

## U.S. Bureau of Customs and Border Protection Regulations Concerning Automatic Manifest Filing.

### 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"<sup>1</sup> 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). 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 containerised 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) . Under previous regulations, which went into effect on February 2, 2003, certain cargoes (bulk, neo-bulk, and certain breakbulk cargoes<sup>2</sup>) 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.<sup>3</sup> 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.<sup>4</sup> 19 CFR §4.7 (b)(4) . 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                         |

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|--------------------|----------------------|---|
| 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, 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<sup>5</sup>;
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<sup>6</sup> 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<sup>7</sup>;
8. The shipper's complete name and address, or identification number, from all bills of lading<sup>8</sup>;
9. The complete name and address of the consignee, or identification number, from all bills of lading<sup>9</sup>;
10. The vessel name, country of documentation, and official vessel number<sup>10</sup>;
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.<sup>11</sup>
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)

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).
- 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.<sup>12</sup> 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](http://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<sup>13</sup>. 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, 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<sup>14</sup>. 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](http://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](http://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.

All inquiries and/or comments relating to this Alert should be directed to us at:

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## **ENDNOTES**

1. See item D, below for "definition" thereof.
2. The new regulations define bulk cargoes as "a homogeneous cargo that is stowed loose in the hold and is not enclosed in any container &" It includes free flowing articles such as oil, grain, coal, ore, and similar cargoes which can be pumped, dumped, or run through a chute. It also includes articles that require mechanical handling such as bricks, pig iron, lumber, steel beams, and the like. 19 CFR §4.7 (b)(4)(I)(A),(B). CBP interpretive documents also include the following as "bulk" cargoes: metal coils, rod, rails, pipe, plates, billets, slabs, sheets, and wire, pulp, newsprint, linerboard, and other paper products (not used as packaging material), and certain unpackaged perishable commodities, such as seafood and produce.
3. The only cargoes exempt from the notice/filing requirement are shipments consisting entirely of empty articles (pallets, tanks, cores, containers, etc.) that are designated as Instruments of International Traffic (IIT's). However, if any other cargoes are carried on

the same vessel, all such IIT's must be identified as such and listed on the carrier's cargo declaration.

4. In the event that the transit time between a foreign port and the first U.S port is less than 24 hours, the electronic filing must be made at the time of sailing from the foreign port.
5. This means that the carrier must transmit the quantity of the smallest external packaging unit - containers and pallets are not acceptable designations for manifested quantities (for example, a container containing 10 pallets with 200 cartons should be manifested as 200 cartons)
6. The HTS is available from the U.S. International Trade Commission (USITC) at [www.usitc.gov/taffairs.htm](http://www.usitc.gov/taffairs.htm). The schedule provides the applicable commodity designated numbers, tariff rates and statistical categories for all merchandise imported into the United States. It is based on the international *Harmonized System*, the global classification system that is used to describe most goods in world trade. Although the USITC publishes and maintains the HTS in its various forms, the CBP is the only agency that can provide legally binding advice or rulings relating to classification of imports. Accordingly, CBP should be contacted if there are any questions about how potential imports into the U.S. should be designated and/or classified.
7. Generic descriptions, specifically those such as "FAK" ("freight of all kinds"), "general cargo", and "STC" ("said to contain") are not acceptable.
8. At the master bill level, for consolidated shipments, the identity of the Non Vessel Operating Common Carrier (NVOCC), freight forwarder, container station or other carrier is sufficient. For non-consolidated shipments, and for each house bill in a consolidated shipment, the identity of the foreign vendor, supplier, manufacturer, shipper or other similar party is acceptable (the address of the foreign vendor, etc., must be a foreign address). By contrast, the identity of the carrier, NVOCC, freight forwarder or consolidator is not acceptable. The identification number will be a unique number assigned by CBP upon the implementation of the Automated Commercial Environment.
9. For consolidated shipments, at the master bill level, the NVOCC, freight forwarder, container station or other carrier may be listed as the consignee. For non-consolidated shipments, and for each house bill in a consolidated shipment, the consignee is the party to whom the cargo will be delivered in the United States, with the exception of "FROB" (foreign cargo remaining on board). However, in the case of cargo shipped "to order of [a named party]," the carrier must report this named "to order" party as the consignee; and, if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information (address) in the "Notify Party" field of the advance electronic data transmission to CBP, to the extent that the CBP-approved electronic data interchange system is capable of receiving this data. The identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment.
10. The vessel number is the International Maritime Organization number assigned to the vessel.
11. This element relates to the departure of the vessel from the foreign port with respect to which the advance cargo declaration is filed. The time frame for reporting this particular data element will be either:
  - A. No later than 24 hours after departure from the foreign port of lading, for those vessels that will arrive in the United States more than 24 hours after sailing from that foreign port; or

- B. No later than the presentation of the permit to unload (Customs Form (CF) 3171, or electronic equivalent), for those vessels that will arrive less than 24 hours after sailing from the foreign port of lading);
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- 12. The Ocean Shipping Reform Act, at 46 U.S.C. §1702 (16), defines an "ocean common carrier" as a vessel operating common carrier. While this may not be helpful by itself, the statute also defines an NVOCC as "a common carrier that does not operate the vessels by which the ocean transportation is provided &" 46 U.S.C. §1702 (17)(B).
  - 13. Application for the SCAC may be made at the NMFTA website ([www.nmfta.org](http://www.nmfta.org)), or by telephone at (703) 838-1810. The cost of a SCAC is \$30.00 USD per year.
  - 14. Furthermore, depending upon the identity and/or business of the filer (usually customs house brokers or entities involved in creating in-bond shipments), an additional bond (Activity Code 2 Custodial Bond) may also be required.