

**U.S. BUREAU OF CUSTOMS AND BORDER PROTECTION REGULATIONS
CONCERNING AUTOMATED MANIFEST SYSTEMS**

A. Introduction

A "Final Rule" relating to Regulations concerning Automatic Manifest Filing, under the authority of the Trade Act of 2002, was issued on December 5, 2003, by the U.S. Bureau of Customs and Border Protection ("CBP"). These regulations replaced the interim rules which had been promulgated on February 2, 2003. The new regulations went into effect on January 5, 2004, and will be enforced by United States Customs from March 5, 2004, going forward.

The new regulations require that all "carriers" of cargo, inbound to the United States, transmit electronically to CBP's Vessel Automated Manifest Systems ("AMS") certain specified information about the cargo. See, 19 CFR §4.7 (b) (copy attached hereto). The regulation states that CBP must receive "from the incoming carrier, ... the CBP-approved electronic equivalent of the vessel's Cargo Declaration (Customs Form 1302)." The new rules for presenting electronic cargo declaration information require that the automated cargo manifest be submitted to the CBP via the Vessel Automated Manifest System, which is operated, maintained, and administered by CBP.

B. Submission Periods

For certain cargoes, including containerized cargo, the cargo manifest information must be submitted to the CBP at least 24 hours prior to loading in a foreign port. 19 CFR §4.7 (b)(2) (see attachment). Under previous regulations, which went into effect on February 2, 2003, certain cargoes (bulk, neo-bulk, and certain breakbulk cargoes) were exempted from the advance reporting requirement. However, the new regulations mandate that manifest information relating to all inbound cargo be electronically transmitted to CBP via the AMS. Under the new regulations, these previously "exempt" bulk and breakbulk cargoes do not require an electronically filed cargo manifests 24 hours before loading, but the carriers of such cargoes must electronically file such manifest 24 hours prior to the vessel's arrival in the first U.S. port. 19 CFR §4.7 (b)(4). (See attachment). Carriers of such "exempt" cargoes must still report 24 hours in advance of loading any containerized or non-exempt breakbulk cargo transported on the same vessel. The requirements for the time at which electronic filings must be made may be summarized as follows:

<u>Type of Cargo</u>	<u>Qualifier</u>	<u>Time of Receipt by CBP in AMS</u>
Containerized	N/A	24 Hours prior to loading
Breakbulk (non-exempt)	N/A	24 Hours prior to loading
Bulk	Voyage over 24 hrs.	24 hrs. prior to arrival at 1st US port
Bulk	Voyage under 24 hrs.	Time of sailing
Breakbulk (exempt)	Voyage over 24 hrs.	24 hrs. prior to arrival at 1st US port
Breakbulk (exempt)	Voyage under 24 hrs.	Time of sailing

C. Penalties for Failure to Make, or for Improper Manifest Declarations

Failure to make the necessary electronic manifest filing may result in a number of penalties or sanctions. In this regard, any party who fails to provide manifest information as required, or who presents or transmits electronically any document required by the new regulations that is forged, altered or false, may be liable for civil penalties as provided under 19 U.S.C. 1436 (copy attached), in addition to penalties applicable under other provisions of law. Such additional penalties may include a \$1,000 USD administrative penalty for each bill of lading improperly documented (19 USC §1448), or civil penalties for improper documentation of cargo equal to the value of the cargo, or even seizure and forfeiture of the goods (19 USC 1431(a)). In addition, CBP may issue "Do Not Load" orders to carriers for cargoes that are erroneously declared or otherwise misdeclared.

D. Manifest Information Required to be Filed Electronically

The Cargo Manifest Declaration submitted electronically to the CBP must contain the following information:

1. The last foreign port from which the vessel departs for the United States;
2. The carrier SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier; SCAC codes are explained in greater detail below);
3. The carrier-assigned voyage number;
4. The date the vessel is scheduled to arrive at the first U.S. port in Customs territory;
5. The numbers and quantities of cargo listed in the carrier's ocean bills of lading, either master or house, as applicable;
6. The name of the first foreign port where the carrier takes possession of the cargo destined to the United States;
7. A precise description (or the Harmonized Tariff Schedule (HTS) numbers to the 6-digit level under which the cargo is classified if that information is received from the shipper) of the cargo; the weight of the cargo; or, for a sealed container, the shipper's declared description and weight of the cargo;
8. The shipper's complete name and address, or identification number, from all bills of lading;
9. The complete name and address of the consignee, or identification number, from all bills of lading;
10. The vessel name, country of documentation, and official vessel number;
11. The name of the foreign port where the cargo is laden on board;

12. IMDG or CFR hazardous material code when such materials are being shipped (these are code numbers assigned to various hazardous commodities by IMO under the International Maritime Dangerous Goods Code, or by the U.S. Coast Guard under the provisions of 49 CFR Parts 100-185. For more information, we suggest that you contact National Cargo Bureau, Inc., 17 Battery Place, NY, NY 10007, (800) 886-7447);
13. Container numbers (for containerized shipments);
14. The seal numbers for all seals affixed to containers;
15. Date of departure from the foreign port where the cargo was loaded, as will be reflected in the vessel's log.
16. Time of departure from the foreign port where the cargo was loaded, as will be reflected in the vessel's log. (See fn11, below, for the applicable time frame for reporting this data element to CBP.) (See also, 19 CFR 103.31, attached hereto)

There are two matters of special note regarding the above:

- A. Vessel owners and operators should note that under a different section of the CBP regulations, an importer or consignee may request confidential treatment of its name and address contained in inward manifests, as well as any identifying marks and numbers on its shipment. In addition, an importer or consignee may request confidential treatment of the name and address of the shipper. 19 CFR §103.31(d) and 19 CFR §103.31(3) (a). (copies attached hereto).
- B. The requirement for the submission of information on the hazardous nature of commodities listed in the CBP Cargo Manifest, in no way affects the requirements for producing a Hazardous Cargo Manifest, as required by the U.S. Coast Guard. The carrier may not substitute one form for the other. A Coast Guard approved Hazardous Cargo Manifest must still be maintained and made available for inspection on board the vessel upon arrival in the U.S., regardless of any requirement for the same information by the CBP.

E. Definition of "Carriers"

The regulations require that the manifest information be transmitted by the incoming "carrier". However, as with many other regulations, the term "carrier" is not defined by CBP with any specificity. CBP has stated only that it views the carrier as "the entity that controls the conveyance." We have contacted CBP in this regard, and, at the time of this writing, the agency will not clarify this definition in any greater detail. It is CBP's present position that the interested parties will have to work out the meaning of the term as between themselves and/or on their own. On its face, this definition seems to indicate that CBP will look to the head owner, bareboat charterer, or operator of the vessel for the AMS filings. However, unless the head owner, bareboat charterer, or operator of the vessel is the entity which issues the bills of lading, it is evident that none of those entities will have the necessary information required for filing under the new regulations. The CBP regulations do reference, in several instances, the term "ocean carrier". Such reference would seem to indicate that the entity contemplated under the CBP

regulations is the equivalent of the "ocean common carrier" under the Federal Maritime Commission regulations. Furthermore, the regulations and the CBP's interpretive documents reference the carrier as the party "having operational control of the vessel."

Accordingly, in our opinion, CBP will accept the AMS filings from the entity which issues the ocean bills of lading on the subject vessel and operates that vessel, or, in the case of slot sharing agreements, the operator of the vessel who is responsible under the operating agreement for consolidating the requisite information and issuing the cargo manifest for the subject vessel. This view is consistent both with the CBP interpretation of the carrier as the entity that controls the conveyance, and with the practical necessity of the issuer of the bill of lading being the entity with the required information. (Although the CBP has not issued any further interpretations on this issue since the publication of the new regulations, we will continue to monitor the situation closely.)

F. Third Party Filings

While the CBP may be content at this time to let the various private interests sort out for themselves who will do the actual filing, the entities that may file the electronic cargo manifests are restricted to either the carrier, or a party specifically authorized by CBP. In this regard, one major consideration for vessel owners and operators is that the regulations do not provide any authority for a vessel's agent to file the required forms in its own name, or "as agent" for the carrier. Thus, it is quite clear that CBP will not accept filings directly from ship husbanding or protective agencies. Although such agencies may prepare the data for transmission, and may be permitted to transmit the data, they will not be permitted to use their own SCAC or other identifier in place of the carrier on any form. This does not mean, however, that the vessel operator or carrier must interface directly with CBP. Carriers may interface with the AMS through an approved service center (denominated by the CBP as an "authorized transmitting party"). A list of approved service providers is available at CBP's website at www.cbp.com. Carriers may, of course interface directly with the AMS. However, in order to do so, a carrier must either purchase software and communications programs from an approved software vendor, or program their own software interface. This is an involved process, which involves the filing of a letter of intent with CBP, trials and testing before implementation, and a public listing as an AMS participant. Accordingly, a direct interface is not recommended for carriers unless they already have automated documentation systems, or the volume of their manifest production makes this an attractive option.

G. SCAC's and Carrier Bonds

Participation in the AMS, either direct or through a third party, also requires two other key elements. First, the carrier filing the electronic manifest must possess and use a Standard Carrier Alpha Code (SCAC), and secondly, the carrier must post an International Carrier Bond.

- A. The SCAC required under the regulations is a unique identifier code that is assigned to transportation entities by a private organization on behalf of CBP. The required SCAC may be obtained by any interested party from the National Motor Freight Traffic Association (NMFTA) in Alexandria, Virginia. NMFTA will provide a confirmation of the SCAC to the applicant, and a copy of same may then be faxed to the CBP at (703) 921-7173. Since the SCAC is simply and easily obtained, and the cost is minimal, it is

highly recommended that all entities (owners, bareboat charterers, time charterers, operators, etc.) apply for a SCAC, whether or not they will be the actual party that performs the AMS filing.

- B. Under 19 CFR §113.64, (copy attached) an electronic filer must also post a carrier bond. All entities filing must carry an "Activity Code 3 CBP International Carrier Bond" in the minimum amount of \$50,000 USD. The minimum bond may, however, be set at a higher amount at the discretion of the local CBP Port Director. (We understand that the minimum bond in New York has been set at \$100,000 USD). A list of approved surety companies providing such bonds is available at the US Treasury website (www.fms.treas.gov). There is no present requirement that the bond be either continuous or a single transaction bond. If any entity seeking a bond feels that the Port Director has not observed the standards for setting the bond amount, or has arbitrarily set the minimum bond at too high a level, they may appeal to the CBP Branch Chief, Entry and Drawback Management in Washington, DC ((202) 927-0300).

Further to the bonding requirement, all non-U.S. companies must have a CBP assigned number. The request for the number may be made on Form CF 5106 (Importer ID Input Record), which is available from the CBP website (www.cbp.com). There is a \$50 USD processing fee for submission of the form. Once the form is received and processed, CBP will notify the applicant of the assigned number. This number is required for the bond application of the foreign entity.

The bond requirements outlined above should be viewed as especially important, since CBP may draw upon such bonds after assessing penalties against carriers who have supplied incorrect information or misdeclared cargoes in their electronic filings, and may also draw upon bonds for claims for liquidated damages. CBP has not, as yet established what the penalties and/or mitigation policies will be, but a final rule is expected this year. The existing final rule indicates, however, that carriers may be liable for penalties under 19 USC 1436, and authorized transmitting parties may be liable for liquidated damages under 19 CFR 113.64.

H. Participation in Customs-Trade Partnership Against Terrorism Program (C-TPAT)

Finally, we note that carriers who currently participate in the existing Customs-Trade Partnership Against Terrorism program (C-TPAT), may enjoy certain preferences under the new regulations. CBP recognizes that its partners in C-TPAT already provide much of the information required under the new rule as part of their security related procedures, and, as such, those carriers should have already implemented many of the requirements under the new regulations. Accordingly, while C-TPAT participants are not excluded from any of the reporting requirements of the AMS, CBP has indicated that participation in the C-TPAT program may be taken into account during the targeting process (under which selected carriers, exporting countries, and trade routes may receive special review by CBP), and may be considered as a mitigating factor for penalties and assessment of liquidated damages that may be assessed against a non-conforming carrier.

Please feel free to contact us regarding any inquiries and/or comments relating to this article.

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