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## ***CBP Suspended Billing for Reimbursable Expenses In October 2003 for Legacy INS and Agriculture Overtime Services***

***NAMO members include:*** Association of Ship Brokers & Agents (U.S.A.), Inc., Columbia River Steamship Operators Association, Connecticut Maritime Association, Gulf States Maritime Association, Jacksonville Marine Transportation Exchange, Lake Charles Harbor Safety Committee, Marine Exchange of Puget Sound, Marine Exchange of Southern California, Maritime Association of Greater Boston, Maritime Association of the Port of New York/New Jersey, Maritime Exchange of the Delaware River and Bay, Pacific Merchants Shipping Association, Savannah Maritime Association, U.S. Great Lakes Shipping Association, Virginia Maritime Association, West Gulf Maritime Association

***Statement of the Issue:*** Starting in February of 2007, U.S. agency companies began receiving invoices for reimbursable overtime services performed by legacy INS and Agriculture inspectors dating as far back as October of 2003. According to CBP, 6000 invoices have been sent to agency companies to date. CBP states that agency companies will be responsible for payment of these invoices if they do not successfully receive payment from their principals on whose behalf the services were requested.

As CBP has been made aware on numerous occasions, ship agents request CBP services on behalf of their principals – ship owners, operators and charterers – via the CBP lading order. Agents are often required by their principals to submit all invoices for payment within 60 days of vessel sailing. It will be difficult, if not impossible, for Agents to collect fees for services performed on vessels which have completed their voyage, undergone a name change, been sold or sold for scrap. In some cases the responsible party is difficult to locate as they may have gone out of business. CBP is holding the Agent financially responsible as non-payment of the invoice may result in CBP withholding service or requiring cash in advance for any services requested by the Agent.

***Background:*** In October of 2003, legacy INS, Agriculture and Customs inspection officers were merged to form Customs and Border Protection so as provide “One face at the Border” for all inspection services. Cross training the inspection officers was only one of the necessary steps to fully integration of three agencies into one. We understand that CBP is still sorting out the differences in the regulations that govern these legacy agencies, which is the point at which this problem begins. Starting in February of 2007, U.S. agency companies began receiving CBP issued invoices for reimbursable services, such as overtime, that had been provided by legacy INS and Agriculture inspection officers dating back to point of the merger, October of 2003. CBP has been unable to bill for these services because each legacy agency union billed for overtime at different rates. CBP sought the advice of legal counsel which appears to have rendered a decision as to the billable overtime rate sometime in the end of 2006. During this period, CBP never issued a formal notice to industry explaining their inability to bill for overtime services at the present time nor place agents on notice that CBP is statutorily obligated to do so once the issue of billing rate was resolved.

***NAMO Position:*** Since February of 2007, NAMO members have attempted to better understand the problem by working with CBP toward a mutually amicable resolution. It is now clear to NAMO members that CBP is not legally required to operate according to standard accepted business practices. CBP will not suffer a significant shortfall in income if they do not provide quality service and timely billing of their customers. CBP has acted in an unprofessional manner by not informing industry of its decision to suspend billing of overtime until such point as legal counsel could determine the overtime rate.

Congressional assistance is required to rectify this situation. NAMO members respectfully request that Congress acknowledge that this is a problem that resulted from the merger and that the statutory regulation that requires CBP to bill for reimbursable services for up to six years must be suspended in this case. Congress must also

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address the fact that it is now over three years since the merger and CBP has yet to sort out the regulatory differences of their legacy agencies in order to effectively operate as “One Face at the Border”.