

(NCBFAA LETTERHEAD)

September 6, 2002

United States Customs Service
Office of Regulations and Rulings
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

Attention: Office of Regulations and Rulings

Re: Comments on Proposed Vessel Cargo Declaration Regulations

Dear Sirs:

The following is submitted in connection with the Notice of Proposed Rulemaking, (“NPRM”) published in the Federal Register of August 8, 2002 (67 F.R. 51519), relating to proposed amendments to Parts 4 and 113 of the Customs Regulations, concerning the above subject. These comments are submitted jointly on behalf of the following organizations:

- National Customs Brokers & Forwarders Association of America, Inc. (“NCBFAA”);
- Business Alliance for Customs Modernization (“BACM”);
- American Association of Exporters and Importers (“AAEI”);
- Joint Industry Group (“JIG”);
- Pacific Coast Council of Freight Forwarders and Customs Brokers (“PCC”);
- The International Association of NVOCCS, Inc.; and
- Los Angeles Customs Brokers and Freight Forwarders Association

As stated in the “Background” section of the notice, the proposed changes will amend the Customs Regulations to require the advance and accurate presentation of manifest information prior to lading at the foreign port and to encourage the electronic presentation of such information. The proposed rule will also allow a licensed non-vessel operating common carrier (“NVOCC”) having an International Carrier Bond to electronically present the cargo manifest information to Customs. The stated purposes of these proposals are to evaluate the risk of smuggling weapons of mass destruction, to prevent terrorism, to facilitate the prompt release of shipments and to strengthen the Container Security Initiative (“CSI”).

We recognize the importance of insuring that cargo destined for the United States does not contain weapons of mass destruction or other means through which the enemies of this country can do us harm. We also commend the Customs Service in developing the CSI and forging partnerships with several countries that will result in stationing Customs representatives at major ports throughout the world. We believe that this cooperative effort, in combination with C-TPAT, will effectively deter those who seek to use containerized cargo to transport terrorist weapons. We would also support an initiative that will require the filing of security-related data at a *reasonable* time prior to vessel's arrival in the United States

While the Customs Service believes that the proposed amendments are necessary and required for the protection of this country, as a practical matter, we do not believe that the contemplated changes will achieve that end. We particularly disagree with the use of the commercial manifest as the vehicle for gathering this data.

The unintended affect of these proposals will be to severely impede the normal commercial flow of trade and will adversely impact the business of importers, as well as those entities involved in the transportation of imported goods. We are also of the opinion that Congress has not as yet conferred on the Customs Service the authority to adopt what the agency proposes in the NPRM.

Again, we must emphasize our support for the apparent intended aim of these proposed regulations, *i.e.*, the earlier acquisition of information about commercial shipments, through electronic means, so that the agency can better and more timely assess security risks. For the following reasons, we do not, however, believe that Customs' solutions, as expressed in the notice are appropriate to achieve this end.

**Customs Lacks The Statutory Authority To Implement Proposed Sections
4.7(b) And 4.8, C.R.**

As stated in the "Background" section of the notice, "Customs possesses a reasonable measure of regulatory discretion as to whether, and under what circumstances and conditions, to issue a permit to unlade incoming cargo from a vessel arriving in the United States." However, the level of discretion authorized by Congress to Customs relates only to compliance with the statutory vessel entry and manifest requirements and cannot reasonably be understood to authorize Customs to impose, as a condition precedent to issuance of a permit to unlade, that a vessel provide cargo information 24 hours prior to such cargo being laden on board the vessel and/or to assess liquidated damages or penalties for the failure to do what Customs is unauthorized to mandate. That authority simply does not exist under current law.

The sole authority governing the time that a vessel entry must be submitted is found in 19 U.S.C. 1434, Subsection (a) of which provides for its submission, "Within 24 hours (or such other period of time as may be provided under Subsection (c)(2) of this

Section) after the arrival at any port or place in the United States” (emphasis supplied). Thus, Customs cannot issue any regulation that mandates the entry of a vessel, or the submission of manifest information, prior to the arrival of a vessel. Nor can Customs condition the issuance of a permit or the assessment of liquidated damages on a regulation that is, *prima facie*, *ultra vires* and, therefore, void on its face.¹ Similarly, Customs cannot assess penalties under 19 U.S.C. 1436, for violations of arrival, reporting, entry and clearance requirements, unless the master voluntarily elects to transmit manifest information prior to arrival.

The Regulations Are Unreasonable As They Will Burden International Commerce.

It is estimated that vessels receive approximately 40% of cargo in sealed containers. This is for reasons of security of the cargo and to relieve the vessel operator from liability for the contents of the container. Under proposed Section 4.7a(c)(4)(vii), the master is responsible for providing a precise description or the Harmonized Tariff Schedule (HTS) numbers for the cargo. Only a small portion of these shipments will come from bonded NVOCCs that provide the information directly. Therefore, the master has to rely on the information it receives when preparing the C.F. 1302 but will have no means to verify its reliability. To that extent, the proposed regulations will not insure that Customs is receiving accurate information.

The proposed regulations are also problematic in that a “precise description,” to a large extent, depends upon the shipper’s willingness to furnish such information. Should the shipper not provide sufficiently detailed information, the information cannot be listed on the manifest. There is certainly no guarantee that a description received by the master is in fact a reliable description, or that Customs might decide that another description would be more accurate.

Moreover, the NPRM provides no guidelines to determine what constitutes a “precise description,” making this provision ambiguous and vague. Absent a clear explanation of what constitutes a “precise description,” Customs would have an unreasonably wide scope of authority in determining whether a manifest complies with this regulation. As is also often the case, a consolidated container may contain many dozens or hundreds of different kinds of cargo. The odds are clearly against a shipper

¹ Section 1434 makes unambiguous distinctions between what the Secretary may provide as a mandatory versus a permissive regulation in regards to the timing of entry. 19 U.S.C. 1434(b) provides for the preliminary entry of vessels, in that the Secretary *may* by regulation *permit* the master to make preliminary entry of the vessel, in lieu of, or before, formal entry is made. That provision cannot be read to *require* pre-filing of information. Likewise, 19 U.S.C. §1434(c) states that the Secretary may by regulation provide that any such entry *may* be made electronically, pursuant to an electronic data interchange system, prior to the arrival of the vessel, but, again, it cannot be interpreted to *require* pre-entry. Further, section 1434(c)(2)(a) allows the Secretary to require that formal entry must be made within a greater or lesser time than 24 hours *after arrival*, but in no case more than 48 hours after arrival.

listing each and every type. The same would be true of containers that are not destined for importation into the United States and those destined for in-bond movement through the United States.

Thus, the NPRM places an unreasonable burden on the vessel master or the NVOCC, by holding them strictly liable for either transmitting information that turns out to be false or for failure to transmit required information in accordance with the proposed regulations.

In addition, the proposed regulations pose unnecessary and conflicting requirements and will create confusion in the industry with respect to transmission of cargo manifests. The proposed regulations outline a set of procedures only for CSI ports. As a result, carriers will have to implement multiple guidelines, depending on whether they are lading at a CSI or non-CSI port. This confusion can easily result in an inadvertent error by the master following the wrong set of transmission guidelines, resulting in severe monetary penalties and delayed shipments.

The Proposed Rules Increases Security Risks

It is unlikely that foreign container yards will have the additional space needed to secure cargo and containers that implementation of the NPRM requires. As a result, containers will wait longer on the dock before they are loaded and may be stored in unsecured locations. Longer dock times and unsecured locations increase the likelihood that terrorists will have an opportunity to infiltrate cargo with weapons of mass destruction, and thus defeating a major stated purpose of the NPRM. Customs should not undertake the NPRM until it fully evaluates the potential impact of the message delivery requirements contained in the proposed rule. A dialogue with major container ports and a thorough risk analysis of the impact of adding even 24 hours to the supply chain should be undertaken before moving forward with the NPRM.

The NPRM Provides No Support For Requiring This Information 24 Hours Prior to Lading.

In drafting the proposed regulations, particularly the requirement that information be provided 24 hours before the cargo is laden on board in the foreign port, Customs failed to consider the nature of the trade industry and how it functions. For example, with over a dozen time zone differences in play for any given shipment, the reporting requirement may in reality translate into an augmented time frame, adding at least 2 to 4 days to the supply chain.² This, in turn, will increase inventory costs and financial

² For instance, if a vessel is scheduled to be loaded and sail on a Monday, the cargo and the bill of lading has to be delivered to the carrier on the prior Thursday; this means that the container has to be loaded by the shipper by the previous Tuesday, to allow enough time for the forwarder to transmit the data to the carrier, etc.

burdens to businessmen, as well as resulting in higher prices imposed on American consumers.

Although the proposed regulations dictate that the information be transmitted or filed 24 hours before loading, there is no corresponding reason why such a requirement is necessary. Nor do they (or can they) require that Customs advise the vessel if the cargo should not be loaded. Yet, there has been no explanation as to why this information cannot be transmitted or filed prior to the arrival of the vessel.

The Requirements of the NPRM Will Cause Economic Harm To The Importer and Carrier Without A Commensurate Increase In Security.

Many carriers receive freight until shortly before the vessel sails. By adhering to a 24 hour reporting requirement prior to lading, this would force the vessel to sit in a foreign port an additional 24 hours at the risk of failing to attain delivery deadlines for the cargo already loaded on board. It will also discourage a carrier from receiving cargo less than 24 hours before the scheduled sailing. This will not only negatively impact the revenue of carriers, it will interfere with the importers requirements for “just in time” inventory.

Similarly, there are many areas of transportation where the geographic distance and subsequent transit time between the foreign port of lading and the U.S. port of discharge is minimal, such as the case with shipments between Vancouver, Canada and the Bellingham, Everett, Seattle and Tacoma, Washington ports. However, the volume of trade, whether in the form of container vessels, barge traffic and the like, is tremendous.

Due to the large trade volume, carriers historically load bulk cargo until moments before the vessel departs from the foreign port and thus often do not obtain an accurate quantity from the surveyor until after the ship sails. To delay the voyage until full manifest information can be presented imposes a severe cost to all parties involved in the transaction. As such, the transmission of a complete and accurate manifest 24 hours prior to the vessel’s sailing will either delay the vessel and/or expose the master to liquidated damages. Consequently, any proposed regulations must adequately address situations where transit time is brief and information cannot be presented to Customs until just prior to arrival of the vessel.

Even in situations where the transit time is longer, containers scheduled for a particular voyage may not be delivered to a carrier in time for such shipment. Since cargo space is at a premium, carriers need the financial ability to replace cargo they have not received for a scheduled shipment. As a result, a carrier will have cargo on board that was not intended for the current shipment. In these instances, to require the manifest be filed 24 hours prior to lading is impractical and will have the effect of delaying cargo that is ready to be shipped and that may be subject to both time limitations and penalty provisions, in order for the carrier to comply with the proposed regulations.

Should the proposed regulations be implemented, it would impose significant additional costs on the trade industry. Carriers would effectively be barred from loading last minute cargo, resulting in significantly lower revenue. Exporters would have to deliver merchandise to the carrier sooner than previously required, resulting in increased internal and inventory costs, because additional personnel would be necessary in order to process the advance cargo declarations. Containers delivered to a carrier without sufficient time to comply with the new advance manifest requirements would remain on the dock or terminal. This would allow additional time for our enemies to insert a weapon of mass destruction in the container. It would also involve additional storage expense, as well as exposing the cargo to loss through spoilage and/or pilferage.

Moreover, cargo presented to a carrier several days before the vessel sailing, may be included on the transmitted C.F. 1302. However, as is common, that cargo may be “pulled” and loaded on another vessel. This can occur for a number of reasons, some of them based on financial considerations. It is just as common that a carrier is scheduled to sail on a given date but completes loading earlier and is ready to sail on the same date that the message was transmitted. This will not be allowed under the NPRM.

In addition, as noted below, cargo is frequently tendered by one NVOCC to another NVOCC, who gives the cargo to yet a third or fourth NVOCC, who finally gives it to the actual carrier or vessel operating common carrier (“VOCC”). However, the VOCC does not issue a bill of lading number until the shipment is loaded on board the vessel. As a result, it is impossible for the NVOCC to reference a “master” bill of lading number on its cargo manifests, as required in the proposed regulations, since the NVOCC will not have a master bill of lading number to transmit at that time.

Thus, until the VOCC loads the cargo, the “booking number” is used as a reference for tracing and tracking each shipment. Consequently, Customs’ proposed requirement that an NVOCC transmit the master bill of lading number is both unreasonable and illogical. Furthermore, from a security perspective, how will Customs match the documents filed under a house bill of lading number with the master bill of lading issued by the VOCC?

Finally, by making no accommodation for pre-screened shippers engaged in making low-risk shipment, the proposed regulations effectively remove the benefits of participation by importers in C-TPAT. In essence, if Customs withholds the permit to unlade, every container on the vessel will be affected because the carrier cannot pick and choose the order in which containers will be off-loaded. Thus, this requirement will substantially interfere with the current practices of vessel operators, NVOCCs and importers.

The Proposed Regulations Are Unenforceable Because Customs Cannot Determine Exactly When Goods Are Laden Onboard A Vessel

While Customs may know the date of export, vessels are often in port lading merchandise for several days. Under the proposed regulations, the carrier is required to provide Customs an advance cargo declaration for the first cargo loaded on board, even if this entails providing manifest data several days prior to the date of export. Consequently, the date on the bill of lading would not and could not accurately reflect the time when cargo was physically loaded on the vessel. As such, Customs cannot determine whether a cargo declaration was provided at least 24 hours before the goods were laden for every item listed on the bill of lading. Therefore, the proposed regulations are inherently unenforceable.

The Proposed Regulations Are Unworkable In A Non-Electronic Environment

Although the summary included in the preamble to the NPRM states that the intent of the proposal is “to *encourage* the electronic presentation of such information in advance,” (emphasis added), in fact the rule is entirely unworkable except in the electronic environment. By requiring the submission of advance cargo declarations at least 24 hours before cargo is laden, the proposal effectively requires carriers to provide Customs with partial data constituting less than a complete manifest because, as noted above, a vessel may be in port lading merchandise for several days and the data relating to the first cargo loaded would have to be provided to Customs well before lading of the vessel is complete.

In a critical omission, the proposal fails to address how carriers who do not participate in the Automated Manifest System (AMS) are supposed to provide advance cargo declarations to Customs. Obviously, U.S. Customs officials will not be stationed at every foreign or U.S. port to receive the cargo declarations. The rule does not specify whether the cargo declarations should be mailed to Customs at the intended port of discharge or the first port of entry or to both ports, or whether they may be faxed to Customs. There is no guidance as to where paper documents are to be filed, such as to a particular U.S. port or to a particular department in Customs. Furthermore, it is unclear, and in fact unlikely, that cargo declarations mailed to Customs will arrive sufficiently in advance of the vessel to significantly enhance Customs cargo screening, regardless of substantial burden this procedure imposes on carriers.

As they relate to NVOCC’s the proposed regulations are premised on the availability of AMS. However, AMS is not available in certain locations, and the regulations do not address any alternative methods of transmission that would allow an NVOCC to comply with the regulations, much less being subject to liquidated damages. There is also no accommodation for alternative methods of transmission in the event of a system failure or power outage. Obviously, failure of AMS or Customs’ computer system would prohibit loading and reporting under their proposed regulations.

Aside from the substantial cost associated with AMS, many NVOCCs do not have the sophisticated automation presently in place. Regardless, even the NVOCCs that currently have the capability for automated transmission do not have the corresponding software to implement the transmissions. Obtaining the appropriate software and subsequent programming will be extremely costly, and will ultimately take substantial time to be incorporated into the ordinary course of business.

Thus, the transmission procedures need to be clarified. Until Customs outlines an actual and detailed program for the handling of required information, we see Customs and the public burdened with a requirement, without any idea of how and where to route the information. At the very least, the proposed regulations should specify the procedures for how carriers that do not participate in AMS provide their cargo declarations to Customs.

The Regulations Will Cause Irreparable Harm To U.S. NVOCCs By Making Business Confidential Information Available To The Public.

Pursuant to 19 U.S.C 1433(c), the information required under the NPRM may be disclosed to the public. Similarly, 19 U.S.C. 1431(c)(2) provides that certain information in the cargo manifest shall be available for public disclosure. Pursuant to this authority, Section 103.31(a)(3), C.R., makes all the information on a C.F. 1302 available, unless the Secretary of the Treasury makes a shipment-by-shipment determination that disclosure may pose a threat of “personal injury or property damage.” Further, an NVOCC is precluded from filing a blanket request for confidential treatment because the regulations provide that only the importer or the consignee may make this request.

The house bill of lading issued by an NVOCC contains information that is business confidential. If disclosed, the information can cause irreparable economic harm to parties listed on the document. Thus, even assuming that Customs has the authority to issue the proposed regulations, it should not do so until legislation is enacted that will entitle the NVOCC to make the information appearing on the C.F. 1302, exempt from disclosure to the public.

The NPRM Does Not Address Situations Where Licensed And Bonded NVOCCS “Co-Load” Cargo

While the NPRM would permit NVOCCs to directly transmit the required cargo manifest information to Customs, it does not address the situation that often arises when NVOCCs “co-load” traffic.³ The practice of co-loading is commonly used in order to consolidate smaller, less than container, (“LCL”) shipments into a full container, thereby substantially enhancing the efficiency and economics of ocean transportation. The

³ The Federal Maritime Commission has defined co-loading as “the combining of cargo by two or more NVOCCs for tendering to an ocean common carrier [vessel carrier] under the name of one or more of the NVOCCs.” 46 C.F.R. § 520.2.

proposed rule would essentially end this practice.

The NPRM requires that only the NVOCC that tenders the consolidated container to the vessel carrier (commonly referred to as the “master loader”) is the appropriate party to transmit the electronic manifest data but only if it is licensed by the FMC and has a bond. However, the NVOCC that tenders its shipment (commonly referred to as the “tendering NVOCC”) to the “master loader” for consolidation has business confidentiality concerns that cannot be addressed because it is not the party that can transmit the information.

This is further complicated by the fact that the “tendering NVOCC” may be licensed by the FMC but the “master NVOCC” may not be licensed; in that case, the “tendering NVOCC” must disclose the contents of the shipment to “master loader” which, in turn, must disclose this information to the vessel master, another potential competitor of the “tendering NVOCC.”

Thus, the “tendering NVOCC,” even if licensed and bonded would have no means by which to protect its sensitive, proprietary business information from the master loader, a potential competitor. Absent that, the only option available would be not to “co-load.” This would be a substantial detriment both to its business and to the efficient movement of ocean shipments and, yet, another reason for not adopting this rule.

The NPRM Does Not Comport With The Requirements of Section 343, Trade Act of 2002.

Although not cited in the NPRM, the recently enacted Section 343(a)(1), Trade Act of 2002, provides authority for Customs to implement an electronic data interchange system, for information pertaining to “cargo destined for importation into the United States, prior to such importation,” subject to the parameters set forth within the Section. However, for the following reasons, the proposed regulations do not comport with the requirements of that statute.

1. Section 343 does not grant authority to Customs to require information for cargo *before* it is destined for importation—i.e., prior to being laden on board. As such, any rule requiring such information, as with proposed Section 4.7a, is beyond the scope of authority conferred upon Customs by law;
2. The statute does not confer authority for Customs to require detailed information for cargo destined for third countries. It applies only to merchandise intended to be imported *into the United States* (or exported from the United States);
3. The notice does not comply with Section 343(a)(3)(A), in that the Secretary has not solicited comments or consulted with the broad

range of parties likely to be affected by the regulations, including importers, exporters, carriers, customs brokers, freight forwarders, and NVOCCs, among other interested parties, in developing the proposed regulations;

4. Proposed Section 4.7(e), imposing a penalty upon the master of a vessel for failing to present or transmit accurate manifest data, or for transmitting forged, altered or false information, in the prescribed time period, violates the provisions of Section 343(a)(3)(B), in that it does not provide that the master may transmit information that he “reasonably believes to be true.” In essence, Customs seeks to make the transmittal of a manifest and the verification of its contents a strict liability crime, where intent of the master is irrelevant;
5. The proposed regulations violate Section 343(a)(3)(C), in that Customs failed to take into account the existence of competitive relationships among the parties on which requirements to provide particular information are imposed;
6. The proposed regulations violate Section 343(a)(3)(E), in that Customs failed to take into account the extent to which the technology necessary for parties to transmit and for Customs to receive the requested information and/or to provide interim procedures for transmitting such data until the required technology is available;
7. Proposed Section 4.30(n)(1) violates the provisions of Section 343(a)(3)(F), in that the collected information will be used for purposes other than for ensuring aviation, maritime, and surface transportation safety and security;
8. The proposed regulations violate Section 343(a)(3)(G), in that Customs failed to draft the regulations to protect the privacy of business proprietary and any other confidential information provided to the Customs Service;
9. The proposed regulations violate Section 343(a)(3)(H), in that Customs failed to balance the likely impact on the flow of commerce in determining the timing for transmittal of any information;
10. The proposed regulations violate Section 343(a)(3)(I), in that Customs imposes requirements that are redundant to other laws and regulations already in existence;

11. The proposed regulations violate Section 343(a)(3)(L), in that Customs failed to transmit a report regarding the proposed regulations to the appropriate congressional committees at least 60 days prior to promulgation, with explanations of the following three items: (1) how particular requirements in the proposed regulations meet the needs of aviation, maritime, and surface transportation safety and security; (2) how the Secretary expects the proposed regulations to affect the commercial practices of affected parties; and (3) how the proposed regulations address particular comments received from interested parties; and
12. The proposed regulations violate Section 343(a)(3)(L), in that Customs failed to transmit a report regarding the proposed regulations to the appropriate congressional committees at least 60 days prior to promulgation, with explanations of the following three items: (1) how particular requirements in the proposed regulations meet the needs of aviation, maritime, and surface transportation safety and security; (2) how the Secretary expects the proposed regulations to affect the commercial practices of affected parties; and (3) how the proposed regulations address particular comments received from interested parties.

**An International Carrier's Bond Should Not Be Required From An Entity
Other Than The Vessel Operator.**

Under any circumstances, Customs should not require that an NVOCC, licensed by the Federal Maritime Commission, post an international carrier's bond in order to provide the C.F. 1302 information. The terms and conditions set forth in Section 113.64, C.R., are very broad in nature and relate directly to the obligations of the actual carrier. Sureties "rate" the risk and the cost of the policy based on these conditions. The sole reason for requiring a bond from the NVOCC is to secure its obligation to provide the information on the "house bill" to Customs and provide for the assessment of liquidated damages for the failure to do so.

Clearly, it is not necessary to require a bond with conditions that will never be applicable to an NVOCC, which is never the custodian of the freight and is not required to comply with the myriad of laws and regulations that pertain to a vessel operator. Under these circumstances, and to limit the cost of obtaining a bond, Customs has the authority to establish a separate bond applicable solely to NVOCC's providing only the terms set out in proposed Section 113.64(c). To avoid unnecessary expense to NVOCC's we ask that this be done.

**The Regulatory Requirements Will Cause An Unreasonable
Paperwork Burden On The Public.**

35 U.S.C. 3501 provides, *inter alia*, that “the purposes of this chapter are to (1) minimize the paperwork burden for individuals, small business, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government.”⁴ Section 3502(2) further provides that “the term ‘burden’ means time, effort, or financial resources expended by persons to generate, maintain or provide information to or for a Federal agency, including (B) acquiring, installing and utilizing technology and systems and (F) transmitting, or otherwise disclosing the information.”

The estimate contained in the NPRM, that the average annual time per respondent to comply with the regulations, *i.e.*, 6.5 hours, is unrealistic. NVOCCs are not presently required to collect or report information required in proposed Section 4.7, C.R. Assuming that even the smallest NVOCC ships 100 containers per year, and the time required to obtain and provide either Customs or the vessel master with the necessary data is a minimum of 2 - 4 hours per container, the minimum burden per NVOCC respondent would be 200 – 400 hours per year. Based on the fact that the average NVOCC ships several hundred containers per year, the average annual burden is well over 1,000 hours. This represents an unreasonable paperwork burden on NVOCC’s and undermines the purpose of the Paperwork Reduction Act.

**The NPRM does not comply with the requirements of the Regulatory
Flexibility Act or E.O. 12866.**

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires federal agencies to consider the effects of their regulatory actions on small businesses and other small entities and to minimize any undue disproportionate burden.

Many NVOCCs located in the United States have gross incomes under 18 million dollars per year and are considered “small businesses,” as defined in the statute. Contrary to the statement contained in the Notice, the proposed regulations will have a significant impact upon these small entities by requiring that they obtain a carrier bond in order to directly transmit the required information to Customs or provide this information to the master of the vessel. Many of these entities either cannot obtain a carrier bond and/or the cost of this bond will substantially increase the NVOCC’s cost of doing business. This will place the continued existence of many NVOCC’s at risk.

⁴ It is worth nothing that Section 3501(8)(A) also provides that a purpose of the statute is to “ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the Federal Government is consistent with applicable laws, including laws relating to privacy and confidentiality, including section 552 of title 5.” This further bolsters our assertions presented under heading “The Regulations Will Cause Irreparable Harm To U.S. NVOCCs By Making Business Confidential Information Available To The Public” of this letter.

Further, by requiring that NVOCCs without carrier bonds disclose information from the house bill to the carrier, it places the NVOCC in a position where it must disclose the name of its customer and other confidential business information to the vessel operator, who is a direct competitor for the same business. Obviously, customers who do not want their confidential business information exposed will instead ship only through NVOCCs with carrier bonds. As a result, this will have a negative economic impact on NVOCCs without carrier bonds.

Therefore, the proposed rules will have a substantial impact on a number of small businesses and Customs should comply with the requirements of both the Regulatory Flexibility Act and Executive Order 12866.

Conclusion

In light of the events of September 11, justifiable concerns regarding safety and security understandably arose in the Trade Community. As such, it is expected that some legislation and/or reasonable regulation will be implemented to prevent, to the extent it is realistically possible to do so, against an occurrence of terrorist activity and similar events. However, it appears that the proposed regulations will only serve to interdict the smooth flow of legitimate commerce and economically disadvantage NVOCCs, importers and various other entities involved in international trade. To that extent, we respectfully request that the NPRM be withdrawn, and that any additional proposals should be drafted in accordance with Section 343 of the Trade Act of 2002.

The trade community has always been, and remains amenable, to a partnership for developing changes that will enhance the safety and security of the United States. Although we feel that security can be measurably enhanced through the transmission of advance shipment data, this goal can be achieved through guidelines with a smaller negative impact on the trade community than the proposed regulations. We look forward to accomplishing this goal under the guidance provided by Congress in section 343.

We thank you for the opportunity to file these comments.

Sincerely,

Federico Zuniga,
President, NCBFAA

cc: Business Alliance for Customs Modernization (“BACM”);
American Association of Exporters and Importers (“AAEI”);
Joint Industry Group (“JIG”);
Pacific Coast Council of Freight Forwarders and Customs Brokers (“PCC”); and
The International Association of NVOCCS, Inc.
Los Angeles Customs Brokers and Freight Forwarders Association