. Participants in ABI for the purposes of transmitting data relating to entry and

entry summary may be:

(1) Customs brokers as defined in Sec. 111.1 of this chapter;
 (2) Importers as defined in Sec. 101.1 of this chapter; and
 (3) ABI service bureaus, that is, an individual, partnership, association or corporation which provides communications facilities and data processing services for brokers and importers, but which does not engage in the conduct of customs business as defined in Sec. 111.1 of this chapter.

(b) Participants for Importer Security Filing purposes. Any party may participate in ABI solely for the purposes of filing the Importer Security Filing pursuant to Sec. 149.2 of this chapter if that party fulfills the eligibility requirements contained in Sec. 149.5 of this chapter. If a party other than a customs broker as defined in Sec. 111.1 of this chapter or an importer as defined in 19 U.S.C. 1484 submits the Importer Security Filing, no portion of the Importer Security Filing can be used for entry or entry summary purposes pursuant to Sec. 149.5 of this chapter.

(c) Participants for other purposes. Upon approval by CBP, any party may participate in ABI for other purposes, including transmission of protests, forms relating to in-bond movements (CBP Form 7512), and applications for FTZ admission (CBP Form 214).

PART 146--FOREIGN TRADE ZONES

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26. The general authority citation for part 146 continues to read as follows:

Authority: 19 U.S.C. 66, 81a-81u, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624.

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27. Amend Sec. 146.32 by:

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a. Removing all references to ``Customs Form 214'' and adding in their place ``CBP Form 214'' wherever they appear;

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b. Redesignating paragraph (a) as paragraph (a)(1); and

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c. Adding a new paragraph (a)(2).

The new paragraph (a)(2) reads as follows:

Sec. 146.32 Application and permit for admission of merchandise.

(a)(1) * * *

(2) CBP Form 214 and Importer Security Filing submitted via a single electronic transmission. If an Importer Security Filing is filed pursuant to part 149 of this chapter via the same electronic transmission as CBP Form 214, the filer is only required to provide the following fields once to be used for Importer Security Filing and CBP Form 214 purposes:

(i) Country of origin; and

(ii) Commodity HTSUS number if this number is provided at the 10-digit level.

* * * * *

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28. Add part 149 to chapter I to read as follows:

PART 149--IMPORTER SECURITY FILING

Sec.

149.1 Definitions.

149.2 Importer security filing--requirement, time of transmission, verification of information, update, withdrawal, compliance date.

149.3 Data elements.

149.4 Bulk and break bulk cargo.

149.5 Eligibility to file an Importer Security Filing, authorized agents.

149.6 Entry and entry summary documentation and Importer Security

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Filing submitted via a single electronic transmission.

Authority: 5 U.S.C. 301; 6 U.S.C. 943; 19 U.S.C. 66, 1624, 2071 note.

Sec. 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 cargo, the ISF Importer will be the carrier. 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.

(b) Importation. For purposes of this part, ``importation'' means the point at which cargo arrives within the limits of a port in the United States.

(c) Bulk cargo. For purposes of this part, ``bulk cargo'' is defined as homogeneous cargo that is stowed loose in the hold and is not enclosed in any container such as a box, bale, bag, cask, or the like. Such cargo is also described as bulk freight. Specifically, bulk cargo is composed of either:

(1) Free flowing articles such as oil, grain, coal, ore, and the like, which can be pumped or run through a chute or handled by dumping; or

(2) Articles that require mechanical handling such as bricks, pig iron, lumber, steel beams, and the like.

(d) Break bulk cargo. For purposes of this part, ``break bulk cargo'' is defined as cargo that is not containerized, but which is otherwise packaged or bundled.

Sec. 149.2 Importer security filing--requirement, time of transmission, verification of information, update, withdrawal, compliance date.

(a) Importer security filing required. For cargo arriving by vessel, with the exception of any bulk cargo pursuant to Sec. 149.4(a) of this part, the ISF Importer, as defined in Sec. 149.1 of this part, or authorized agent (see Sec. 149.5 of this part) must submit in English the Importer Security Filing elements prescribed in Sec. 149.3 of this part within the time specified in paragraph (b) of this section via a CBP-approved electronic interchange system.

(b) Time of transmission. With the exception of any break bulk cargo pursuant to Sec. 149.4(b) of this part, ISF Importers must submit:

(1) Seller, buyer, importer of record number / foreign trade zone applicant identification number, and consignee number(s) (as defined in Sec. 149.3(a)(1) through (4) of this part) no later than 24 hours before the cargo is laden aboard the vessel at the foreign port.

(2) Manufacturer (or supplier), ship to party, country of origin, and commodity HTSUS number (as defined in Sec. 149.3(a)(5) through (8) of this part) no later than 24 hours before the cargo is laden aboard the vessel at the foreign port.

(3) Container stuffing location and consolidator (stuffer) (as defined in Sec. 149.3(a)(9) and (10) of this part) as early as possible, in no event later than 24 hours prior to arrival in a United States port (or upon lading at a foreign port that is less than a 24 hour voyage to the closest United States port).

(4) The data elements required under Sec. 149.3(b) of this part for FROB, prior to lading aboard the vessel at the foreign port.

(c) Verification of information. Where the party electronically presenting to CBP the Importer Security Filing required in paragraph (a) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what the party reasonably believes to be true.

(d) Update of Importer Security Filing. The party who submitted the Importer Security Filing pursuant to paragraph (a) of this section must update the filing if, after the filing is submitted and before the goods enter the limits of a port in the United States, any of the information submitted changes or more accurate information becomes available.

(e) Withdrawal of Importer Security Filing. If, after an Importer Security Filing is submitted pursuant to paragraph (a) of this section, the goods associated with the Importer Security Filing are no longer intended to be imported to the United States, the party who submitted the Importer Security Filing must withdraw the Importer Security Filing and transmit to CBP the reason for such withdrawal.

(f) Flexible Requirements. For each of the four data elements required under paragraph (b)(2) of this section ISF Importers will be permitted to submit an initial response or responses based on the best available data available at the time that, in accordance with paragraph (d) of this section, ISF Importers will be required to update as soon as more precise or more accurate information is available, in no event less than 24 hours prior to arrival at a U.S. port (or upon lading at a foreign port that is less than a 24 hour voyage to the closest U.S. port).

(g) Compliance date of this section. (1) General. Subject to paragraph (g)(2) of this section, ISF Importers must comply with the requirements of this section on and after January 26, 2010.

(2) Delay in compliance date of section. CBP may, at its sole discretion, delay the general compliance date set forth in paragraph (g)(1) of this section in the event that any necessary modifications to the approved electronic data interchange system are not yet in place or for any other reason. Notice of any such delay will be provided in the Federal Register.

Sec. 149.3 Data elements.

(a) Shipments intended to be entered into the United States and shipments intended to be delivered to a foreign trade zone. Except as otherwise provided for in paragraph (b) of this section, the following elements must be provided for each good listed at the six-digit HTSUS number at the lowest bill of lading level (i.e., at the house bill of lading level, if applicable). The manufacturer (or supplier), country of origin, and commodity HTSUS number must be linked to one another at the line item level.

(1) Seller. Name and address of the last known entity by whom the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the name and address of the owner of the goods must be provided. A widely recognized commercially accepted identification number for this party may be provided in lieu of the name and address.

(2) Buyer. Name and address of the last known entity to whom the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the name and address of the owner of the goods must be provided. A widely recognized commercially accepted identification number for this party may be provided in lieu of the name and address.

(3) Importer of record number/Foreign trade zone applicant identification number. Internal Revenue Service (IRS) number, Employer Identification Number (EIN), Social Security Number (SSN), or CBP assigned number of the entity liable for payment of all duties

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and responsible for meeting all statutory and regulatory requirements incurred as a result of importation. For goods intended to be delivered to a foreign trade zone (FTZ), the IRS number, EIN, SSN, or CBP assigned number of the party filing the FTZ documentation with CBP must be provided.

(4) Consignee number(s). Internal Revenue Service (IRS) number, Employer Identification Number (EIN), Social Security Number (SSN), or CBP assigned number of the individual(s) or firm(s) in the United States on whose account the merchandise is shipped.

(5) Manufacturer (or supplier). Name and address of the entity that last manufactures, assembles, produces, or grows the commodity or name and address of the party supplying the finished goods in the country from which the goods are leaving. In the alternative the name and address of the manufacturer (or supplier) that is currently required by the import laws, rules and regulations of the United States (i.e., entry procedures) may be provided (this is the information that is used to create the existing manufacturer identification (MID) number for entry purposes). A widely recognized commercially accepted identification number for this party may be provided in lieu of the name and address.

(6) 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.

(7) Country of origin. Country of manufacture, production, or growth of the article, based upon the import laws, rules and regulations of the United States.

(8) 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 up to the 10-digit level. This element can only be used for entry purposes if it is provided at the 10-digit level or greater by the importer of record or its licensed customs broker.

(9) Container stuffing location. Name and address(es) of the physical location(s) where the goods were stuffed into the container. For break bulk shipments, as defined in Sec. 149.1 of this part, the name and address(es) of the physical location(s) where the goods were made "ship ready" must be provided. A widely recognized commercially accepted identification number for this element may be provided in lieu of the name and address.

(10) Consolidator (stuffer). Name and address of the party who stuffed the container or arranged for the stuffing of the container. For break bulk shipments, as defined in Sec. 149.1 of this part, the name and address of the party who made the goods "ship ready" or the party who arranged for the goods to be made "ship ready" must be provided. A widely recognized commercially accepted identification number for this party may be provided in lieu of the name and address.

(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 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.

Sec. 149.4 Bulk and break bulk cargo.

(a) Bulk cargo exempted from filing requirement. For bulk cargo that is exempt from the requirement set forth in Sec. 4.7(b)(2) of this chapter that a cargo declaration be filed with Customs and Border Protection (CBP) 24 hours before such cargo is laden aboard the vessel at the foreign port, ISF Importers, as defined in Sec. 149.1 of this part, of bulk cargo are also exempt from filing an Importer Security Filing with respect to that cargo.

(b) Break bulk cargo exempted from time requirement. For break bulk cargo that is exempt from the requirement set forth in Sec. 4.7(b)(2) of this chapter for carriers to file a cargo declaration with Customs and Border Protection (CBP) 24 hours before such cargo is laden aboard the vessel at the foreign port, ISF Importers, as defined in Sec. 149.1 of this part, of break bulk cargo are also exempt with respect to that cargo from the requirement set forth in Sec. 149.2 of this part to file an Importer Security Filing with CBP 24 hours before such cargo is laden aboard the vessel at the foreign port. Any importers of break bulk cargo that are exempted from the filing requirement of Sec. 149.2 of this part must present the Importer Security Filing to CBP 24 hours prior to the cargo's arrival in the United States. These ISF Importers must still report 24 hours in advance of loading any containerized or non-qualifying break bulk cargo they will be importing.

Sec. 149.5 Eligibility to file an Importer Security Filing, authorized agents.

(a) Eligibility. To be qualified to file Importer Security Filing information electronically, a party must establish the communication protocol required by Customs and Border Protection for properly presenting the Importer Security Filing through the approved data interchange system. If the Importer Security Filing and entry or entry summary are provided via a single electronic transmission to CBP pursuant to Sec. 149.6(b) of this part, the party making the transmission must be an importer acting on its own behalf or a licensed customs broker.

(b) Bond required. The ISF Importer must possess a basic importation and entry bond containing all the necessary provisions of Sec. 113.62 of this chapter, a basic custodial bond containing all the necessary provisions of Sec. 113.63 of this chapter, an international carrier bond containing all the necessary provisions of Sec. 113.64 of this chapter, a foreign trade zone operator bond containing all the necessary provisions of Sec. 113.73 of this chapter, or an importer

security filing bond as provided in Appendix D to part 113 of this chapter. If an ISF Importer does not have a required bond, the agent submitting the Importer Security Filing on behalf of the ISF Importer may post the agent's bond.

(c) Powers of attorney. Authorized agents must retain powers of attorney in English until revoked. Revoked powers of attorney and letters of revocation must be retained for five years after the date of revocation. Authorized agents

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must make powers of attorney and letters of revocation available to representatives of Customs and Border Protection upon request.

Sec. 149.6 Entry and entry summary documentation and Importer Security Filing submitted via a single electronic transmission.

If the Importer Security Filing is filed pursuant to Sec. 149.2 of this part via the same electronic transmission as entry or entry/entry summary documentation pursuant to Sec. 142.3 of this chapter, the importer is only required to provide the following fields once to be used for Importer Security Filing, entry, or entry/entry summary purposes, as applicable:

- (a) Importer of record number;
- (b) Consignee number;
- (c) Country of origin; and
- (d) Commodity HTSUS number if this number is provided at the 10-digit level.

PART 178--APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

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29. The general authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 et seq.

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30. Amend Sec. 178.2 by adding new listings for Sec. Sec. 4.7c, 4.7d, and 149.2 in appropriate numerical sequence according to the section number under the columns indicated, to read as follows:

Sec. 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB Control No.
	* * * * *	
Sec. 4.7c.....	Vessel stow plan.....	
Sec. 4.7d.....	Container status messages.....	
	* * * * *	
Sec. 149.2.....	Importer Security Filing.....	
	* * * * *	

PART 192--EXPORT CONTROL

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31. The general authority citation for part 192 continues to read as follows:

Authority: 19 U.S.C. 66, 1624, 1646c. Subpart A also issued under 19 U.S.C. 1627a, 1646a, 1646b; subpart B also issued under 13 U.S.C. 303; 19 U.S.C. 2071 note; 46 U.S.C. 91.

Sec. 192.14 [Amended]

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32. Amend Sec. 192.14(c)(4)(ii) by removing the reference to ``Sec. 113.64(g)(2)'' and adding in its place ``Sec. 113.64(k)(2)''.

Dated: November 7, 2008.
Michael Chertoff,
Secretary.
[FR Doc. E8-27048 Filed 11-24-08; 8:45 am]

BILLING CODE 9111-14-P