

Agriculture Transportation Coalition

"The principal voice of agriculture in U.S. transportation policy"

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AgTC Position on SOLAS as of May 17, 2016, latest developments: USCG Declaration of Equivalency Changes Everything; East Coast Ports Offer VGM Alternative -- Container Weighing; and OCEMA Shipper Liability.

Since the US Coast Guard issued its Declaration of Equivalency, the SOLAS landscape has changed for the better. The Equivalency has force of law equal to original SOLAS amendment, clarifies that the 2 methods set forth in the original SOLAS and the OCEMA "Best Practices" are NOT the only legal means of compliance. The USCG states that current practices, or any other methods worked out between the carrier and its customer, or weighing at the ports (thus eliminating need for shippers to submit any new data or VGM to the carrier), are among alternatives that are compliant with SOLAS.

Developments:

a. Charleston was the first to take advantage of the Equivalency, offering to weigh loaded containers (as all US marine terminals have been required to do under OSHA for the past 3 decades) and providing this accurate VGM to all parties, so that the exporter does not have to certify to the carrier how much the carrier's own container weighs (as OCEMA would require). Savannah, then last week, Virginia, followed -- eliminating the cost and disruption of the OCEMA 'best practices'; already exporters have announced intention to route cargo through these ports. 4 other East Coast ports considering following.

b. Exporters and some carriers are now discussing more efficient means of getting VGM to terminals, other than OCEMA "best practices". These may become better known in coming days/week.

c. Congressional initiatives on SOLAS, on behalf of the US exporters may expand in coming days.

d. OCEMA (the collective ocean carrier organization setting SOLAS container weighing positions for all international ocean carriers serving the US) now states they **won't hold the shipper liable for deviation** between published empty ("tare") weight of a container and the container's true weight. Question: if the true weight of the combined container and cargo (VGM) isn't their chief objective, how can this be about "safety"? And OCEMA still wants the exporter to put their name on the document to certify the container weight (regardless if the weight is truly accurate), so **let's be honest - is OCEMA about "safety" or shifting liability?**

[NOTE: This does not eliminate the primary concerns of exporters about the OCEMA "Best Practices" scheme. The JOC has characterized the current situation as OCEMA "carriers playing a game of chicken" versus their shipper/customers. The USCG Equivalency and recent port announcements make it clear that instead of playing chicken against their own customers, carriers can and should partner with their customers. Like the ports which stepped forward in the last two weeks, the carriers which step forward will get the cargo.]

Alternatives permitted by the Equivalency are being pursued because the OCEMA "best practices":

A. Impose significant costs (monetary and manpower) in development and operation of **new, additional and expensive EDI fields**, for both the carriers and shippers **(at a time carriers can ill-afford more cost and red ink, and exporters are struggling against the high dollar and vigorous foreign competition)**

B. Is **disruptive, creating new congestion at the ports** as the deadlines for VGM submission to the carrier and from the carrier to the terminal imposes yet another advance documentation cutoff for shippers -- already doc and cargo cuts are a major cause of missed sailings and port congestion; this will exacerbate the situation. For trans-loaded cargo (cargo loaded into containers at or near the terminals), the fast pace of loading and short haul to the terminal gates makes it impossible for all the following to happen before the truck arrives at the terminal gate with the loaded container: the exporter to get the tare weight info from the carrier or see and read the printed tare weight on the container, add its own cargo weight, send combined VGM back to the carrier, and then the carrier sends it to the marine terminal, all prior to the container getting to the terminal gate. When this does not happen before truck arrives, truck will have to wait outside the gates, or not depart load points while waiting for the EDI to arrive at gates; the entire process is backed up, container pools cannot be emptied timely, etc. -- delay will cause additional missed cargo cuts and missed sailings, with containers stacked up on and around the terminals. For refrigerated cargo, delay means cargo damage and loss.

C. Adds significant out of pocket costs to the supply chain - both for exporters and carriers, which **renders our exports more expensive** in a global environment in which the dollar is high relative to our competitors in Russia, Brazil, Argentina, Chile, etc.

D. Who is going to pay those costs? Carriers will also have their own internal EDI costs, in addition to the port disruption costs. Carriers rumored to be **considering a surcharge** to pay for the costs of their "Best Practices" method? In the current overcapacity environment, unlikely that the shippers/exporters will pay additional charges for a scheme which the USCG has already stated is unnecessary.

E. **USCG and SOLAS (due to the Equivalency) now give each carrier the ability to work with its customers to develop compliance that works for both**, including the 'rational' method (exporter gives cargo weight to the carrier, carrier adds the weight of its container and submits the combined VGM to the terminal). The carriers need to be open to customer needs and negotiate terms that work to keep the cargo moving. East Coast ports, by weighing the loaded containers are getting the actual VGM, and thus eliminating need for SOLAS Methods 1 or 2. **Individual carriers legally can and must now work WITH their customer exporters to develop mutually workable methods of compliance.**