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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 and 192

[USCBP-2007-0077]

RIN 1651-AA70

Importer Security Filing and Additional Carrier Requirements

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

ACTION: Notice of proposed rulemaking.

SUMMARY: To help prevent terrorist weapons from being transported to the United States, vessel carriers bringing cargo to the United States are currently 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 document proposes to require both importers and carriers to submit additional information pertaining to cargo before the cargo is brought into the United States by vessel. CBP must receive this information by way of a CBP-approved electronic data interchange system. The information required is reasonably necessary to further improve the ability of CBP to identify high-risk shipments so as to prevent smuggling and ensure cargo safety and security. The proposed regulations are specifically intended to 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: Written comments must be submitted on or before March 3, 2008.

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

Dept: [INSERT DOCKET NUMBER].

- *Mail:* Border Security Regulations Branch, Office of Trade, U.S Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

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) 572-8768.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Public Participation
- II. Background
 - A. Current Requirements and CBP Authority for Issuance of Proposed Rule
 - (1) 24 Hour Rule
 - (2) Trade Act Regulations
 - (3) SAFE Port Act
 - B. Statutory Factors Governing Development of Regulations
 - C. Carrier and Importer Requirements Presented Separately
- III. Proposed Carrier Requirements Relating to Vessel Cargo Destined to the United States
 - A. Overview; Vessel Stow Plan
 - B. Overview; Container Status Messages
 - 1. Events Requiring a CSM, Effective Upon Implementation of the Final Rule
 - 2. Additional Events Requiring a CSM, Effective 90 Days After CBP Publishes a Notice in the **Federal Register**
- IV. Proposed Importer Requirement for Vessel Cargo Destined to the United States
 - A. Overview; Required Elements
 - 1. Shipments Other Than FROB, IE Shipments, and T&E Shipments
 - 2. FROB, IE shipments, and T&E shipments
 - B. Public Comments; Required Elements
 - C. Overview; Master Bills/House Bills
 - D. Public Comments; Master Bills/House Bills
 - E. Overview; CBP-approved Electronic Interchange System

- F. Public Comments; CBP-approved Electronic Interchange System
- G. Overview; Authorized Agents
- H. Public Comments; Authorized Agents
- I. Public Comments; Requested Exemptions/Exclusions From Importer Security Filing Requirements
 - 1. Bulk and Break Bulk Cargo
 - 2. Foreign Cargo Remaining on Board, In-bond Shipments, and Instruments of International Traffic
- J. Overview; Updating an Importer Security Filing
- K. Public Comments; Withdrawing an Importer Security Filing
- L. Overview; Importer Security Filing, Entry, and Application for FTZ Admission
 - 1. Importer Security Filing and Entry
 - 2. Importer Security Filing and Application for FTZ Admission
- M. Public Comments; Importer Security Filing, Entry, and Application for FTZ Admission
- V. General Public Comments
 - A. Economic Analysis; Cost, Benefit, and Feasibility Study
 - B. Protection of Confidential Information Presented to CBP
 - C. Test of Concept and Phase-in Enforcement
 - D. Other General Comments
- VI. Amendments to Bond Conditions
 - A. Bond Conditions Related to the Proposed Importer Security Filing, Vessel Stow Plan, and Container Status Message Requirements
 - B. Bond Conditions Related to the Trade Act Regulations
- VIII. Regulatory Analyses
 - A. Executive Order 12866
 - B. Regulatory Flexibility Act
 - C. Unfunded Mandated Reform Act
 - D. Paperwork Reduction Act
- IX. Signing Authority
- X. Proposed Regulatory Amendments

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
- AMS—Automated Manifest System
- ANSI—American National Standards Institute
- ATDI—Advance Trade Data Initiative
- ATS—Automated Targeting System
- CBP—Customs and Border Protection
- COAC—Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions
- CFR—Code of Federal Regulations
- CSI—Container Security Initiative
- CSM—Container status message
- C-TPAT—Customs-Trade Partnership Against Terrorism
- DDP—Delivered duty paid
- DDU—Delivered duty unpaid
- DHS—U.S. Department of Homeland Security
- EIN—Employer identification number
- FAQ—Frequently asked questions

FROB—Foreign cargo remaining on board
 FTZ—Foreign trade zone
 HTSUS—Harmonized Tariff Schedule of the United States
 ICPA—International Compliance Professionals Association
 IE—Immediate exportation
 IIT—Instruments of international traffic
 IMO—International Maritime Organization
 IRS—Internal Revenue Service
 ITDS—International Trade Data System
 JIG—Joint Industry Group
 MD—Manufacturer identification
 MTSA—Maritime Transportation Security Act of 2002
 NAM—National Association of Manufacturers
 NCBFAA—National Customs Brokers and Forwarders Association of America
 NVOCC—Non-vessel operating common carrier
 OMB—Office of Management and Budget
 Pub. L.—Public Law
 RFA—Regulatory Flexibility Act of 1980
 RILA—Retail Industry Leaders Association
 SAFE Port Act—Security and Accountability for Every Port Act of 2006
 SBREFA—Small Business Regulatory Enforcement Fairness Act of 1996
 SSN—Social security number
 T&E—Transportation and exportation
 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
 WCO—World Customs Organization
 WSC—World Shipping Council

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the notice of proposed rulemaking. The Department of Homeland Security (DHS) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposal. Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the proposal, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Background

A. Current Requirements and CBP Authority for Issuance of Proposed Rule

1. 24 Hour Rule

Section 1431 of title 19, United States Code (19 U.S.C. 1431) requires that every vessel bound for the United States and required to make entry under 19 U.S.C. 1434 have a manifest that meets the requirements that are prescribed by regulation. Pursuant to 19 U.S.C. 1431,

Customs and Border Protection (CBP) published a final rule in the **Federal Register** (67 FR 66318) on October 31, 2002, which amended the regulations in title 19, Code of Federal Regulations (CFR), to require, among other things, the advance and accurate presentation of certain manifest information 24 hours prior to lading of containerized and non-exempt break bulk cargo at a foreign port and to encourage the presentation of this information electronically, commonly known as the 24 Hour Rule. The advance information required pursuant to the October 31, 2002, final rule is required in order to enable CBP to evaluate the potential risk of smuggling weapons of mass destruction through the use of oceangoing cargo containers before goods are loaded on vessels destined to the United States. This advance information ensures compliance with U.S. law and enables CBP to facilitate the prompt release of legitimate cargo following its arrival in the United States. The information assists CBP in increasing the security of the global trading system and, thereby, reducing potential threats to the United States and world economy.

2. Trade Act Regulations

Pursuant to section 343(a) of the Trade Act of 2002 (19 U.S.C. 2071 note), as amended by section 108 of the Maritime Transportation Security Act of 2002 (Pub. L. 107–295, 116 Stat. 2064), CBP published a final rule in the **Federal Register** (68 FR 68140) on December 5, 2003, which, among other things, amended the 24 Hour Rule regulations to require the transmission of this information by way of the CBP Vessel Automated Manifest System (AMS). See 19 CFR 4.7 and 4.7a. The advance electronic transmission of cargo information required was determined to be reasonably necessary for CBP to identify high-risk shipments to prevent smuggling and ensure cargo safety and security.

3. SAFE Port Act

On October 13, 2006, the President signed into law the Security and Accountability for Every Port Act of 2006 (Pub. L. 109–347, 120 Stat 1884) (SAFE Port Act). 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. This NPRM proposes to require the electronic transmission of additional data for improved high-risk targeting.¹ Some of these data elements would be required from carriers and others would be required from “importers,” as that term is defined for purposes of these regulations.

Prior to enactment of the SAFE Port Act, CBP had already undertaken an internal review of its targeting and inspection processes. Consequently, CBP had 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.

The information that CBP currently analyzes to generate its risk assessment prior to vessel loading contains the same data elements that were originally established by the 24 Hour Rule. For the most part, this is the ocean carrier's or NVOCC's cargo declaration. While this was a sound initial approach to take after the tragic events of September 11th, internal and external government reviews have concluded that more complete advance shipment data would produce even more effective and more vigorous cargo risk assessments.

In late 2004, the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC) forwarded to the Department of Homeland Security and CBP one of its subcommittees' recommendations, which provided that: “For ATS to provide enhanced security screening, the system should acquire additional shipment data to be used in the pre-vessel loading security screening

¹ Information on cargo feeds into CBP's Automated Targeting System (ATS) and is run against the system's protocols to evaluate all cargo shipments headed to the United States. ATS uses algorithms and anomaly analysis to identify high-risk targets. The system screens 100 percent of all cargo shipments. Using risk management principles and strategic intelligence, analysts use the system to identify shipments that pose a potential terrorist threat. One hundred percent of all high-risk shipments are inspected on arrival at ports of entry in the United States or in Container Security Initiative affiliated ports overseas.

process.” COAC recommended that CBP undertake a thorough review of the data element recommendations with the Trade Support Network (TSN) to determine what data elements the government required to improve the agency’s risk assessment and targeting capabilities.

Accordingly, CBP undertook further internal review and analysis of its targeting and inspection processes and worked with the TSN on this issue. Based upon its analysis, as well as the requirements under the SAFE Port Act, CBP is proposing to require the electronic transmission of additional data for improved high-risk targeting.

B. Statutory Factors Governing Development of Regulations

Pursuant to section 203(d) of the SAFE Port Act, DHS is required to adhere to the parameters applicable to the development of regulations under section 343(a) of the Trade Act of 2002, including provisions relating to consultation, technology, analysis, use of information, confidentiality, and timing requirements.

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. However, where doing so is not practicable, CBP in the proposed regulations must take into account how the party on whom the requirement is imposed acquires the necessary information under ordinary commercial practices, and whether and how this party is able to verify the information it has acquired. Where the party is not reasonably able to verify the information, the proposed regulations must allow the party to submit the information on the basis of what it reasonably believes to be true.

Furthermore, in developing the regulations, CBP, as required, has taken into consideration the remaining parameters set forth in the statute, where applicable, including:

- The existence of competitive relationships among parties upon which the information collection requirements are imposed;
- Different commercial practices and operational characteristics, and the technological capacity to collect and transmit information electronically;
- The need for interim requirements to reflect the technology that is available at the time of promulgation of the regulations for purposes of the parties transmitting, and CBP receiving and analyzing,

electronic information in a timely fashion;

- That 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;
- The protection of the privacy of business proprietary and any other confidential cargo information that CBP receives under these regulations, with the exception that a limited portion of certain manifest information may be required to be made available for public disclosure pursuant to 19 U.S.C. 1431(c);
- Balancing the impact on the flow of commerce with the impact on cargo safety and security in determining the timing for transmittal of required information;
- Where practicable, avoiding requirements in the regulations that are redundant with one another or with requirements under other provisions of law; and
- The need, where appropriate, for different transition periods for different classes of affected parties to comply with the electronic filing requirements in the regulations.

Additionally, the statute requires that a broad range of parties, including importers, exporters, carriers, customs brokers, and freight forwarders, among other interested parties likely to be affected by the regulations, be consulted and their comments obtained and evaluated as a prelude to the development and promulgation of the regulations. In furtherance of this requirement, CBP met with COAC and other industry groups, including 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 TSN, the U.S. Chamber of Commerce, and the World Shipping Council (WSC). In meetings and during conference calls, members of the importing and exporting community made many significant observations, insights, and suggestions as to what CBP should consider and how CBP should proceed in composing the proposed regulations. CBP presented to these groups a document entitled “CBP Proposal for Advance Trade Data

Elements” (the “10+2 Strawman”). CBP also posted the 10+2 Strawman on the CBP Web site along with a request for comments from the public. The Strawman was known as 10+2 because ten of the elements are to come from importers, as defined in these regulations, describing the cargo, and two of the elements are to come from carriers including information regarding the containers and conveyances in which the cargo is loaded.

Numerous commenters responded to the 10+2 Strawman. At CBP’s request, the COAC Advance Data Subcommittee also prepared and presented recommendations to CBP. Indeed, input and recommendations from those members of the trade who participated in the meetings discussed above, the various workgroups of the COAC subcommittee, as well as the views expressed in the many e-mail submissions on this matter, were considered in the development of these proposed regulations.

In this document, CBP responds to comments that were received in response to the 10+2 Strawman and the recommendation of the COAC Advance Data Subcommittee. General comments and responses are presented in Section III of this document. Comments relating to specific aspects of the proposal are presented in the section of this document that discusses CBP’s proposal relating to that particular aspect.

C. Carrier and Importer Requirements Presented Separately

Under the proposed regulations, carriers would be generally required to submit a vessel stow plan and container status messages regarding certain events relating to containers loaded on vessels destined to the United States (the “2” of “10+2”). Importers, as defined in these regulations, would be required to submit an Importer Security Filing containing certain data elements (the “10” of “10+2”). 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 is 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 is construed as the party filing the IE, T&E, or FTZ documentation with CBP. Because the proposed requirements for carriers and importers are different in scope and timing, they are presented separately below.

III. Proposed Carrier Requirements Relating to Vessel Cargo Destined to the United States

A. Overview; Vessel Stow Plan

Pursuant to the authority granted in section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002 (MTSA), CBP is proposing to require carriers to submit a vessel stow plan for vessels destined to the United States. The vessel stow plan is used to transmit information about the physical location of cargo loaded aboard a vessel, which enhances the security of the maritime environment. Under the proposed regulations, CBP must receive the stow plan for vessels transporting containers and/or break bulk cargo no later than 48 hours after 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 carriers would be exempt from this requirement for vessels exclusively carrying bulk cargo. The vessel stow plan must be submitted via the CBP-approved electronic data interchange system. The current approved electronic data interchange system for the vessel stow plan is vessel AMS. If CBP approves of different or additional electronic data interchange systems, CBP will publish a notice in the **Federal Register**.

Under the proposed regulations, the vessel stow plan must include standard information relating to the vessel and each container and unit of break bulk cargo laden on the vessel. The vessel stow plan must 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. Overview; Container Status Messages

Pursuant to section 343(a) of the Trade Act of 2002, CBP is proposing to require carriers to submit container status messages (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. 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.

Container status messages 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. This enhanced view (in corroboration with other advance data messages) into the international supply chain will 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 messages 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). There are two basic standards governing the formation of CSMs. These are the American National Standards Institute (ANSI) X.12 standard and the United Nations rules for Electronic Data Interchange For Administration, Commerce and Transport (UN EDIFACT) standard. Under the proposed regulations, CSMs created under either standard will be acceptable.

Under the proposed regulations, 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. The proposed regulations would not require a carrier 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 must 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 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 may 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. Accordingly, CBP is proposing 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. By transmitting CSMs in addition to those required by the proposed regulations, a carrier authorizes CBP to access and use that data.

For each CSM submitted, 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.

Carriers would be exempt from the CSM requirement for bulk and break

bulk cargo. Under the proposed regulations, CSMs must be submitted via the CBP-approved electronic data interchange system. The current approved electronic data interchange system for CSMs is vessel AMS. CBP is continuing to consider additional electronic interchange systems. If CBP approves of a different or additional electronic data interchange system, CBP will publish notice in the **Federal Register**.

IV. Proposed Importer Requirements for Vessel Cargo Destined to the United States

A. Overview; Required Elements

Pursuant to the authority of section 343(a) of the Trade Act of 2002 and section 203 of the SAFE Port Act, in order to enhance the security of the maritime environment, CBP is proposing to require 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. Because FROB is frequently laden based on a last-minute decision by the carrier, the Importer Security Filing for FROB would not be required 24 hours prior to lading. Rather, the Importer Security Filing for FROB would be required any time prior to lading.²

Under the proposed regulations, 10 elements are required for shipments consisting of goods intended to be entered into the United States and goods intended to be delivered to a foreign trade zone (FTZ). For goods to be delivered to an FTZ, the importer is construed as the party filing the FTZ documentation with CBP. These 10 elements must be transmitted by the importer, as defined in these regulations, or its agent. Five elements are required for shipments consisting entirely of FROB and shipments consisting entirely of goods intended to be “transported” as immediate exportation (IE) or transportation and exportation (T&E) in-bond shipments.

For FROB, the importer is construed as the international carrier of the vessel arriving in the United States. For IE and T&E in-bond shipments, the importer is 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 must be provided, unless specifically exempted. The manufacturer (or supplier) name and address, country of origin, and commodity HTSUS number must be linked to one another at the line item level.

The ten required elements are:

(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.³

(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.⁴

(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 6 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 must be provided in order to enhance the security of the maritime environment.

The five required elements are:

(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.

² CBP is not proposing to amend the timing requirements in 19 CFR part 4 requiring submission of advance manifest information 24 hours prior to lading.

³ 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 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) *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 6 digit level. The HTSUS number is required to be provided up to the 10 digit level.

B. Public Comments; Required Elements

Comment

The Importer Security Filing should be based on the best information available at the time of filing. CBP, in consultation with the trade, should develop a process to amend a filing prior to arrival. An entry (CBP Form 3461, 7501 or 214) filed prior to arrival should be accepted as the amendment, except to change the name and address of the consolidator and/or place of container stuffing. CBP should issue frequently asked questions (FAQs) clarifying when an amendment is required or recommended.

CBP Response

Pursuant to existing 19 CFR 4.7(b)(3)(iii) and proposed 19 CFR 149.2(c), CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired Importer Security Filing 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.

Under the proposed regulations the party who filed the Importer Security Filing is required to update the Importer Security Filing 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.

Permission to divert T&E and IE shipments would be required. Such permission would only be granted upon receipt by CBP of a complete Importer Security Filing.

Finally, in order to maintain the integrity of the differences between the Importer Security Filing and commercial documents and to facilitate compliance with the Trade Act requirement not to use security information for trade compliance

purposes, CBP will not accept CBP Forms 3461, 7501, or 214 in lieu of an amendment to an Importer Security Filing.

Comment

CBP needs to provide instruction to the trade as to how to handle those situations where despite due diligence, all of the necessary data elements are simply not available 24 hours prior to loading. For example, importers may not know the container stuffing location, consolidator name and address, country of origin, and 6 digit HTSUS number 24 hours prior to lading.

CBP Response

CBP understands that, in some cases, business practices may have to be altered to obtain the required information in a timely fashion. CBP, however, will provide guidance in the form of FAQs, postings on the CBP website, and other outreach to the trade.

If an importer, as defined in these regulations, does not know an element that is required pursuant to the proposed regulations, the importer must take steps necessary to obtain the information. For example, the 6 digit HTSUS number is sometimes provided by members of the trade community on T&E and IE in-bond movements. Under the proposed rulemaking, CBP would allow importers to submit the HTSUS number at the 6 digit level. 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

Tier 3 C-TPAT members should be exempt from the Importer Security Filing requirement or, in the alternative, should be required to submit fewer than all of the required Importer Security Filing elements. Tier 3 C-TPAT supply chains have already been vetted by CBP. Why does CBP intend to repeat its risk assessment on each individual shipment?

CBP Response

CBP will use the Importer Security Filing to assess the risk of individual shipments. For purposes of this rulemaking, all cargo arriving to the United States by vessel, regardless of the parties involved, would be subject to the Importer Security Filing requirements. CBP is not proposing to allow 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 CBP scrutiny. Other related prerequisites 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

The Importer Security Filing should be done by a single party; however that party should be permitted to rely on information from more than one source for the purpose of preparing the filing. CBP and the trade should remain open to proposals for any viable means by which a single Importer Security Filing could be done by more than one party.

CBP Response

Under the proposed regulations, the importer, as defined in these regulations, is ultimately responsible for the timely, accurate, and complete submission of the Importer Security Filing. CBP is proposing to require that one party aggregate and submit all required elements. In response to requests from the trade, CBP is proposing to allow 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 to obtain the required information at an earlier point, CBP does not anticipate that these changes will be unduly burdensome.

Comment

CBP's current layered targeting approach, along with the additional Importer Security Filing data elements, such as container stuffing and consolidator data, provide CBP with the needed information with which to determine the last country of manufacture, production, assembly or shipping. Therefore, the current regulatory definition of country of origin as articulated by existing CBP regulations and free trade agreements should remain an option for satisfying the Importer Security Filing definition of country of origin.

CBP Response

CBP agrees. Under the proposed regulations, the country of origin is required to be provided for all goods that have been listed at least at the 6 digit HTSUS level. The proposed definition for this element is consistent with the country of origin as required on CBP Form 3461.

Comment

The security filing should require an HTSUS number at only the 6 digit level; however the system used for filing should be capable of accepting up to a 10 digit HTSUS number.

CBP Response

CBP agrees. Under the proposed regulations, the importer, as defined in these regulations, is required to provide the HTSUS number 24 hours prior to lading at the HTSUS number at the 6 digit level. However, importers may submit the HTSUS number up to the 10 digit level (they must use the 10 digit level if they plan to use the Importer Security Filing as part of an entry filing).

Comment

There should be no mandatory linking of the HTSUS number to the country of origin and manufacturer (or supplier) name and address data elements. If this linking is proposed by CBP in its NPRM, the agency must first ensure this specific topic is addressed in a separate cost/benefit analysis, with the participation of the trade, and the results separately reported, because the linking would potentially impose a significant cost burden on the trade both from a programming perspective and a service provider fee perspective. The data in question is also generally not provided at the line item level to foreign entities such as freight forwarders.

CBP Response

CBP disagrees. Under the proposed regulations, the manufacturer (or supplier) name and address, country of origin, and commodity HTSUS number elements must be linked to one another at the line item level. CBP has considered the economic impacts of this proposed rule in its cost, benefit, and feasibility study. A summary of this analysis is presented below, and the complete analysis can be found on the CBP website and the public docket for this rulemaking (*see www.regulations.gov*). Regarding the potential burden, the data is already provided to CBP at the line item level for entry and entry summary purposes. If an importer, as defined in these regulations, chooses to use a foreign

freight forwarder as an agent for Importer Security Filing purposes, the importer will need to provide this data to that party at the line item level.

Comment

The CBP proposal and data elements must include a bill of lading number.

CBP Response

The bill of lading number is necessary to link the carrier's submissions with the Importer Security Filing submission. Under the 24 Hour Rule, the carrier is required to provide the bill of lading number 24 hours prior to lading. Therefore, the importer, as defined in these regulations, or its authorized agent would be required to submit the bill of lading number when the importer elements are submitted.

Comment

The Importer Security Filing data elements and definitions should align with those of the World Customs Organization (WCO) SAFE Framework.

CBP Response

CBP agrees. CBP is working with the WCO to develop an amendment process that will enable the WCO Framework of Standards to adapt to changes in the international security environment. In addition, CBP will seek to make data elements consistent with (or have data elements included in) the WCO Data Model. CBP is concerned with ensuring that, to the maximum extent possible, the data elements and definitions required under the proposed Importer Security Filing regulations are consistent with the data elements and their meaning as currently required of importers under the commercial entry procedures.

Comment

The Importer Security Filing data elements and definitions should align with the ISO UNTEDE 2005 7372:2005 definitions and the Automated Commercial Environment (ACE)/International Trade Data System (ITDS) definitions.

CBP Response

CBP has considered, and will continue to consider, ISO definitions and the ITDS requirements during the development of the Security Filing initiative. As discussed in response to a comment above, CBP is preliminarily concerned with ensuring that, to the maximum extent possible, the data elements and definitions required under the proposed Importer Security Filing regulations are consistent with the data elements and their meaning as currently

required of importers under the commercial entry procedures.

Comment

Where possible the name and address of the actual manufacturer should be required. Where this is not known or the shipment consists of commingled articles, filers should indicate the name and address of the supplier in their security filing.

CBP Response

CBP agrees. Based on input from the trade, CBP is proposing to require the importer, as defined in these regulations, or his authorized agent, to provide the name and address of either the manufacturer or supplier of the finished goods in the country from which the goods are leaving.

Comment

The manufacturer identification (MID) number, as defined in CBP directives, should be accepted in lieu of the manufacturer (or supplier) name and address.

CBP Response

CBP disagrees. In general, the MID does not include the complete address of the manufacturer. CBP believes that the complete manufacturer's name and address (sometimes supplier in the country from which the goods are leaving in lieu of manufacturer) is a critical piece of information to effectively target high risk cargo. CBP believes that this information is readily available to importers because this is the underlying information necessary for creating the MID which is required for filing entry. The trade already has access to software that electronically converts the manufacturer's full name and address into the MID.

Comment

CBP should more clearly define the term "shipper" as used in the data definitions.

CBP Response

"Shipper" is not one of the data elements required under the proposed regulations, nor is it used in the definitions for the required elements.

C. Overview; Master Bills/House Bills

Under the proposed regulations, 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). Generally speaking, a master bill of lading refers to the bill of lading that is generated by the incoming carrier covering a consolidated shipment. A consolidated

shipment would consist of a number of separate shipments that have been received and consolidated into one shipment by a party, such as a freight forwarder or a NVOCC for delivery as a single shipment to the incoming carrier. The consolidated shipment would be covered under the incoming carrier's master bill. However, each of the shipments thus consolidated would be covered by what is referred to as a house bill. It is information from the relevant house bill that CBP is seeking for targeting purposes.

D. Public Comments; Master Bills/House Bills

Comment

When one shipment to one importer of record includes multiple bills of lading, only one security filing should be required. The multiple bills of lading should not be required to be identified at the line item level.

CBP Response

CBP agrees. Under the proposed rule, one Importer Security Filing can satisfy multiple bills of lading. However, the manufacturer (or supplier) name and address, country of origin, and commodity HTSUS number elements must be linked to one another at the line item level.

Comment

There should be capability for the Importer Security Filing to be done at the house bill of lading level with no reference to the master bill of lading.

CBP Response

CBP disagrees with this comment. It is necessary for the filer to reference the master bill of lading number in the Importer Security Filing in order for the house bill and master bill to be linked at a later date.

Comment

In the case of transshipped goods, the system programming should allow reporting at the house bill of lading level based upon the feeder vessel at time of loading, which can then be married to the arriving/mother vessel through AMS filing by that arriving/mother vessel.

CBP Response

CBP disagrees. Under the proposed rule, CBP is requiring that the Importer Security Filing be submitted at the lowest bill level, down to the house bill, and is requiring that the bill be the one under which the cargo is brought to the United States.

Comment

CBP should establish account profiles for importers of repetitive shipments. These accounts could be based on the ACE account example or the BRASS (line release) example at the U.S.-Canada and U.S.-Mexico borders. A repetitive low-security risk importer would then give its account information, together with anything unique/different about the specific shipment, in lieu of the full security filing.

CBP Response

CBP disagrees. CBP will use the Importer Security Filing to assess the risk of individual shipments. For purposes of this rulemaking, each and every shipment arriving to the United States by vessel would be subject to the Importer Security Filing requirements. As CBP continues to develop ACE, the agency will continue to make enhanced flexibility for the trade a top priority.

E. Overview; CBP-approved Electronic Interchange System

Under the proposed regulations, importers, as defined in these regulations, or their agents, would be required to 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 are the Automated Broker Interface (ABI) and the Vessel Automated Manifest System (AMS). If CBP approves a different or additional electronic data interchange system, CBP will publish notice in the **Federal Register**.

F. Public Comments; CBP-approved Electronic Interchange System

Comment

CBP should delay the implementation of the regulations until they can be implemented through ACE.

CBP Response

CBP disagrees. Pursuant to Section 203 of the SAFE Port Act, the Secretary of Homeland Security is required to promulgate regulations requiring additional data elements for improved high-risk targeting. After careful consideration, DHS has determined that immediate action is necessary to increase the security of containers entering the United States by vessel by improving CBP's risk assessment capabilities. CBP will take into account systems changes made by the trade to comply with this proposed rulemaking as ACE is developed.

Comment

Current access requirements to CBP systems need to be changed. CBP must eliminate the requirement that ABI filers have custom house broker licenses or be self-filers.

CBP Response

Pursuant to 19 CFR 143.1, importers, brokers, and ABI service bureaus are permitted to participate in ABI. In addition, other parties currently access ABI to transmit protests, forms relating to in-bond movements (CBP Form 7512), and applications for FTZ admission (CBP Form 214). CBP is proposing to amend 19 CFR 143.1 to clarify that importers, brokers, and, if they do not participate in "customs business," ABI service bureaus are permitted to participate in ABI for entry purposes. In addition, upon approval by CBP, any party may gain access to 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). In addition, CBP is proposing to amend 19 CFR 143.1 to permit any Importer Security Filing filer to gain access to ABI for the purpose of transmitting the Importer Security Filing if that party obtains a bond.

Comment

Flexibility of who may send the Importer Security Filing should be enhanced by allowing other formats and interfaces in addition to ABI and AMS.

CBP Response

CBP disagrees. As stated above, filing of the data elements through ABI and AMS is not limited to licensed customs brokers or importers filing their own submissions (ABI) or bonded carriers (AMS). CBP will continue to make enhanced flexibility for the trade a top priority as ACE is developed and is continuing to look at additional electronic interchange systems for transmission of CSMs.

Comment

CBP should transmit a confirmation or acceptance message confirming that the Importer Security Filing has been successfully filed. The acceptance message is not expected to validate the data transmitted, simply to confirm that it has been received in the required format.

In addition, query functionality should be designed into the system to provide the importer of record or its authorized agent visibility as to whether an Importer Security Filing has been made for a specific shipment. At the

same time, the system should be designed so that importers have full visibility, meaning they are able to read the actual data elements as filed and also who made the filing.

CBP Response

CBP agrees in part. CBP will provide, to the filer, electronic acknowledgement that the filer's submission has been received according to ABI and AMS standards. However, ABI and AMS filers will not have the ability to query whether an Importer Security Filing is complete, the actual data elements, or the identity of the party who filed the elements. CBP believes that communication between importers, as defined in these regulations, and their designated agents will be sufficient to inform the importer regarding the completeness and contents of a filing.

G. Overview; Authorized Agents

CBP is proposing to allow an importer, as defined in these regulations, as a business decision, to designate an authorized agent to file the Importer Security Filing on the importer's behalf. Under the proposed regulations, 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 and obtains a bond.

H. Public Comments; Authorized Agents

Comment

It is unfair to hold the importer liable for data filed by a foreign party, such as a foreign freight forwarder. The foreign filing party may make typographic errors for which the importer may be liable. The importer may not have any method of even checking the advance trade data that has been filed.

CBP Response

In response to requests from the trade, CBP is proposing to allow an importer, as defined in these regulations, to use an agent of the importer's choosing to submit the Importer Security Filing. CBP is not requiring the use of an agent. The importer is ultimately responsible for the timely, accurate, and complete submission of the Importer Security Filing.

Comment

Foreign freight forwarders need to be allowed to file the Importer Security Filing. The final rule needs to state that filing the Importer Security Filing does not constitute "customs business."

CBP Response

The Importer Security Filing would be a filing for security purposes, not for

any of the purposes identified under 19 U.S.C. 1641 or 19 CFR part 111. As such, the transmission of the Importer Security Filing alone would not constitute "customs business." As discussed below, if an importer chooses to have applicable elements of the Importer Security Filing used for entry purposes, the Importer Security Filing must be self-filed by the importer or filed by a licensed customs broker.

I. Public Comments; Requested Exemptions/Exclusions From Importer Security Filing Requirements

Comment

The security filing process should be created in such a way as to allow the capability to designate that the security filing for a specific type of shipment involves a transaction for which all the required information cannot be provided at time of filing. Examples include, but are not limited to: carnets, direct duty paid (DDP)/direct duty unpaid (DDU) shipments, consigned goods, returned goods, and samples.

CBP Response

CBP generally agrees. However, the examples provided by the commenter will not be automatically exempt from submitting the required importer elements. The proposed regulations require the importer, as defined in these regulations, or its authorized agent, to submit the importer elements of the Importer Security Filing. If an importer does not know an element that is required pursuant to the proposed regulations and CBP guidance, the importer must take steps necessary to obtain the information. If an importer believes that a required Importer Security Filing data element does not exist for a non-exempt transaction type, the importer should request a ruling from CBP prior to the time required for the Importer Security Filing. If the filing is for a shipment type that CBP has specifically designated exempt from an element or elements, CBP will allow the filer to designate the filing as one of several "exemption" types, including FROB and IE and T&E in-bond shipments. These "exemptions" are discussed more in-depth below. CBP will publish technical requirements regarding the input of data in ABI and AMS on the CBP Web site.

1. Bulk and Break Bulk Cargo

Comment

How should bulk and break bulk shipments be handled?

CBP Response

Under the proposed regulations, importers of bulk cargo are exempt from the proposed importer and carrier requirements for bulk goods when the goods are exempt from the requirement that the carrier file the cargo declaration 24 hours prior to loading.

For Importer Security Filing purposes, CBP is proposing to model the treatment of approved break bulk cargo as per the Trade Act regulations in 19 CFR 4.7(b)(4). CBP is proposing to require an Importer Security Filing for break bulk shipments, when the goods are exempt from the requirement that the carrier file the cargo declaration 24 hours prior to loading, 24 hours prior to arrival in the United States. For break bulk shipments, the name and address(es) of the physical location(s) where the goods were made "ship ready" must be provided for the container stuffing location element and the name and address of the party who arranged for the goods to be made "ship ready" must be provided for the consolidator (stuffer) name and address element.

2. Foreign Cargo Remaining on Board, IE and T&E In-bond Shipments, and Instruments of International Traffic

Comment

Foreign cargo remaining on board (FROB), Immediate Exportation (IE) and Transportation and Exportation (T&E) in-bond shipments, and instruments of international traffic (IIT) (e.g., containers, racks, pallets) should be exempt from the Importer Security Filing requirement in the near term. The final regulations should define additional transactions exempt from the Importer Security Filing including types of transactions identified by CBP in consultation with the trade.

CBP Response

CBP is not proposing to require an Importer Security Filing for IIT. However, CBP is proposing to require an Importer Security Filing for all other shipments arriving in the United States by vessel, including FROB and in-bond shipments, unless specifically exempted under the regulations. Under the proposed regulations, an Importer Security Filing is required for FROB, but because FROB is not destined to be received in the United States, the carrier would be required to submit the following data elements: booking party name and address, foreign port of unloading, place of delivery, ship to name and address, and commodity 6 digit HTSUS number.

Under the proposed regulations, an Importer Security Filing is required for

IE and T&E in-bond shipments. Because IE and T&E shipments are not destined to remain in the United States, CBP is proposing to require the party taking delivery in the United States to submit the following data elements: booking party name and address, foreign port of unloading, place of delivery, ship to name and address, and commodity 6 digit HTSUS number.

CBP is proposing to amend the regulations to require that, if at the time of submission of the Importer Security Filing, the goods are intended to be moved in-bond as an IE or T&E shipment, but later a decision is made to divert the goods, 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 in which the original in-bond documents were filed. Such permission would only be granted upon receipt by CBP of a complete Importer Security Filing.

J. Overview; Updating an Importer Security Filing

As discussed above, under the proposed regulations, the party who filed the Importer Security Filing is 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 are changes to the information filed or more accurate information becomes available.

K. Public Comments; Withdrawing an Importer Security Filing

Comment

CBP should establish a procedure for cancellation of an Importer Security Filing for goods not shipped, changes in itineraries, etc.

CBP Response

CBP agrees. The proposed regulations allow for the withdrawal of an Importer Security Filing when a shipment is no longer intended to arrive within the limits of a port in the United States.

L. Overview; Importer Security Filing, Entry, and Application for FTZ Admission

1. Importer Security Filing and Entry

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 commodity HTSUS number when provided at the 10 digit level. In an

effort to minimize the redundancy of data transmitted to CBP, after further consideration and in response to public comments, CBP is proposing to allow an importer to 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. In addition, the HTSUS number must be provided at the 10 digit level. Choosing this option does not relieve the requirement to submit all remaining Importer Security Filing elements (including the manufacturer (supplier) name and address) and entry and/or entry summary elements (including the manufacturer identification (MID) number).

Under the proposed rule, an importer can choose to do the following: (1) Submit the Importer Security Filing and entry and/or entry summary data with no connection between them; or (2) Submit the entry and/or entry summary data via the same electronic transmission as the Importer Security Filing. If the importer chooses this option, the importer would only be required to submit the 4 elements listed above once to be applied to the Importer Security Filing as well as the entry and/or entry summary. CBP will publish technical information regarding the transmission of entry and Importer Security Filing data in the appropriate guidance documents and on the CBP Web site.

2. Importer Security Filing and Application for FTZ Admission

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. In an effort to minimize the redundancy of data transmitted to CBP, the proposed regulations 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 chooses to have this element used for FTZ admission purposes, the HTSUS number must be provided at the 10 digit level.

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

Comment

CBP should allow for entry to be made when the Importer Security Filing is submitted.

CBP Response

CBP agrees. Under the proposed rule, an importer would be able to submit the entry and/or entry summary data via the same electronic transmission as the Importer Security 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.

Comment

The regulations should allow an importer to submit, in lieu of an Importer Security Filing, CBP Forms 3461, 7501, or 214. In the alternative, the regulations should allow an importer to submit, in lieu of an Importer Security Filing, CBP Forms 3461, 7501, or 214 along with the consolidator (stuffer) name and address and container stuffing location.

CBP Response

CBP appreciates the suggestions in this comment but disagrees. Importers, as defined in these regulations, or their authorized agents, are responsible for providing the complete Importer Security Filing 24 hours prior to lading. The other options suggested do not satisfy the proposed Importer Security Filing requirements. CBP Forms 3461, 7501, and 214, alone or in combination with the consolidator (stuffer) name and address and container stuffing location, do not contain the required elements. However, as discussed above, CBP is proposing to allow an importer to submit the entry and/or entry summary data via the same electronic transmission as the Importer Security Filing. In addition, CBP is proposing to allow applicants for FTZ admission to submit the country of origin and HTSUS number (when provided at the 10 digit level) once for both Importer Security Filing and FTZ admission purposes.

Comment

The advance trade data required represents a redundancy of information.

CBP Response

As discussed above, in an effort to reduce the redundancy of information presented to CBP, CBP is proposing to allow an importer to submit certain

elements once to be used for both Importer Security Filing and entry purposes and to allow applicants for FTZ admission to submit the country of origin and HTSUS number once to be used for both Importer Security Filing and FTZ admission purposes. To the extent feasible, CBP will continue to explore ways and methods to harmonize and synchronize information collection requirements.

Comment

CBP should extend the five-day minimum entry and selectivity time frame for entry release and FTZ admission purposes to after confirmed departure of the vessel from its last foreign port to the United States.

CBP Response

CBP disagrees. CBP does not propose to amend, at this time, the regulations generally governing entry release and FTZ admission of imported goods.

V. General Public Comments

A. Economic Analysis; Cost, Benefit, and Feasibility Study

Comment

Regulations compelling the advance submission of Importer Security Filing elements would impose substantial reprogramming and process redesign costs on importers. Furthermore, the compliance costs for an importer importing multiple products per container would be substantial. CBP should complete a cost/benefit and feasibility study and report, as recommended by the SAFE Port Act, before the final rule is published.

CBP Response

CBP has conducted a cost, benefit, and feasibility analysis as required under the SAFE Port Act. This analysis meets the requirements of Executive Order 12866 and Office of Management and Budget (OMB) Circular A-4 and has been reviewed by OMB. A summary of this analysis is presented below, and the complete analysis can be found on the CBP Web site and the public docket for this rulemaking (*see* www.regulations.gov). CBP is seeking comments on this analysis.

Comment

CBP has not had sufficient discussions with the trade community, particularly in view of the enormous impact that the proposal will have on the United States economy.

CBP Response

CBP disagrees. CBP has engaged and will continue to engage 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 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 TSN, the U.S. Chamber of Commerce, and the World Shipping Council (WSC). CBP also posted a “strawman” proposal on the CBP Web site along with a request for comments from the trade.

Comment

CBP has not provided any indication that it is in compliance with the requirements of section 343 of the Trade Act of 2002, including the requirement that the agency: “[account] for the extent to which the technology necessary for parties to transmit, and for CBP to receive and analyze, data in a timely fashion, is available.”

CBP Response

CBP is modifying existing systems to accommodate the proposed requirements. CBP has included the impacts to the trade to modify its processes as part of the cost, benefit, and feasibility study.

B. Protection of Confidential Information Presented to CBP

Comment

CBP should keep all the security filing data confidential from disclosure. The data should be held as not eligible for disclosure under 5 U.S.C. 552 *et seq.* or any other statute or regulation. For example, many U.S. firms do not want their federal tax identification number made available to others. The importer may not want the seller to know who the ultimate “deliver to” party is. The importer may fear back solicitation by the seller/exporter. In addition, the seller may not want the buyer to know the name and address of the actual manufacturer.

In lieu of the importer of record and/or consignee number, the filer should be able to indicate the name and address of the importer of record and ultimate consignee. American companies remain concerned about the misuse of the

importer of record number by parties to whom such information is generally not provided for business confidential and other similar reasons.

CBP Response

CBP agrees that we should keep Importer Security Filing, vessel stow plan, and container status message information confidential, except to the extent required by law. Pursuant to the authority under both section 343(a) of the Trade Act (19 U.S.C. 2071 note) and section 203(d) of the SAFE Port Act (6 U.S.C. 943(d)), CBP is proposing to amend 19 CFR 103.31a to include the Importer Security Filing elements (including the importer of record number), vessel stow plan information, and container status message information to the list of information that is per se exempt from disclosure under 19 CFR 103.12(d), unless CBP receives a specific request for such records pursuant to 19 CFR 103.5, and the owner of the information expressly agrees in writing to its release.

While the importer, as defined in these regulations, is proposed to be responsible for providing the Importer Security Filing 24 hours prior to lading, CBP is proposing to allow the importer to use a licensed customs broker, in addition to other parties, to submit the Importer Security Filing. CBP recognizes the concerns of parties in these instances about sharing their confidential business information. If an importer with confidential business interests chooses to use an agent to file, the importer may choose to execute confidentiality agreements to protect those interests. Pursuant to 19 CFR 111.24, customs brokers are required to keep information pertaining to the business of clients serviced by the broker confidential.

C. Test of Concept and Phase-in Enforcement

Comment

There should be a test of the concept and the mechanics of the advance data elements filing with a volunteer group before the concept moves to the phase-in period. The test should involve the proposed data set and should include the approved interfaces (such as ABI and AMS) for initial programming. In order for the test results to have the greatest validity, CBP should seek participation from parties in the supply chain who ship from varying parts of the world and include small, medium and large companies as well as those who ship using forwarders and those who do not. An invitation to participate in the testing should be published in the

Federal Register and on the CBP Web site.

CBP Response

As part of CBP's pre-existing Advance Trade Data Initiative (ATDI), CBP is working 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. The ATDI test results will assist CBP in understanding the various formats that are being used in the international trade community to share supply chain information. Under the foregoing circumstances, we do not believe that a new or separate test is needed to evaluate the practical requirements of this rule.

Comment

Once the final regulations are effective, CBP should adopt a phase-in period, during which CBP should publish FAQs addressing issues associated with the regulations and specific guidelines on how the phase-in will work and what rules will apply. CBP should include outreach to other countries.

CBP Response

CBP agrees. Regardless of when the regulations on this subject go into effect, CBP will adopt a phase-in enforcement process similar to that which was utilized when the 24-Hour Rule and Trade Act regulations were implemented. Depending on the circumstances, CBP may take an "informed compliance" approach following the effective date of this rule. Through the phase-in enforcement process, CBP will work with the trade to ensure informed compliance. CBP will continue to update the trade on issues associated with the proposed regulations in the form of FAQs, postings on the CBP website, other outreach to the trade, and consultation with foreign countries.

Comment

During any test period or phase-in period, CBP should consider requiring fewer than all of the Importer Security Filing elements and carrier elements.

CBP Response

CBP disagrees. Through discussions with the trade and through the development of ATDI, CBP has found that the elements required under the proposed regulations are generally available. Moreover, CBP does not agree that a phase-in period requiring fewer than all of the required Importer Security Filing elements and carrier

elements would fulfill the goal of enhancing the government's risk assessment capabilities.

D. Other General Comments

Comment

Some importers may not be aware of the Importer Security Filing requirement, especially those traveling overseas who happen to buy something to ship.

CBP Response

Under the proposed regulations, the importer, as defined in these regulations, is ultimately responsible for the timely, accurate, and complete submission of the Importer Security Filing. CBP will conduct outreach to the public and the trade, including postings to the CBP website to promote widespread knowledge of this requirement during the phase-in enforcement period following the final rule.

Comment

Shipments may be diverted to Canada or Mexico to avoid the proposed requirements.

CBP Response

CBP disagrees. This proposal is focused on ocean cargo primarily pursuant to the requirements under the SAFE Port Act. As such, this proposal is an incremental step toward meeting the goal of securing shipments to the United States. CBP does not expect shipments to be diverted to Canada or Mexico to avoid the proposed requirements. CBP will continue to evaluate the effectiveness of this rule and will consider additional steps, including expanding the advance data requirements for other transportation modes.

Comment

If containers cannot be laden aboard the vessel, based on existing service contracts, companies quite possibly will face delays while they await another vessel for the specified contract service. These types of delays would create additional security risks.

CBP Response

With regard to the concern that the proposed rule may adversely affect the efficiency of international shipping operations, CBP recognizes this legitimate concern and has taken steps to address it in the development of this rulemaking. First, it is important to note that under the proposed regulations, it is the information about the contents of a shipping container, not the container itself, that must be presented to CBP 24

hours prior to lading at a foreign seaport. Under this proposed rule, so long as the Importer Security Filing is provided to CBP 24 hours in advance of lading, the container itself may be brought to the seaport at a later time. Second, the development of this proposal has been designed to take advantage of the existing shipping cycle. In most foreign seaports, containers destined to the United States are often stored at terminals for several hours or several days before lading. This provides ample opportunity for CBP and its foreign CSI partners to identify and screen potentially high-risk containers within the normal shipping cycle and without causing any unnecessary delays. Third, by screening potentially high-risk containers at foreign seaports during the normal shipping cycle, CBP will use the additional advance information to further expedite low risk shipments. This should not only reduce delays associated with targeting and screening containers for security purposes upon arrival in the United States; it should also add greater predictability to the movement of containers through domestic seaports.

CBP recognizes that some changes to business practices may be required in order to transmit the data required under this proposed rule. For example, although much, if not all, of the data required by CBP is available prior to lading, CBP recognizes that businesses currently may not be configured to collect and transmit such information in compliance with the rule. This is one of the reasons that CBP is proposing to phase in enforcement of the rule—to strike an appropriate balance between the needs of business and the need of the government to address the immediate threat that international terrorist organizations pose to the United States and the global economy.

Comment

CBP should ensure that the information collected pursuant to the proposed regulations will be used exclusively for ensuring transportation safety and security, and not for any other commercial enforcement purposes.

CBP Response

CBP agrees. If the proposed regulations are adopted as final, pursuant to section 343(a)(3)(F) of the Trade Act of 2002, as amended by the MTSA, CBP will use the data required by this rule "exclusively for ensuring cargo safety and security and preventing smuggling" and will not use the data for "determining merchandise entry or for

any other commercial enforcement purposes.”

VI. Amendments to Bond Conditions

In order to provide a clear enforcement mechanism for the proposed requirements, CBP is proposing to amend regulations covering certain bond conditions to include agreements to pay liquidated damages for violations of the new proposed regulations. CBP is also proposing 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. As discussed above, upon implementation of the final rule, CBP will adopt a phase-in enforcement process for the new requirements similar to that which was utilized when the 24-Hour Rule and Trade Act regulations were implemented.

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

The proposed regulations would 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 is proposing to amend 19 CFR 113.62 to include a condition whereby the principal agrees to comply with the proposed Importer Security Filing requirements. 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.

The proposed regulations would also amend those provisions in 19 CFR 113.64 required to be included in an international carrier bond. Specifically, CBP is proposing 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 these regulations. 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, the proposed regulations would amend those provisions in 19 CFR 113.73 required to be included in a foreign trade zone operator bond. Specifically, CBP is proposing to amend 19 CFR 113.73 to include a condition whereby the principal agrees to comply with the Importer Security Filing requirements. 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. Bond Conditions Related to the Trade Act Regulations

The proposed regulations would also amend the liquidated damages amounts for violations of the advance cargo information requirements under 19 CFR 4.7 and 4.7a in order to make those amounts consistent with the liquidated damages amounts for violations of the proposed container status message requirements (\$5,000 for each violation) and more in line with the liquidated damages for violations of the proposed Importer Security Filing requirements. Accordingly, CBP is proposing to amend 19 CFR 4.7, 4.7a, and 113.64 to include liquidated damages amounts of \$5,000 for each violation of the advance cargo information requirements, to a maximum of \$100,000 per conveyance arrival.

VIII. 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 proposed rule has

been reviewed by the Office of Management and Budget (OMB). The following summary presents the costs and benefits of the proposed 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 this analysis, we first estimate current and future baseline conditions in the absence of the proposed 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 proposed rule. We then identify the incremental measures that importers and carriers will take to meet the requirements of the proposed 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 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 proposed regulation and estimate the reduction in the probability of a successful terrorist attack resulting from the proposed regulation that would be required for the benefits of the regulation to equal the costs of the regulation. Finally, we consider the distribution of costs to sensitive subgroups such as small entities and the energy sector.

As of the projected effective date of the regulation, we estimate that approximately 11 million import shipments conveyed by 1,200 different carrier companies operating 50,000 unique voyages or vessel-trips to the United States will be subject to the proposed 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;

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.

TABLE 1.—SUMMARY OF FINDINGS

Discount rate	Annualized costs (2008–2017, \$2007)	Terrorist attack scenario	Percent reduction in baseline risk that must be achieved for benefits to equal costs	Number of these events that must be avoided for benefits to equal costs	Comment
Alternative 1 (chosen alternative): Importer Security Filings and Additional Carrier Requirements, bulk cargo exempt					
3%	\$390 million to \$620 million.	Actual West Coast Port Shutdown (12-days).	25.6 to 41.0	One event in 2 to 4 years ...	Preferred Alternative: Most favorable combination of cost and stringency.
		Hypothetical Nuclear Attack	0.1 to 0.2	One event in 700 to 1,100 years.	
		Hypothetical Biological Attack.	0.9 to 1.4	One event in 70 to 100 years.	
7%	\$390 million to \$630 million.	Actual West Coast Port Shutdown (12-days).	26.1 to 42.0	One event in 2 to 4 years.	
		Hypothetical Nuclear Attack	0.1 to 0.2	One event in 600 to 1,000 years.	
		Hypothetical Biological Attack.	0.9 to 1.4	One event in 70 to 100 years.	
Alternative 2: Importer Security Filings and Additional Carrier Requirements, bulk cargo not exempt					
3%	\$390 million to \$620 million.	Actual West Coast Port Shutdown (12-days).	25.7 to 41.3	One event in 2 to 4 years ...	More stringent than Alternative 1, but limited expected additional benefit for increased cost.
		Hypothetical Nuclear Attack	0.1 to 0.2	One event in 700 to 1,100 years.	
		Hypothetical Biological Attack.	0.9 to 1.4	One event in 70 to 100 years.	
7%	\$400 million to \$640 million.	Actual West Coast Port Shutdown (12-days).	26.3 to 42.3	One event in 2 to 4 years.	
		Hypothetical Nuclear Attack	0.1 to 0.2	One event in 600 to 1,000 years.	
		Hypothetical Biological Attack.	0.9 to 1.5	One event in 70 to 100 years.	
Alternative 3: Importer Security Filings only, bulk cargo exempt					
3%	\$380 million to \$610 million.	Actual West Coast Port Shutdown (12-days).	25.5 to 40.3	One event in 3 to 4 years ...	Similar cost to Alternative 1 with decreased effectiveness. Importer Security Filings and Additional Carrier Requirements are not working in tandem.
		Hypothetical Nuclear Attack	0.1	One event in 700 to 1,100 years.	
		Hypothetical Biological Attack.	0.9 to 1.4	One event in 70 to 100 years.	
7%	\$390 million to \$620 million.	Actual West Coast Port Shutdown (12-days).	26.1 to 41.2	One event in 2 to 4 years.	
		Hypothetical Nuclear Attack	0.1 to 0.2	One event in 700 to 1,000 years.	
		Hypothetical Biological Attack.	0.9 to 1.4	One event in 70 to 100 years.	
Alternative 4: Additional Carrier Requirements only					
3%	\$3 million to \$12 million.	Actual West Coast Port Shutdown (12-days).	0.2 to 0.8	One event in 100 to 600 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	<0.1	One event in 33,000 to 160,000 years.	
		Hypothetical Biological Attack.	<0.1	One event in 4,000 to 18,000 years.	

TABLE 1.—SUMMARY OF FINDINGS—Continued

Discount rate	Annualized costs (2008–2017, \$2007)	Terrorist attack scenario	Percent reduction in baseline risk that must be achieved for benefits to equal costs	Number of these events that must be avoided for benefits to equal costs	Comment
7%	\$3 million to \$13 million.	Actual West Coast Port Shutdown (12-days). Hypothetical Nuclear Attack Hypothetical Biological Attack.	0.2 to 0.9 <0.1 <0.1	One event in 100 to 600 years. One event in 31,000 to 150,000 years. One event in 3,000 to 16,000 years.	

The annualized cost range presented in each cell results from varying assumptions about the estimated security filing transaction costs or fees charged to the importers by the filing parties, the potential for supply chain delays, and the estimated costs to transmit Vessel Stow Plans and CSMs to CBP.

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-shipment basis and applied to the estimated number of shipments annually for a period of 10 years (2008 through 2017). The 10-year calculation likely reflects the maximum time frame that we could reasonably project trends in international shipping. In addition, we estimate costs associated with potential delays in the supply chain that may result from having to meet the proposed filing deadline of 24 hours prior to lading at the foreign port. The estimated costs for the additional carrier requirements are developed on per-carrier and per vessel-trip bases and applied to the estimated number of carriers and vessel-trips in each year of the 10-year analysis period.

To estimate the full range of the total estimated costs for complying with the proposed 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 \$380 million to \$640 million, 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 \$3 million to \$13 million. However, this alternative is the least stringent and effective option, because it only collects data on the conveyance of

the shipment. Further, it does not meet the statutory requirements of Section 203 of the SAFE Port Act. Because costs are likely to exceed \$100 million annually, the proposed regulation represents an economically significant regulatory action as defined by E.O. 12866.

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 proposed regulation. 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 proposed 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 published literature. The analysis compares the annualized costs 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 break-even 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 proposed regulation must result in the avoidance of one such event in a time period of 600 to 1,100 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 proposed regulation. As a result, if the rule only reduced the risk of a single attack on a port, a shutdown would need to be avoided once in a period of two to four years for the benefits of the rule to equal costs. The results expressed as percent reductions in baseline risk also show higher reductions needed if port attacks only are mitigated (about 26 to 42 percent) 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 proposed regulation are presented in Table 2, based on the cost projections we estimate for the 10-year analysis period, 2008 through 2017. Applying a social discount rate of three percent, the total costs of Alternatives 1, 2, and 3 are projected to range from \$3.3 billion to \$5.3 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 social discount rate of seven percent is applied instead, total costs range from \$2.7 billion to \$4.5 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 estimated costs for Alternative 4 are significantly lower than the other three alternatives, ranging from \$19 million to \$104 million.

TABLE 2.—TOTAL PRESENT VALUE COSTS, 2008–2017
[\$2007]

Discount rate	Present value costs
Alternative 1 (chosen alternative): Importer Security Filings and Additional Carrier Requirements, bulk cargo exempt	
3%	\$3.3 billion to \$5.3 billion
7%	\$2.8 billion to \$4.4 billion
Alternative 2: Importer Security Filings and Additional Carrier Requirements, bulk cargo not exempt	
3%	\$3.3 billion to \$5.3 billion
7%	\$2.8 billion to \$4.5 billion
Alternative 3: Importer Security Filings only, bulk cargo exempt	
3%	\$3.3 billion to \$5.2 billion

TABLE 2.—TOTAL PRESENT VALUE COSTS, 2008–2017—Continued
[\$2007]

Discount rate	Present value costs
7%	\$2.7 billion to \$4.4 billion
Alternative 4: Additional Carrier Requirements only	
3%	\$0.02 billion to \$0.1 billion
7%	\$0.02 billion to \$0.1 billion

Again, the range presented in each cell results from varying assumptions about the estimated security filing transaction costs or fees charged to the importers by the filing parties, 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.

TABLE 3.—ANNUAL UNDISCOUNTED COSTS BY YEAR, 2008–2017
[\$2007, 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: Additional carrier requirements only
2008	\$300 to \$520	\$300 to \$520	\$290 to \$490	\$1 to \$30
2009	310 to 500	310 to 500	310 to 490	1 to 7
2010	330 to 520	330 to 530	330 to 520	1 to 7
2011	340 to 550	350 to 550	340 to 540	1 to 7
2012	360 to 580	370 to 580	360 to 570	1 to 8
2013	380 to 610	390 to 610	380 to 600	1 to 8
2014	400 to 640	410 to 650	400 to 630	1 to 8
2015	420 to 680	430 to 680	420 to 670	1 to 8
2016	450 to 710	450 to 710	450 to 700	1 to 8
2017	470 to 750	470 to 750	470 to 740	1 to 8

As shown in Table 3, the annual discounted costs increase from year-to-year over the 10-year analysis period. This increase reflects our projected annual increases in the number of shipments, value of shipments, and vessel-trips into the United States potentially affected by the proposed rule.

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 very 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, not high per-transaction costs. Shipment data indicate that the median value of a shipment of goods imported into the United States is approximately \$37,000. As shown in Table 4, the increase in costs of imported shipments will range from \$20 to \$38 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 0.05 percent to 0.10 percent of the median value of \$37,000 per shipment. CBP welcomes comments on these conclusions and the regulatory alternatives considered.

TABLE 4.—COSTS PER SHIPMENT, MEDIAN VALUE OF SHIPMENT, VESSEL-TRIP, AND CARRIER
[2007]

	3% discount rate	7% discount rate
Importer Security Filing Costs: Alternatives 1 and 3 (bulk cargo exempt)		
Total Present Value Cost	\$3.3 billion to \$5.2 billion	\$2.7 billion to \$4.4 billion
Number of shipments (10-year total)	137 million	137 million
Equivalent per shipment cost	\$24 to \$38	\$20 to \$32
Median value per shipment	\$36,900	\$36,900
Cost per median value	0.06 to 0.10 percent	0.05 to 0.09 percent
Importer Security Filing costs: Alternative 2 (bulk cargo not exempt)		
Total Present Value Cost	\$3.3 billion to \$5.2 billion	\$2.8 billion to \$4.4 billion
Number of shipments (10-year total)	138 million	138 million
Equivalent per shipment cost	\$24 to \$38	\$20 to \$32
Median value per shipment	\$37,200	\$37,200
Cost per median value	0.06 to 0.10 percent	0.05 to 0.09 percent
Vessel Stow Plan Costs: Alternatives 1, 2, and 4		
Total present value cost	\$6 million to \$35 million	\$5 million to \$30 million
Number of non-bulk vessel-trips, small and large carriers (10-year total)	414,000	414,000
Equivalent per vessel-trip cost	\$14 to \$84	\$12 to \$73
Container Status Message Costs: Alternatives 1, 2, and 4		
Total present value cost	\$0.3 million to \$54 million	\$0.3 million to \$49 million
Number of container carriers, large	74	74
Equivalent per carrier cost	\$4,000 to \$730,000	\$4,000 to \$660,000

The proposed regulation may increase the time shipments are in transit, particularly for shipments consolidated in containers. For such shipments, the supply chain is generally more complex and the importer has less control of the flow of goods and 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 is provided by the shippers to the importers (or their designated agents) and is then transmitted to and accepted by CBP in advance of the 24-hour deadline, consolidators may advance

their cut-off times for receipt of shipments and associated security filing data.

These advanced cut-off times would help prevent a consolidator or carrier 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, consolidators may require shippers to submit, transmit, or obtain CBP approval 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 would likely have to increase

the times they hold their goods as inventory and thus incur additional inventory carrying costs to sufficiently meet these advanced cut-off times imposed by their foreign consolidators. The high end of the cost ranges presented in Table 4 assumes an initial supply chain delay of 1 day (24 hours) for the first year of implementation (2008) and a delay of 12 hours for years 2 through 10 (2009–2017).

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. Because the proposed 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. However, due to data limitations, we cannot determine if these effects will be significant on a per-entity basis. Therefore, at this time, CBP cannot certify that the proposed rule will not have a significant impact on a substantial number of small entities. CBP seeks comments on this conclusion. (The detailed Initial Regulatory Flexibility Act analysis 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>).

A description of the reasons why action by the agency is being considered: the description of the proposed action is contained above.

A succinct statement of the objectives of, and legal basis for, the proposed 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 description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply: The proposed rule applies to all entities importing containerized, break-bulk, or Ro-Ro shipments into the United States. Under the chosen alternative, bulk shipments are exempt

from the proposed rule. The proposed regulation also applies to VOCCs transporting shipments via sea to the United States. The majority of the affected entities are likely to be small.

A description of the projected reporting, recordkeeping and other compliance requirements of the proposed 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 proposed rule are expected to be submitted electronically by importers or VOCCs (or an agent representing either).

An identification, to the extent practicable, of all relevant federal rules which may duplicate, overlap or conflict with the proposed rule: The data elements required to be submitted in this proposed rule are, largely, already required under existing Federal rules (e.g., the 24-Hour Advance Vessel Manifest Rule, customs entry requirements). The main impact of this proposed rule, in addition to increasing the number of required data elements, is to change the timeframe prior to departure from the foreign port and prior to arrival at the U.S. port in which submittal is required.

An establishment of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities: CBP does not identify any significant alternatives to the proposed rule that specifically address small entities. Alternative 1, under which bulk cargo is exempt, is the chosen alternative.

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 proposed 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*

There are three proposed collections of information in this document. The proposed collections are contained in 19 CFR 4.7c, 4.7d, and 149.2. This

information would 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 § 4.7c, a vessel stow plan would be 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.

Under § 4.7d, container status messages would be required from an incoming carrier for all containers laden with cargo 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 would 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 U.S. 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.

Under § 149.2, an Importer Security Filing, consisting of security elements of entry data for cargo destined to the United States, would be required from the importer, as defined in these regulations. For foreign cargo remaining on board (FROB), the importer would 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 would be construed as the party filing the IE, T&E, or FTZ documentation with CBP.

The collection of information encompassed within this proposed rule has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). 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.

Estimated Burden for Carrier Requirements Under § 4.7c

Estimated annual reporting and/or recordkeeping burden: 59,542 hours.

Estimated average annual burden per respondent/recordkeeper: 1 hour per Vessel Stow Plan per carrier.

Estimated number of respondents and/or recordkeepers: 958.

Estimated annual frequency of responses: dependent on number of vessel arrivals in the United States.

Estimated Burden for Carrier Requirements Under § 4.7d

Estimated annual reporting and/or recordkeeping burden: 6,753 hours.

Estimated average annual burden per respondent/recordkeeper: 15 minutes per day per carrier.

Estimated number of respondents and/or recordkeepers: 958.

Estimated annual frequency of responses: dependent on number of vessel arrivals in the United States.

Estimated Burden for Importer Requirements Under § 149.2

Estimated annual reporting and/or recordkeeping burden: 10,482,907 hours.

Estimated average annual burden per respondent/recordkeeper: 52.3 hours.

Estimated number of respondents and/or recordkeepers: 200,438.

Estimated annual frequency of responses: dependent on number of shipments to the United States.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also 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. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including

through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchases of services to provide information.

The list of approved information collections, contained in 19 CFR Part 178, would be revised to add an appropriate reference to sections 4.7c, 4.7d, and 149.2 upon adoption of the proposal as a final rule.

IX. 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).

X. Proposed 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.

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 192

Penalties, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

It is proposed to amend 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, and 192), as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

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.

* * * * *

2. Amend § 4.7 by:

- a. Revising paragraph (b)(2); and
- b. In paragraph (e), 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 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:

§ 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 § 4.7c of this part and the container status message requirements pursuant to § 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 § 4.30(n)(1)). The current approved system for presenting electronic cargo declaration information to CBP is the Vessel Automated Manifest System (AMS).

* * * * *

§ 4.7a [Amended]

3. Amend § 4.7a(f) 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 "in addition to damages under the international carrier bond of \$5,000 for each violation discovered", and 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".

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

§ 4.7c Vessel stow plan.

Vessel stow plan required. In addition to the advance filing requirements pursuant to §§ 4.7 and 4.7a of this part and the container status message requirements pursuant to § 4.7d of this part, for all vessels subject to § 4.7(a) of this part, except for any vessel exclusively carrying bulk cargo as prescribed in § 4.7(b)(4) of this part, the incoming carrier must submit a vessel stow plan consisting of vessel, container, and break bulk cargo information as specified in paragraphs (a)(2) and (3) of this section within the time prescribed in paragraph (a)(1) 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 and unit of break bulk cargo carried on each vessel:

(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.

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

§ 4.7d Container status messages.

(a) *Container status messages required.* In addition to the advance filing requirements pursuant to §§ 4.7 and 4.7a of this part and the vessel stow plan requirements pursuant to § 4.7c of this part, for all containers laden with cargo destined to arrive within the limits of a port in the United States from foreign 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 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 CSM data under this paragraph that the carrier does not otherwise create or collect on its own and maintain in its electronic equipment tracking system.

(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 shipped 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.

(e) *Additional container status messages.* 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 that data.

PART 12—SPECIAL CLASSES OF MERCHANDISE

6. The general authority citation for part 12 and specific authority citation for § 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;

* * * * *

§ 12.3 [Amended]

7. Amend § 12.3(b)(2) and (c) by removing references to “§ 113.62(l)(1)” and adding in their place “§ 113.62(m)(1)”.

PART 18—VESSELS IN FOREIGN AND DOMESTIC TRADES

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;

* * * * *

9. Amend § 18.5 by:

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

b. Adding a new paragraph (g).

The new paragraph (g) reads as follows:

§ 18.5 Diversion.

* * * * *

(g) For in-bond shipments which, at the time of transmission of the Importer Security Filing as required by § 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

10. The general authority citation for part 103 continues, and the specific

authority citation for § 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;

* * * * *

11. Revise § 103.31a to read as follows:

§ 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 § 103.12(d), unless CBP receives a specific request for such records pursuant to § 103.5, and the owner of the information expressly agrees in writing to its release:

(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 § 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 § 149.2 of this chapter;

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

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

PART 113—CUSTOMS BONDS

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

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

* * * * *

13. Amend § 113.62 by:

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

b. Adding new paragraph (j);

c. In redesignated paragraph (k)(2), removing the phrase “\$5,000 for each regulation violated” and adding in its place “\$5,000 for each violation”.

d. In newly designated 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)”;

e. In newly designated paragraph (m)(4), removing the reference to “paragraph (l)(1)” and adding in its place “paragraph (m)(1)”;

f. In newly designated paragraph (m)(5), removing the reference to “paragraph (k)” and adding in its place “paragraph (l)”.

The new paragraph (j) reads as follows:

§ 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 equal to the value of the merchandise involved in the default.

* * * * *

14. Amend § 113.64 by:

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

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

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

d. In redesignated paragraph (d), removing the phrase “\$5,000 for each regulation violated” and adding in its place “\$5,000 for each violation”.

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

§ 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 §§ 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 equal to the value of the merchandise involved in the default.

(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.

* * * * *

15. Amend § 113.73 by:

- Redesignating existing paragraphs (c) and (d) as paragraphs (d) and (e); and
- Adding a new paragraph (c).

The new paragraph (c) reads as follows:

§ 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 equal to the value of the merchandise involved in the default.

* * * * *

PART 122—AIR COMMERCE REGULATIONS

16. 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.

* * * * *

§ 122.48a [Amended]

17. Amend § 122.48a(c)(2) by removing the reference to “§ 113.62(j)(2)” and adding in its place “§ 113.62(k)(2)”.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

18. 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.

* * * * *

§ 123.92 [Amended]

19. Amend § 123.92(c)(2) by removing the reference to “§ 113.62(j)(2)” and adding in its place “§ 113.62(k)(2)”.

PART 141—ENTRY OF MERCHANDISE

20. The general authority citation for part 141 and specific authority citation for § 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.

§ 141.113 [Amended]

21. Amend § 141.113(b) by removing the reference to “§ 113.62(l)(1)” and adding in its place “§ 113.62(m)(1)”.

PART 143—SPECIAL ENTRY PROCEDURES

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

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

25. Revise § 143.1 to read as follows:

§ 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:

- Customs brokers as defined in § 111.1 of this chapter;
- Importers as defined in § 101.1 of this chapter; and
- 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 § 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 § 149.2 of this chapter if that party fulfills the eligibility requirements contained in § 149.5 of this chapter. If a party other than a customs broker as defined in § 111.1 of this chapter or an importer as defined 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 § 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

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.

27. Amend § 146.32 by:
- Removing all references to “Customs Form 214” and adding in their place “CBP Form 214”;
 - Redesignating paragraph (a) as paragraph (a)(1); and
 - Adding a new paragraph (a)(2).
- The new paragraph (a)(2) reads as follows:

§ 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:

- Country of origin; and
- Commodity HTSUS number if this number is provided at the 10 digit level.

* * * * *

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

PART 149—IMPORTER SECURITY FILING

Sec.

- Definitions.
- Importer security filing—requirement, time of transmission, verification of information, update, withdrawal.
- Data elements.

- 149.4 Bulk and break bulk cargo.
 149.5 Authorized agents.
 149.6 Entry and/or entry summary documentation and Importer Security 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.

§ 149.1 Definitions.

(a) *Importer.* For purposes of this part, “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 is 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 is construed as the party filing the IE, T&E, or FTZ documentation.

(b) *Importation.* For purpose 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.

§ 149.2 Importer security filing—requirement, time of transmission, verification of information, update, withdrawal.

(a) *Importer security filing required.* With the exception of any bulk cargo pursuant to § 149.4(a) of this part, the importer, as defined in § 149.1 of this part, or authorized agent (*see* § 149.5 of this part) must submit in English the Importer Security Filing elements prescribed in § 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 § 149.4(b) of this part and foreign cargo remaining on board (FROB), CBP must receive the Importer Security Filing no later than 24 hours before the cargo is laden aboard the

vessel at the foreign port. For FROB, CBP must receive the Importer Security Filing 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.

§ 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 6 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) name and address, country of origin, and commodity HTSUS number must be linked to one another at the line item level.

(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.

(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.

(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, as defined in § 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.

(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, as defined in § 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.

(7) *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 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.

(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.

(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.

(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 must be provided to the 6 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.

(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 6 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.* 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 6 digit level. The HTSUS number may be provided to the 10 digit level.

§ 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 § 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, importers, as defined in § 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 § 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, importers, as defined in § 149.1 of this part, of break bulk cargo are also exempt with respect to that cargo from the requirement set forth in § 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 § 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 importers must still report 24 hours in advance of loading any containerized or non-qualifying break bulk cargo they will be importing.

§ 149.5 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 § 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. Also, any Importer Security Filing filer must possess a basic importation and entry bond containing all the necessary provisions of § 113.62 of this chapter, an international carrier bond containing all the necessary provisions of § 113.64 of this chapter, or a foreign trade zone operator bond containing all the necessary provisions of § 113.73 of this chapter.

(b) *Powers of attorney.* Authorized agents must retain powers of attorney and make them available to representatives of Customs and Border Protection upon request.

§ 149.6 Entry and/or entry summary documentation and Importer Security Filing submitted via a single electronic transmission.

If the Importer Security Filing is filed pursuant to § 149.2 of this part via the same electronic transmission as entry and/or entry summary documentation pursuant to § 142.3 of this chapter, the importer is only required to provide the following fields once to be used for Importer Security Filing, entry, and/or 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 192—EXPORT CONTROL

29. 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.

§ 192.14 [Amended]

29. Amend § 192.14(c)(4)(ii) by removing the reference to “§ 113.64(g)(2)” and adding in its place “§ 113.64(k)(2)”.

Dated: December 14, 2007.

W. Ralph Basham,

Commissioner, Customs and Border Protection.

Approved:

Dated: December 21, 2007.

Michael Chertoff,

Secretary.

[FR Doc. E7–25306 Filed 12–31–07; 8:45 am]

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OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

32 CFR Part 1701

Privacy Act Regulations

AGENCY: Office of the Director of National Intelligence.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides the public the guidelines under which the Office of the Director of National Intelligence (ODNI) will implement the Privacy Act of 1974, 5 U.S.C. 552a, as amended. The proposed regulation describes agency policies for collecting and maintaining personally identifiable records and processes for administering requests for records under the Privacy Act. In addition, as permitted by the Privacy Act, subsections (j) and (k), and in accordance with the rulemaking procedures of the Administrative Procedures Act, 5 U.S.C. 553, the ODNI proposes exempting several new systems of records of the National Counterterrorism Center (NCTC), the Office of the National Counterintelligence Executive (ONCIX), and the Office of the Inspector General (OIG) from various provisions of the Act. The ODNI further proposes that exemptions invoked by agencies whose records the ODNI receives continue in effect where reasons for the exemption remain valid. Subpart C of this regulation proposes routine uses applicable to more than one ODNI Privacy Act system of records.