



Memorandum

To: WSC Security Advisory Committee Members

**Re: Summary of Meeting with Customs and Border Protection (CBP) on
10 + 2 Interim Final Rule**

Date: December 12, 2008

Yesterday the Council and WSC member company representatives met with CBP officials to discuss questions relating to the agency's recently published 10 + 2 interim final rule (IFR). CBP participants included Rich DiNucci, Elise Modesto, Sabat Choudry, Chuck Miller (Contractor), and Peggy Rutledge (Contractor) representing the Office of Field Operations (OFO) and two attorneys from the Office of Regulations and Rulings (ORR).

At the start of the meeting Mr. DiNucci provided an overview of the IFR. As noted in previous WSC updates, the rule becomes effective on January 26, 2009 after which there will be a 12 month flexible enforcement period which applies to carriers as well as importers. During this period CBP will not issue penalties or "Do Not Load" messages. CBP will, however, contact carriers by phone to reconcile cases of unmanifested containers, which represent the agency's primary security objective with the rule.

Mr. DiNucci stated that CBP expects carriers to begin transmitting stow plans, container status messages (CSM) and importer security filings (ISF) (for FROB (Freight Remaining On Board) and carrier-issued IE (Immediate Export) and T&E (Transport and Export) in-bonds) on January 26, 2009. He qualified this statement by noting that CBP understands that some carriers may not be able to transmit complete or accurate filings – particularly ISFs -- immediately after the effective date. Mr. DiNucci also noted that CBP has tested its systems and can handle the volume of filings it expects. Carriers that fail to begin transmitting will be contacted by CBP to discuss the circumstances causing their inability to file. Other compliance feedback will be provided through phone and email communications from AMS client representatives and OFO staff. CBP will only take enforcement action during the flexible enforcement period in extreme cases such as a legitimate national security risk or intentional transmission of incorrect data.

Mr. DiNucci commented that CBP has a good working relationship with the Council and its Member companies and will work in good faith with carriers to encourage compliance and provide timely feedback. After the initial discussions, the meeting turned to the list of questions the Council circulated to Members and CBP on December 9th. We have

inserted CBP's responses to each question below. Please contact Doug Schneider (dschneider@worldshipping.org or 202-589-1227) if you have any questions on the interim final rule.

Stow Plans

1. **Stow Plan Amendments:** In our previous comments in response to the NPRM, WSC sought clarity regarding when amendments to stow plan filings would be expected. The interim rule leaves this issue unclear. CBP made it clear that the purpose of the stow plan submission is to "identify potentially unmanifested containers". It is understood that if a carrier found a stow plan error reflecting on the presence of a previously unreported container onboard, an immediate amendment would be needed. That is the point of the stow plan filing.

Other data changes and minor errors that have nothing to do with whether a container is on board that has not been manifested, however, could raise the possibility of many amendment filings for little, if any, purpose. CBP's reply that a new plan submission is necessary "immediately upon discovery of any inaccuracies" (p.71740) would indicate that the agency may want any discovered inaccuracy in a stow plan to result in a new submission. This is impractical.

For reasons explained in the Council's comments in the NPRM (see comment #23, page 15), this policy makes little sense if taken literally. For example, equipment size may be misstated, and an amendment would not be warranted if the stow plan calls a 45 ft container a 40 foot container. Containers may be stowed out of sequence by the terminal operator; that should not require an amended filing. The port of discharge may be changed, but normal business practice may be *not* to amend the stow plan; this information is already being transmitted to CBP via an AMS amendment. None of these situations should raise a security concern, a validation or enforcement effort, or a need to amend the stow plan.

Clarity is needed regarding which changes or errors, if any, other than a previously unreported container, would warrant a stow plan amendment, and when or how frequently they would need to be filed (for example, might there be one submission of non-critical amendments prior to the arrival of the ship?) Further discussion on these issues is needed.

RESPONSE: CBP used its 2002 Trade Act authority to write the IFR. Consequently, the agency expects filers to use the best information available to them in stow plans, CSMs and ISF filings, not 100% perfect information.

CBP reiterated that the primary utility of the stow plans is to identify unmanifested containers. The identification by the carrier of unmanifested containers in a stow plan should immediately trigger a re-filing of a corrected stow plan.

CBP does not intend to require amendments or issue penalties for errors on minor stow plan data elements that would not impact the agency's unmanifested container assessment. For example, an amendment would not be necessary if a stow plan calls a 45 foot container a 40 foot container. In another example, a change in the port of discharge, which would already be reported to CBP in the AMS manifest amendment, would not necessitate an amended stow plan filing.

In short, Mr. DiNucci indicated that CBP would take a reasonable approach, understood that minor changes or errors were not the focus of the agency's interest, and that the focus of the stow plan is to identify any unmanifested containers that may be on an arriving ship

2. **Stow Plan Accuracy and Enforcement:** CBP's discussion of stow plans in the preamble to the Interim Rule states:

“While prior to this interim final rule, stow plans were not created to meet regulatory requirements, *CBP is requiring, through this rulemaking, that vessel carriers submit accurate and timely stow plans for containerized cargo.... CBP enforcement actions may include, but are not limited to, claims for liquidated damages...*” (p 71739)

The Commentary also states: “a carrier must submit a new accurate stow plan immediately upon discovery of any inaccuracies. However, the carrier will still be liable for enforcement actions resulting from the inaccurate vessel stow plan.” (p. 71740).

This is the kind of “gotcha” enforcement regime that CBP officials repeatedly stated would not be the way this initiative would be implemented or enforced. We are concerned that the written commentary in the Interim Rule is inconsistent with the long-standing understandings that the carrier community thought it had about the provision of these operational data documents.

As noted above, there are aspects of presumably every vessel stow plan that contain inaccuracies. Carriers understand and accept that inaccuracies regarding what boxes have been stowed onboard would be a problem that needs to be corrected immediately to address the purpose of the regulation, namely to “identify potentially unmanifested containers”.

Other data in stow plans cannot realistically be held to a 100% accuracy standard, and minor discrepancies are not appropriate for penalties.

Further discussion with CBP is necessary to address this issue of what level of accuracy can be reasonably expected for all the various elements of a vessel stow plan.

RESPONSE: Please refer to the response under Question #1 above.

3. **Foreign-U.S.-Canada-U.S. Voyages:** As noted in our comments to the NPRM, if a carrier operates a service such as Japan – U.S. – Canada – U.S. – Japan, does CBP expect the carrier to submit a stow plan to the U.S. after departing Canada? If so, CBP must recognize that the second stow plan (filed after departing Canada) would contain U.S. exports, which would not be manifested like U.S. imports due to the differing regulations, as well as timing challenges.

RESPONSE: CBP will require the carrier to file a stow plan after departing Canada as described in the scenario above. CBP reported that its systems can filter out U.S. export cargo information.

4. **Stow Plan Formats:** Carrier X uses BAPLIE version 1.5. It understands that CBP will take the BAPLIE in any UNEDIFACT or ANSI X.12 format, in addition to AMS, secure FTP and email. Please confirm that this is correct.

RESPONSE: The carrier may file the BAPLIE in the 3S and BG UNEDIFACT formats. Once the M1 functionality in the Automated Commercial Environment (ACE) has been implemented in mid-2009, carriers may also file the BAPLIE using the 324 ANSI X.12 format.

5. **Codes:** Vessel operators may use their own codes to identify ports, container operator, and container types/sizes. We understand that they may continue to do so. Please confirm that this is correct.

RESPONSE: Vessel operators will need to use the codes that are listed in the format definitions for each message set. The format definitions for “ports” will accept Schedule K, D, and UN codes.

6. **Container Operator Codes:** Has CBP determined that it can work with container operator translation tables provided by each line? Is there a need to discuss container operator code standardization?

RESPONSE: Vessel operators will need to use the codes that are listed in the format definitions for each message set. The format definitions for “container operator” will accept only the SCAC or BIC code.

7. **Port of Discharge Data:** Containers will often have the port of discharge changed before vessel arrival. Stow plans may not be amended to reflect these changes, although AMS cargo declaration filings may be amended. If CBP expects stow plans to be amended for this data change, we would appreciate understanding why.

RESPONSE: CBP will not require stow plans to be amended if the port of discharge changes.

8. **Receipt Messages:** Would CBP please explain how it will acknowledge stow plan receipt, how the receipt transmission will work, and what will be its content? Will it have a unique identifier? Is that identifier to be used if amendments are to be filed?

RESPONSE: Today, in response to a stow plan filing, the vessel operating carrier will receive an “unmanifested container” status notification message that will identify any unmanifested containers in the stow plan. Once ACE M1 functionality has been implemented, the vessel carrier will receive a “receipt of stow plan” message followed by an “unmanifested container” status notification message. CBP urges vessel carriers to address cases of unmanifested containers immediately upon notification.

9. **Receipt Messages #2:** Will CBP send an acceptance or incomplete message to all the container operators on the stow plan, or just to the vessel operator that filed the stow plan?

RESPONSE: CBP currently plans to provide the “unmanifested container” status notification messages to the vessel operating carrier and not to the container operator. CBP advised that it may be willing to reconsider this approach and recommended that the Council submit further comments on this issue.

10. **Receipt Messages #3:** If CBP fails to accept/pull in the stow plan transmission sent by a carrier, will the carrier be notified that there is an issue, or does the filing carrier need to actually look for a receipt message and then assume if there is no receipt message that there is an issue or problem?

RESPONSE: For all stow plan filings, the carrier will receive an “unmanifested container” status notification message within a few minutes after transmitting the stow plan to CBP (depending on the size of the transmission). This message will list any containers (by container number) that appear in the stow plan but not in the cargo manifest filing. Status notification messages will still be sent to carriers if no unmanifested containers are identified in the stow plan filing.

11. **Breakbulk/RoRo:** For a breakbulk/RoRo vessel that has containers on board, does the vessel have a choice of submitting either the portion of the stow plan relating to containers, or, if it prefers, the entire vessel stow plan?

RESPONSE: As long as the carrier submits information documenting all containers on board the ship, CBP will allow the carrier the choice to file either the portion of the stow plan relating to containers or the entire stow plan. CBP reminds carriers to follow the format requirements for the filings.

RESPONSES TO ADDITIONAL STOW PLAN QUESTIONS PRESENTED TO CBP DURING THE MEETING:

Stow Plan Filing Timelines: Some carriers reported that because they cannot file stow plans from their mainframe data systems 24/7 there may be cases where a stow plan filing would be 12 to 24 hours late. CBP encouraged carriers to do their best to submit stow plans by the published deadline (48 hours after the vessel departs the last foreign load port enroute the United States). CBP noted that carriers would not be subject to penalties in 2009 for late stow plan filings and recommended that the Council file comments to CBP discussing this issue in further detail.

Secure File Transfer Protocol (sFTP) Filing Locations: A carrier requested confirmation that CBP's sFTP locations would remain stable during the implementation period. CBP stated there would be no changes to the sFTP locations, which remain "USCBP04" and "USCBP06".

Importer Security Filings

12. **Validation:** When a carrier files an ISF, will the data elements be validated in AMS upon receipt, and an AMS Error message sent back to the carrier in the same fashion that Manifest & BL transmissions are validated today?

RESPONSE: Yes, the ISF filing will be validated upon receipt and the carrier will receive a message back indicating discrepancies.

Carriers that file "unified filings", which contain both the AMS manifest information plus the ISF data elements, will receive a "reject" message indicating the entire filing has been rejected if there are discrepancies (such as empty fields) in the ISF portion of the unified filing. Minor changes (such as piece count changes) to the manifest portion of the unified filing that do not require a delete/add of the AMS filing may be performed without re-submitting the entire unified filing.

13. **Disposition Codes:** When will AMS start sending ISF Disposition Codes S1, S2, S3, S4, and S5? Is it correct that if an importer submits an ISF that generates one of these codes that the filer receives the code and not the carrier, and that if the carrier files the ISF, it would receive any generated disposition code?

In reference to Disposition Code S5, what is the meaning/significance of an ISF being cancelled? What needs to happen then?

RESPONSE: AMS will generate ISF disposition codes in cases where there is no bill of lading associated with the ISF filing upon its submission and 5, 10, and 30 days thereafter. Disposition codes will be sent to the ISF filer, the bill of lading filer identified in the ISF, and any second notify parties listed in the ISF. If 30 days pass and no bill of lading has been associated with the ISF filing, the filing will be "cancelled", which means it will remain in AMS but will no longer be evaluated to check for an associated bill of lading on file. If a carrier re-sends a corrected ISF, as long as the bill of lading reference

number is present, the ISF filing will not be rejected for having no associated manifest on file.

14. **Ship To Party**: This party is defined as “the first deliver-to-party scheduled to physically receive the goods after the goods have been released from custody”. WSC comments had requested that the agency adopt a clearer definition, namely “the party to whom the carrier is to deliver the goods under the carrier’s contract of carriage”. The “released from custody” language in the ISF context is drafted to refer to CBP release, which has no meaning for FROB cargo.

WSC would like to propose that CBP confirm, for FROB/IE and T&E cargo where the ocean carrier must file an abbreviated ISF, that CBP agree that the “ship to” party can be “the party to whom the carrier is to deliver the goods under the carrier’s contract of carriage”.

RESPONSE: CPB agreed to accept our proposed “ship-to” party definition for FROB cargo, which is: “the party to whom the carrier is to deliver the goods under the carrier’s contract of carriage”.

15. **Six Digit Commodity Code**: WSC comments on the proposed rule requested that this not be required of ocean carriers for ISF filings they may need to make. CBP retained the requirement in the interim rule; however, the agency recognizes that it must not be too rigid with respect to commodity descriptions, noting that this will be subject to “flexibility as to interpretation” and that the carrier is entitled to use its best judgment “based on the facts available at the time”. While the timing of providing this information 24 hours before loading is retained, it would seem that CBP is suggesting that good faith carrier attempts to provide 6 digit HTS cargo descriptions would be acceptable. This is an issue that will warrant further discussion with CBP.

RESPONSE: CBP expects vessel carriers and importers to do their best to submit the full 6-digit HTS number. CBP noted, however, that they will be flexible and provide feedback during the phase-in period. CBP stressed that the narrative cargo description and HTS number must be reasonably consistent.

16. **Notice of ISF Filing**: CBP will send a notice of ISF filing to the bill of lading issuer and second notify parties. We request that CBP confirm that there is no obligation under the interim rule on the ocean carrier to do anything with this information when it is received. Specifically, we request confirmation of our understanding that the ocean carrier is not obligated to make sure that there is an ISF notice of filing for each of its bills of lading. We would appreciate understanding CBP’s rationale behind the generation and use of this notice, and whether each acknowledgment of receipt will have a unique identifier.

RESPONSE: CBP will transmit notices of ISF filings to the ISF filer, the bill of lading issuer and second notify parties. CBP noted that there is no requirement that carriers use or respond to the notice of ISF filing in any way.

17. **Single Transmission for 1302 and FROB, IE and T&E:** CBP comments provide: “...in response to requests from the trade, CBP will allow carriers to submit an Importer Security Filing for IE, T&E or FROB cargo and the advance cargo declaration via the same electronic transmission.” (p. 71745) This appears helpful as it appears to envision a unified, single filing in AMS for carriers. We would appreciate further discussion with CBP to understand how this will work and that this is the case.

For example, is it necessary to send the ISF filing wrapped within the ACR/ZCR of existing AMS transactions, or does the ISF data need to be filed separately?

For example, if the ISF and manifest filing is combined and a BL amendment is transmitted to AMS for non-ISF data elements, does the ISF data have to be re-sent in the transaction? Or is only the non-ISF portion of the BL data sent? If ISF data does not have to be sent with every Amendment, is there a problem if it is sent anyway?

RESPONSE: As noted in Question #12 above, carriers may choose to file “unified filings”, which contain the advance cargo declaration plus the ISF filing, or they may choose to transmit each filing individually. Unified filings may be transmitted today in AMS via CAMIR or X.12. When M1 in ACE is rolled out in mid-2009, it too will provide the functionality to file unified filings.

If a carrier wishes to make an amendment (other than a minor edit) to the cargo declaration portion of the unified filing, the carrier will need to delete and then re-transmit all of the unified filing data elements. If, however, the carrier files the 1302 and ISF in separate transmissions, only the affected transmission would need to be amended as long as the bill of lading number, which ties the two data sets together, remains unchanged.

During the meeting some carriers noted that they expect to have difficulty obtaining the “booking party” field for the ISF filing, particularly in the early stages of this new rule’s implementation. Leaving it blank would cause it to reject the ISF, which, in a unified filing, would reject the entire filing. CBP advised carriers who have this problem with any ISF data element to input the best information they have into this element and then notify CBP (email the AMS client representative and Mr. DiNucci at richard.dinucci@dhs.gov) what data they are using instead of the required element. CBP will work with the carriers to improve the quality and accuracy of the ISF data during the phase-in period.

18. **FROB Cargo Containers that May Involve NVOCC House Bills.** The interim rule commentary provides that NVOCCs are not required to file ISFs for FROB cargo (p.71744), but it provides that that: “CBP is requiring an Improper Security Filing at the lowest level to the house bill of lading level, if applicable.” The interim rule provides that ocean carriers are to file ISFs for FROB, but they do not have NVOCC house bill level information or house bill booking party information. CBP commentary notes that “the NVOCC can submit the ISF directly to CBP, *if it does so as the vessel operating carrier’s agent*” (p. 71744).

We are concerned that this will create substantial confusion and is not workable.

- Is the intent of CBP to legally require ocean carriers to file NVOCCs' customer (booking party) information for FROB, IE and T&E cargo? This data may be commercially sensitive. Most NVOCCs will not provide this information to a carrier.
- In a co-loaded container, how would an ocean carrier obtain a co-loading NVOCC's booking party information? The ocean carrier may not even know if there are co-loading NVOCCs in the container. Is CBP trying to require the master NVOCC to obtain the customer lists of its co-loading NVOCCs and then share them with the ocean carrier? If so, it needs to require that of the master NVOCC who has the information.
- An ocean carrier will not know who the "ship to" party is under an NVOCC's contract with its customer.
- Ocean carriers will know the "place of delivery" that they have contracted for, but they will not know what an NVOCC may have contracted for.

CBP requires NVOCCs to submit 24 Hour Rule manifest data for FROB shipments. CBP is going to allow a single transmission of 1302 and FROB data (see question above). So, if the NVO is already required to make a filing to CBP in AMS for the FROB shipment, why shouldn't the NVO file the ISF information for the FROB shipment too? - particularly when 1) it is the party which has the relevant information, and 2) the Trade Act requires the party with direct knowledge of the information to be the party providing it to CBP.

We believe NVOCCs may see this as a problem too. Discussion with CBP is needed.

IE and T&E Issues with House Bills

This issue of filing such ISF data at a house bill level for IE and T&E shipments also warrants discussion, as it may be even more complicated and problematic. In those cases, there is no mandatory NVOCC cargo declaration filing in AMS, and it is not clear how an ocean carrier can be expected to get house bill and house booking level data from foreign freight forwarders for such cargo movements. Further, it is not clear how an ocean carrier or CBP would even know if the forwarder with whom the ocean carrier is doing business is moving the goods under house bills of lading (as an NVOCC) or as agent for the shipper (which may be permitted in non-U.S. trades).

RESPONSE: In presenting this question to CBP, the Council pointed out that it was impractical for the ocean carrier to submit ISF data elements at the house bill of lading level, and that NVOCCs would be highly unlikely to provide ocean carriers with this information because it is business sensitive. CBP acknowledged the difficulty in

complying with this portion of the IFR and noted that AMS will remain configured to accept carriers' ISF filings without the associated ISFs at the house bill level.

The Council requested that CBP provide clarity on its rationale for this approach when CBP rules require today vessel carriers file their cargo declarations at the master bill level and NVOCCs file their cargo declarations at the house bill level. CBP did not provide any explanation for their approach.

Mr. DiNucci fully recognizes that this part of the IFR is a problem and that compliance is highly problematic. He stated that CBP wishes to work with the Council and its member companies early next year to consider whether viable alternatives could be identified to the approach taken in the IFR.

The Council does not expect any significant action on this effort until January at which time we will communicate a more detailed assessment of this issue to Members. If Members do not provide house bill level ISF data to CBP for this cargo, there should be no consequences for the foreseeable future and until the industry has had a chance to further address this issue with CBP in 2009.

In short, everyone knows this part of the IFR is a problem that needs a resolution, and that we will work with the agency on it during the coming year.

19. **FROB, IE or T&E Becomes U.S. Import Cargo:** For a FROB, IE or T&E shipment, the carrier is deemed the ISF importer and must file an abbreviated five data element ISF. Consider what happens, when after sailing, the shipper then changes the shipment to U.S. destination and discharge, as it is legally entitled to do.

- A) Who is responsible for filing the complete 10 ISF data elements?
- B) When?
- C) What would be the consequences of such a change?
- D) Is there a unique ID number for the carrier ISF filing that now becomes the importer of record's responsibility to amend?

RESPONSE: CBP stated unequivocally that the importer would become the party responsible for filing the full 10 element ISF to CBP. There should be no operational consequences to the carrier. CBP stated that it understands that it will need to work out an enforcement protocol to prevent importers from using this approach as a loophole to avoid filing a complete 10 element ISF prior to lading prior to vessel loading.

If the conversion of FROB cargo to U.S. import cargo results in the creation of a split bill of lading, the importer is responsible for ensuring a new ISF is filed for the new bill of lading.

CBP confirmed that a carrier, if it so wishes, could file the additional 5 ISF data elements as the importer's agent. In such a case, the carrier would need to file the 10 element ISF as a stand alone (i.e. not unified) filing.

20. **Rolled and Split Shipments:** WSC comments requested clarity on whether a new ISF filing would be required for such shipments. CBP responded that when a new bill of lading number is created, a new ISF is required. A rolled shipment that does not change the B/L number would not need a new ISF filing. The more specific examples that our comments sought guidance on were not addressed – for example, where B/L numbers automatically include the voyage number, a changed voyage would technically create a new B/L number even though everything else would remain the same and an audit trail exists. This issue warrants further discussion with CBP.

RESPONSE: CBP advised that if a new bill of lading number is generated, a new ISF filing would be required. Therefore, if a carrier’s voyage number is part of its bill of lading format, then a new voyage number would necessitate filing a new ISF.

21. **Do Not Load Messages:** In the narrative accompanying the interim rule, CBP responded to a comment that CBP should issue DNL messages for any bill of lading that does not have the ISF on file at the time the carrier files the 24 Hour advance manifest data. CBP responded: “CBP will not issue DNL messages for missing Importer Security Filings until the Importer Security Filing time period has passed” (i.e., 24 hours prior to lading for cargo other than FROB...). It is worth noting that CBP also stated it intended to minimize the use of DNLs during the informed compliance period. Further discussion with CBP will be needed about its intent re: DNLs, as DNLs can substantially impair vessel loading operations.

RESPONSE: CBP stated that it will not issue DNL messages based on ISF filings during the phase-in barring an emergency national security situation or repeated, fraudulent ISF filing. Once rolled out in 2010, CBP’s approach to issuing DNLs based on ISF filings will be the same as its approach today with DNLs. CBP’s National Targeting Center for Cargo will remain the approving authority for all DNL messages.

22. **ISF Filer:** The Interim Rule allows two of the data elements to be filed “prior to arrival”. Is it correct that the party that filed the 8 data elements before vessel loading is the party that must file the remaining 2 data elements within the time required?

RESPONSE: Yes.

23. **ISF Filer/Carrier:** If a carrier files the ISF for the importer, what process is to be used? For example, could the ISF be presented as a subfile to the AMS manifest submission?

RESPONSE: As noted in the response to Question #19, the carrier may, if it wishes to do so, file the 10 data element ISF on behalf of the importer. To do so, the carrier must file the 10 element ISF as a stand alone submission in AMS, so the filing could not be submitted as a subfile to the carrier’s AMS manifest submission.

24. **New Cars:** Please confirm that exemptions, such as new vehicle exemptions approved for PCC/RORO as provided for in the 24-Hour Rule, will also carry through to exempt the 10 plus 2 ISF requirement.

RESPONSE: CBP staff stated that the existing exemptions to the 24-Hour Rule will carry through to the filing of an ISF, but will review this international to confirm this position and reply to the Council in the near future.

25. **Emergencies/Bad Weather By-Passes of Foreign First Port of Call:** We had requested that when an emergency causes a vessel call at a U.S. port with cargo never intended to enter a US port, that an exemption be provided. (E.g., bad winter weather in the North Atlantic causes a vessel to bypass Halifax as first port of call and call NY directly. No ISF filing would have been made for the cargo that was planned for Halifax discharge.) CBP has declined to exempt such cargo, stating that the ISF Importer (which may or may not be the ocean carrier in this example) “will still be liable for enforcement actions resulting from late Importer Security Filing submissions. However, CBP will consider the totality of the circumstances surrounding the event before any further CBP actions are taken”. (p. 71756). In light of the fact that such events will happen, and that penalties would be inappropriate, further discussion and understanding with CBP is needed.

RESPONSE: CBP recognized that it needed to be practical in dealing with such situation, and encourages carriers dealing with emergency situations that may cause a vessel to by-pass a foreign destination before calling the United States to contact CBP as soon as possible. CBP commented that ISF filings would not seem to be applicable to such situations.

26. **Sample:** Can CBP provide a Sample ISF filing?

RESPONSE: CBP will provide a sample ISF filing to the Council in a week or so for circulation to Member companies.

RESPONSES TO ADDITIONAL ISF QUESTIONS PRESENTED TO CBP DURING THE MEETING:

Commencement of ISF Filings by Carriers: CBP stated that it would like ocean carriers to begin transmitting abbreviated 5 data element ISFs for FROB, IE and T&E cargo starting January 26, 2009. Carriers that will not be able to do so are encouraged to advise their AMS client representatives, who will provide feedback and assistance to help bring the carrier into compliance. One carrier in the meeting stated that it would not be able to provide ISF data (particularly booking party data) until March, and CBP understood its reasons. CBP is looking for carriers’ best efforts, not perfection on January 26.

Unique Receipt Number for ISF Filings: CBP stated that AMS will generate a unique transaction receipt number that will be sent to the filing party for all formats, except for “unified filings” that contain both the manifest and the ISF. CBP noted, however, that a transaction number is not needed to make amendments to an original bill of lading or ISF filing.

Ship Spares Exemption: CBP confirmed that ship spares and ship stores (e.g. engine parts, food, tools, etc...) are exempt from ISF filing requirements.

CSMs

27. **Empty Containers:** The interim rule expanded the requirement in the NPRM to require the filing of CSMs for empty containers. In previous discussions CBP has acknowledged that the CSM filing obligation does not begin until a container is designated for shipment to the United States. Because empties may not be identified for loading to the U.S. until the last minute, CBP would only receive a single CSM relating to the loading of an empty container onto the vessel and would not receive any prior CSMs for those containers. What is the value in this when CBP receives a list of empties from the arriving vessel anyhow?

RESPONSE: CBP acknowledges that it only expects to receive a single CSM relating to the loading of an empty container onto the vessel. CBP stated that empty container CSMs represent new data for CBP and that that date provide utility to the agency.

28. **Bookings:** CSMs are to be sent to CBP when the booking is confirmed, and the Commentary states that it is “left to the carrier’s discretion to define when they deem a booking has reached ‘confirmed’ status.” (p. 71742). For Customs’ information, at least some carriers understand this to mean that for them the filing should occur after the shipper has picked up an empty container against that booking.

RESPONSE: CBP agreed that this was an acceptable interpretation of the requirement.

Other

29. **Questions:** We were advised by CBP to send questions to:
Security_Filing_General@cbp.dhs.gov
When we sent our questions to above address we received the following response:
"Thank you for your email submission. CBP will not be responding to individual emails. CBP will review submitted emails and address questions/comments through the ongoing public communication processes."

We would like to discuss with CBP how carriers can best get their ongoing questions responded to.

RESPONSE: CBP indicated that over time it would answer questions submitted through this channel.

In response to a question, CBP stated that it is considering providing each vessel carrier with a designated national account representative for compliance and technical assistance on all electronic filings provided to CBP; however, this is a resource issue within the agency and no commitments were made. In the interim, carriers are encouraged to work with their AMS client representatives or to contact CBP's toll-free AMS help desk which is available 24/7. We will forward the updated help desk phone number to Members upon receipt of the number from CBP in the near future.

In addition, WSC staff are always willing to be a conduit for getting questions addressed.

If you have any further questions on the above, please contact Doug Schneider of the WSC staff at dschneider@worldshipping.com or at (202) 589-1227.