

Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## **PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### **§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2002-22-05 Boeing:** Amendment 39-12929. Docket 2002-NM-214-AD.

**Applicability:** All Model 737-100, -200, -200C, -300, -400, and -500 series airplanes; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent severe flap asymmetry due to fractures of the carriage spindles on an outboard mid-flap, which could result in reduced control or loss of controllability of the airplane, accomplish the following:

#### **Repetitive Inspections**

(a) Do general visual and nondestructive test (NDT) inspections of each carriage spindle (two on each flap) of the left and right outboard mid-flaps to find cracks, fractures, or corrosion at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable, per the Work Instructions of Boeing Alert Service Bulletin 737-57A1277, dated July 25, 2002. Repeat the inspection at least every 180 days until paragraph (c) of this AD is done.

(1) Before the accumulation of 12,000 total flight cycles or 8 years in-service on new or overhauled carriage spindles, whichever is first.

(2) Within 90 days after the effective date of this AD.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting

conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

#### **Corrective Action**

(b) If any crack, fracture, or corrosion is found during any inspection required by paragraph (a) of this AD: Before further flight, do the applicable actions for that spindle as specified in paragraph (b)(1) or (b)(2) of this AD, per the Work Instructions of Boeing Alert Service Bulletin 737-57A1277, dated July 25, 2002. Then repeat the inspections required by paragraph (a) of this AD every 12,000 flight cycles or 8 years, whichever is first; on the overhauled or replaced spindle only.

(1) If any corrosion is found in the carriage spindle, overhaul the spindle.

(2) If any crack or fracture is found in the carriage spindle, replace with a new or overhauled carriage spindle.

**Note 3:** Although the service bulletin recommends that operators report inspection findings of any crack or fracture in the carriage spindle to the manufacturer, this AD does not contain such a reporting requirement.

#### **Optional Overhaul or Replacement**

(c) Overhaul or replacement, as applicable, of all four carriage spindles, per the Work Instructions of Boeing Alert Service Bulletin 737-57A1277, dated July 25, 2002, extends the repetitive inspection interval specified in paragraph (a) of this AD to every 12,000 flight cycles or 8 years, whichever is first.

#### **Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

#### **Special Flight Permits**

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

#### **Incorporation by Reference**

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 737-57A1277, dated July 25, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal

Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### **Effective Date**

(g) This amendment becomes effective on November 15, 2002.

Issued in Renton, Washington, on October 22, 2002.

**Vi L. Lipski,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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## **DEPARTMENT OF THE TREASURY**

### **Customs Service**

#### **19 CFR Parts 4, 113 and 178**

[T.D. 02-62]

**RIN 1515-AD11**

#### **Presentation of Vessel Cargo Declaration to Customs Before Cargo Is Laden Aboard Vessel at Foreign Port for Transport to the United States**

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations to require the advance and accurate presentation of certain manifest information prior to lading at the foreign port and to encourage the presentation of this information electronically. The document also allows a non-vessel operating common carrier (NVOCC) having an International Carrier Bond to electronically present cargo manifest information to Customs. This information is required in advance and is urgently needed in order to enable Customs to evaluate the risk of smuggling weapons of mass destruction through the use of oceangoing cargo containers before goods are loaded on vessels for importation into the United States, while, at the same time, enabling Customs to facilitate the prompt release of legitimate cargo following its arrival in the United States. Failure to provide the required information in the time period prescribed may result in the delay of a permit to unlade and/or the assessment of civil monetary penalties or claims for liquidated damages.

**EFFECTIVE DATE:** December 2, 2002.

#### **FOR FURTHER INFORMATION CONTACT:**

For Legal matters: Larry L. Burton, Office of Regulations and Rulings, (202-572-8724).

For National Targeting Center issues: David Tipton, (202-927-0108).

For Container Security Initiatives: Adam Wysocki, (202-927-0724).

For Trade Compliance issues: Kimberly Nott, (202-927-0042).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Customs laws impose certain requirements upon vessels that will arrive in the United States to discharge their cargo. In particular, vessels destined for the United States must comply with 19 U.S.C. 1431, which requires that every vessel bound for the United States and required to make entry under 19 U.S.C. 1434 have a manifest that meets the requirements that are prescribed by regulation. To this end, under 19 U.S.C. 1431(d), Customs may by regulation specify the form for, and the information and data that must be contained in, the vessel manifest, as well as the manner of production for, and the delivery or electronic transmittal of, the vessel manifest.

Currently, § 4.7, Customs Regulations (19 CFR 4.7), requires: That the master of every vessel arriving in the United States and required to make entry have on board the vessel a manifest in accordance with 19 U.S.C. 1431 and § 4.7; and that an original and one copy of the manifest must be ready for production upon demand and must be delivered to the first Customs officer who demands the manifest. Sections 4.7(a) and 4.7a, Customs Regulations (19 CFR 4.7(a) and 4.7a), set forth the documentary and informational requirements that constitute the vessel manifest.

Pursuant to § 4.7(a), the cargo declaration (Customs Form 1302 or its electronic equivalent) is one of the documents that comprises a vessel manifest. The cargo declaration must list all the inward foreign cargo on board the vessel regardless of the intended U.S. port of discharge of the cargo (§ 4.7a(c)(1)).

Furthermore, 19 U.S.C. 1448 provides, in pertinent part, that no merchandise may be unladen from a vessel which is required to make entry under section 1434 until Customs has issued a permit for its unloading. In addition, under section 1448, 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. Section 4.30, Customs Regulations (19 CFR 4.30), lists the requirements and conditions under which Customs may issue a permit to unlade foreign merchandise from a vessel arriving in the United States.

In addition, 19 U.S.C. 1436(a)(1) and (a)(4) provide that it is unlawful to fail to comply with sections 1431, 1433 or 1434 or any regulation prescribed under any of those statutory authorities. Moreover, 19 U.S.C. 1436(a)(2) states that it is unlawful to present or transmit, electronically or otherwise, any forged, altered or false document, paper, data or manifest to the Customs Service under 19 U.S.C. 1431, 1433(d) or 1434. Under section 1436(b), the master of a vessel who commits any such violation is liable for a civil penalty of \$5,000 for the first violation and \$10,000 for each subsequent violation and any conveyance used in connection with any such violation is subject to seizure and forfeiture.

##### Proposed Rulemaking; Advance Presentation of Vessel Cargo Manifest to Customs; Required Information

By a document published in the **Federal Register** (67 FR 51519) on August 8, 2002, Customs proposed to amend § 4.7 to provide that, pursuant to 19 U.S.C. 1431(d), for any vessel subject to entry under 19 U.S.C. 1434 upon its arrival in the United States, Customs must receive the vessel's cargo manifest (declaration) from the carrier 24 hours before the related cargo is laden aboard the vessel at the foreign port. The proposed rule also enumerated the specific informational elements that would need to be included in the submitted cargo manifest.

##### Necessity for Advance Presentation of Vessel Cargo Manifest to Customs

As explained in the preamble of the Notice of Proposed Rulemaking (67 FR at 51520), the United States Customs Service recently launched the Container Security Initiative ("CSI"). CSI will secure an indispensable, but vulnerable link in the chain of global trade: Containerized shipping. Approximately 90% of world cargo moves by container; 200 million cargo containers are transported between the world's seaports each year, constituting the most critical component of global trade. Nearly half of all incoming trade to the United States (by value) arrives by ship, and most of that is in sea containers. Annually, nearly 6 million cargo containers are offloaded at U.S. seaports.

There is, however, virtually no security for this critical global trading system. And the consequences of a terrorist incident using a container would be profound. As experts like Dr. Stephen E. Flynn, Senior Fellow, Council on Foreign Relations, have pointed out repeatedly, if terrorists used a sea container to conceal a weapon of

mass destruction—a nuclear device, for example—and detonated it on arrival at a port, the impact on global trade and the global economy would be immediate and devastating. All nations would be affected because there would be no mechanism for identifying weapons of mass destruction before they reached our shores and before they posed a threat to the global economy.

Al Qaeda and other terrorist organizations pose an immediate and substantial threat. And the threat is not just to harm and kill American citizens, it is a threat to damage and destroy the U.S. and the world economy.

To address the threat terrorists pose to containerized shipping, Customs developed CSI. Under CSI, U.S. Customs is working with other governments to identify high-risk cargo containers and pre-screen those containers at the foreign ports *before* they are shipped to the U.S. CSI has four core elements:

(1) Identify "high-risk" containers. In connection with its domestic targeting efforts, Customs has already established criteria and automated targeting tools for identifying "high risk" shipments. Indeed, every one of the shipments that arrives in the United States by sea container is *currently* assessed for risk using these tools and advance manifest data. If this data were provided earlier, Customs could use these same tools to detect high risk shipments before they were carried to the United States. Accordingly, to enhance domestic targeting and to enable overseas targeting and screening of containers, Customs has proposed a rule requiring accurate and detailed information to be transmitted before shipments are laden on vessels destined for the United States.

(2) Pre-screen containers *before* they are shipped. As discussed above, to protect the United States and global trade from the risks posed by international terrorists, security screening should be done at the port of departure rather than the port of arrival.

(3) Use technology to screen high-risk containers. Technology enables screening to be done rapidly without slowing down the movement of trade. This technology includes large-scale x-ray and gamma machines and radiation detection devices.

(4) Use more secure containers to ensure the integrity of containers screened overseas.

CSI thus offers real protection, on a day-to-day basis, for the primary system of international trade—a system on which all economies depend. Given the security afforded by CSI, the investments made by ports and

members of the trade to implement CSI represent relatively inexpensive forms of insurance against the terrorist threat. In the event of an attack using a cargo container, the CSI network of ports will be able to remain operational because those ports will already have an effective security system in place—one that will deter and prevent terrorists from using it. Without such a network, the damage to global trade caused by a terrorist attack involving international shipping would be staggering.

In addition to protecting global trade, CSI should *facilitate* the flow of that trade. When a container has been pre-screened and sealed under CSI, U.S. Customs will not, absent additional information affecting its risk analysis, need to inspect it for security purposes when it reaches the U.S. Moreover, this system could reduce the processing time for certain shipments because the screening at a CSI port will in most cases take place during “down time.” Most containers sit on a terminal for an average of several days prior to lading. This window of “down time” will be used to screen containers for security purposes. On arrival at the U.S. seaport, the CSI-screened container should be released immediately by U.S. Customs, which could shave hours, if not days, off of the shipping cycle. In this manner, CSI should increase the speed and predictability for the movement of cargo containers shipped to the U.S.

For these reasons, CSI is a critical component of the President's Homeland Security Strategy. It has also been endorsed by the G-8 as well as the World Customs Organization.

As a result of this broad support, CSI has been expanding rapidly. When Customs launched CSI this past January, the first step was to implement CSI as quickly as possible in Canada and the top 20 ports (by volume) that ship to the United States. When fully implemented in these locations, CSI will substantially increase the security of the United States and the global trading system because the top 20 ports alone account for nearly 70% of all the containers shipped to U.S. seaports. To date, Canada, the Netherlands, Belgium, France, Germany, Singapore, Hong Kong, and Japan have agreed to implement CSI. These countries represent 11 of the top 20 ports. Customs anticipates that several other nations will agree to implement CSI in the near term, and that CSI will expand beyond the top 20 ports during the next year.

CSI is already operational in Canada and the Netherlands. It will be implemented at several additional ports within the next 90 days. Given this

explosive growth, it is critical that the information necessary to implement CSI fully be provided to Customs in the near term. For this reason, Customs proposed this rulemaking on August 8, 2002 and, following the comment period, is issuing this final rule today.

#### **Non-Vessel Operating Common Carriers (NVOCCs)**

Under the proposed rule, the conditions of the International Carrier Bond (19 CFR 113.64) were proposed to be amended to recognize the status of a Non-Vessel Operating Common Carrier (NVOCC) as a manifesting party and to obligate any NVOCC having such a bond and electing to provide cargo manifest information to Customs electronically under § 4.7 and 4.7a to accurately transmit such information to Customs 24 or more hours before the related cargo is laden aboard the vessel at the foreign port. Breach of these obligations would result in liquidated damages against the NVOCC. For purposes of the proposed rule, a non-vessel operating common carrier (NVOCC) as a common carrier that does not operate the vessels by which the ocean transportation is provided, would be considered a shipper in its relationship with an ocean common carrier.

#### **Penalties or Liquidated Damages for False or Untimely Filing of Manifest Data**

If the master of a vessel failed to present or transmit accurate manifest data in the required time period or presented or transmitted any false, forged or altered document, paper, manifest or data to Customs, the proposed regulations specified that monetary penalties could be assessed under the provisions of 19 U.S.C. 1436(b). Likewise, if an NVOCC having an International Carrier Bond elected to transmit such data electronically to Customs and failed to do so in the required time period or transmitted any false, forged or altered document, paper, manifest or data to Customs, the NVOCC could be liable for the payment of liquidated damages for breach of the conditions of the International Carrier Bond, in addition to any other applicable penalties.

#### **Issuance of Permit To Unlade Cargo**

The proposed rule also provided that if the carrier did not present cargo declaration information to Customs prior to the lading of the cargo aboard the vessel at the foreign port, Customs could, in addition to assessment of civil monetary penalties, delay issuance of a permit to unlade the entire vessel or a

portion thereof until all required information was received.

#### **Preliminary Entry**

Finally, it was proposed that § 4.8 be amended to make clear that the granting of preliminary entry by Customs would be conditioned upon the electronic submission of the Cargo Declaration (Customs Form (CF) 1302), as well as the provision to Customs either electronically or in paper form of all other forms required by § 4.7.

#### **Discussion of Comments**

A total of 78 commenters responded to the notice of proposed rulemaking. Nearly all of the commenters recognized the need to act immediately to protect the global trading systems, and in particular to protect the most important element in the movement of international trade—containerized cargo. They also recognized the urgency and seriousness of the threat posed by terrorist organizations and the smuggling of weapons of mass destruction, including radiological and nuclear materials. They complimented the Customs Service on newly created programs such as the Customs-Trade Partnership Against Terrorism (C-TPAT) and the Container Security Initiative (CSI), which are designed to address this threat.

Most commenters questioned how the regulation would be implemented. They raised operational issues regarding the movement of containers, the security of containers and the interfaces between the U.S. Customs Service and the trade. They also noted that the regulation would require changes to existing business practices that could take several months to fully implement.

While the aim of this regulation is to better secure containerized cargo from the threat of terrorism, it is important to note that carriers, shippers, importers and others should realize significant benefits from its implementation. Most notably, once a cargo container is pre-screened in a foreign port, in the absence of additional information affecting Customs risk analysis, Customs will rarely need to again screen the container or inspect its contents for security purposes upon arrival in the United States. This offers greater predictability for freight forwarders and importers to arrange for transportation upon discharge of the cargo. This and other benefits, however, will only be fully realized after the Customs Service is able to pre-screen containers overseas, using the accurate and complete information required by this regulation.

We have carefully considered all of the comments, and as a result, we have

modified the proposed regulation in many respects. For example, many commenters questioned the need to include bulk shipments under the proposed regulation. After considering these comments, we have modified the proposed regulation to exempt bulk shipments from its requirements. Others requested greater assurances of confidentiality. In response, we will be taking steps appropriately to protect business sensitive information.

In addition, we have considered the comments about the need for additional time to implement the reporting requirements because of potential changes in business practices. Balancing these comments against the pressing need to protect the national security of the United States and to protect the safe and secure movement of international trade, we have decided to not initiate any enforcement actions such as assessing penalties for non-fraudulent violations of this regulation for 60 days after the regulation goes into effect. There is an overriding national security need, however, to move as quickly as possible to protect the United States and the global trading system from terrorism, especially the profound threat of nuclear terrorism.

Though enforcement actions for non-fraudulent violations of this regulation will not be initiated for 60 days after the regulation goes into effect, the U.S. Customs Service is prepared to receive automated manifest information immediately, which would allow Customs to offer facilitation benefits to those customers of carriers and NVOCCs that utilize CSI ports.

We have made a good faith effort to make changes to the rule where appropriate at this time, but we recognize that not all of the modifications suggested by commenters relate to changes in the regulation itself, and that not all potential implementation issues could be foreseen. In the interest of maintaining an open dialogue with affected parties, and consistent with the long-standing Customs practice of working with the Trade, Treasury is inviting the Advisory Committee on the Commercial Operations of the U.S. Customs Service (COAC) to convene a special subcommittee to advise the U.S. Customs Service on operational issues arising out of the implementation of this regulation.

A complete description of the various issues raised by the commenters, together with Customs response to these issues, is set forth below.

### **19 U.S.C. 1431 as Authority for Regulations Notwithstanding Trade Act of 2002**

*Comment:* Twenty-one commenters questioned the validity of the proposed advance cargo manifest regulations under 19 U.S.C. 1431 in light of section 343(a) of the Trade Act of 2002 (Public Law 107-210; 116 Stat. 933), that was enacted on August 6, 2002. Section 343(a) concerns the mandatory filing with Customs of advanced electronic information for cargo being imported into or exported from the United States by vessel, vehicle or aircraft. These commenters contend that the proposed advance cargo manifest regulations are in direct contradiction with the requirements imposed under section 343(a)(3) of the Trade Act of 2002. The underlying premise essentially asserted in this context is that Congress, in enacting section 343 of the Trade Act, effectively repealed any authority that Customs might have had to request advance manifest information under 19 U.S.C. 1431.

*Customs Response:* Customs has concluded that both 19 U.S.C. 1431 and section 343(a) of the Trade Act of 2002 co-exist within the Customs laws and the enactment of section 343(a) of the Trade Act did not and was not intended by Congress to implicitly repeal Customs authority to collect manifest information under section 1431. Briefly stated, therefore, Customs retains the authority under section 1431(b) and (d) to require the advance presentation of vessel cargo manifest information in accordance with the regulations being issued today.

In addition, Customs will issue regulations, in accordance with section 343(a) of the Trade Act of 2002, that will require the advance electronic transmission of information on cargo destined for importation into the United States by vessel, vehicle or aircraft. In this regard, Customs will reconcile those regulations that are issued under the authority of section 343(a) with the regulations that are being issued today under the authority under 19 U.S.C. 1431.

### **Bulk and Break Bulk Cargo**

*Comment:* Several commenters inquired as to whether the 24 hour rule would apply to bulk and break bulk cargo. Many commenters requested that only certain data elements be required for such manifest submissions. Others commented that the Coast Guard 96 hour report of arrival requirements should be used for bulk and break bulk carriers for manifest submission to U.S. Customs in the United States.

*Customs Response:* Customs has determined that the proposed rule will be amended in this final rule to provide that bulk cargo as defined in the rule will be exempt from the 24 hour rule; and, further, that break bulk cargo may be exempted from the 24 hour rule on a case by case basis. Companies that are exempted from the 24 hour rule must submit their cargo declaration information to U.S. Customs 24 hours prior to arrival in the U.S. if they are participants in the vessel AMS program or upon arrival if they are non-automated carriers. In response to the comment that the Coast Guard 96 hour report of arrival requirements should be used, the Coast Guard has merely proposed that requirement at this time. While Customs agrees with the idea, this cannot be implemented until the Coast Guard requirement is adopted.

First, regarding bulk cargo, Customs defines such cargo as homogeneous cargo stowed in bulk, that is to say, loose in the hold and not enclosed in any container such as boxes, bales, bags, casks, and so on. It is also called bulk freight. Reference to a maritime dictionary reveals bulk cargo to be composed of (1) free flowing articles such as oil, grain, coal, ore, and so on, which can be pumped or run through a chute or handled by dumping; (2) articles that require mechanical handling such as bricks, pig iron, lumber, steel beams and so on.

Second, Customs also recognizes that there are concerns that carriers have with other types of cargo known as break bulk. Break bulk is cargo that is not containerized, but which is otherwise packaged or bundled. This type of cargo may raise the same types of concealment and smuggling concerns as containerized cargo. Consequently, as indicated above, a carrier of break bulk cargo may apply for an exemption from the 24 hour rule; Customs will evaluate each application on a case by case basis.

To apply for an exemption, the carrier must submit a written request for exemption to the U.S. Customs Service, National Targeting Center, 1300 Pennsylvania Ave., NW., Washington, DC 20229. Until an application for an exemption is granted, the carrier must comply with the 24 hour advance manifest requirement. The written request for exemption must clearly set forth information such that Customs may assess whether any security concerns exist, such as: The carrier's IRS number; the source, identity and means of the packaging or bundling of the commodities being shipped; the ports of call, both foreign and domestic; the number of vessels the carrier uses to transport break bulk cargo, along with

the names of these vessels and their International Maritime Organization numbers; and the list of the carrier's importers and shippers, identifying any who are members of C-TPAT (The Customs-Trade Partnership Against Terrorism).

If Customs, by written response, provides an exemption to a break bulk carrier, the exemption is only applicable under the circumstances clearly set forth in the application for exemption. If circumstances set forth in the approved application change, it will be necessary to submit a new application.

Customs may rescind an exemption granted to a carrier at any time.

As noted above, companies receiving exemptions must submit their cargo declaration information to U.S. Customs 24 hours prior to arrival in the U.S. if they are participants in the vessel AMS program or upon arrival if they are non-automated carriers.

#### **Non Vessel Operating Common Carriers Eligible to Participate**

*Comment:* In the August 8, 2002, proposed rule, Customs stated that Non Vessel Operating Common Carriers (NVOCC) licensed by the Federal Maritime Commission (FMC) would be eligible to become bonded with Customs and to electronically transmit manifest information directly to Customs. Several commenters pointed out that a separate category of NVOCC is not licensed by the FMC, but rather is registered with the agency. This latter group, unless identified by Customs as eligible to participate, would be unable to transmit information directly to Customs prior to foreign lading. It is requested that Customs allow registered NVOCCs to participate. In addition, one commenter advocated that shippers' associations, like NVOCCs, should be authorized to present the required manifest information electronically to Customs.

*Customs Response:* Customs agrees that to the extent that members of the NVOCC community registered with the FMC become bonded with Customs, they should be included in the electronic filing program. Customs in this final rule has amended the proposed regulatory language in this regard to reflect this change. However, shippers' associations may not participate in the electronic filing program. Such associations of shippers are membership-only groups that are not currently regulated under U.S. law, and they are not licensed or registered with the FMC.

#### **Confidentiality of Manifest Information**

*Comment:* A number of commenters addressed the issue of the

confidentiality of certain manifest information. The views expressed really concerned two different aspects of the need for confidentiality—that involving business and competitive advantage and that involving the matter of cargo security.

One group, consisting primarily of the Non Vessel Operating Common Carrier (NVOCC) community, expressed concerns that the information which would be supplied to Customs under the proposed new procedures would be subject to release for publication. It was stated that such release would reveal confidential business information which could result in harm to the NVOCC community. It was suggested that NVOCC filers should be permitted to make biennial confidentiality certifications to Customs on behalf of the importers or consignees, pursuant to statute, which allows only the importers or consignees to submit biennial certifications for confidentiality of certain manifest information. It was also suggested that Customs should consider an NVOCC to be an "attorney in fact" for certification filing purposes since our regulations currently allowed an attorney of an importer or consignee to submit a certification on behalf of that importer or consignee.

The second confidentiality concern expressed by commenters involved the matter of the security of the cargo itself. It was suggested that if Customs released certain manifest information shortly after its receipt, information identifying cargoes could be published even before vessels departed foreign ports bound for the United States.

*Customs Response:* Customs recognizes the confidentiality concerns stated by these commenters. The premature disclosure of information about incoming cargo, particularly sensitive shipments, such as chemicals and the like, could not only undermine business relationships; it could also enable terrorist or criminal organizations, having advance information about incoming cargo, to attempt the theft or destruction of such cargo prior to or upon its arrival in the United States.

Accordingly, in response to these matters, Customs intends to address these concerns to the extent allowable under existing law. To this end, 19 U.S.C. 1431(c) limits the parties eligible to make a necessary confidentiality certification to include only importers and consignees. While our regulations currently allow an attorney of an importer or consignee to file a client's certification, Customs simply cannot designate an NVOCC to be an "attorney in fact" for certification filing purposes.

Proposed amendments to Part 103 of the Customs Regulations (19 CFR part 103) would be necessary. Given this fact, Customs will be issuing a separate **Federal Register** Notice of Proposed Rulemaking in the near future to expand upon those parties who may file a biennial certification on behalf of the importer or consignee. An immediately available option, however, is for NVOCC manifest information filers to request appropriate importers and consignees in the United States to file certifications with Customs on their own behalf, thus protecting the same range of information which is sought to be protected here.

With regard to the concern that release of advance information prematurely can raise new security concerns, Customs will not be releasing information from cargo declarations until the complete manifest is filed with Customs. The statutory provision under consideration, 19 U.S.C. 1431(c), provides for the release for public disclosure of information, when contained in a vessel manifest. The statute does not specify when the information must be released to the public pursuant to 19 U.S.C. 1431(c). (Section 4.7 of the Customs Regulations (19 CFR 4.7) specifically identifies those documents comprising a vessel "manifest"; such documents comprising the vessel manifest include the Vessel Entrance or Clearance Statement (CF-1300); Cargo Declaration (CF-1302); Ship's Stores Declaration (CF-1303); Crew's Effects Declaration (CF-1304, or optional INS Form, I-418); Crew List and I-418; and, Passenger List with I-418.)

The August 8, 2002, document published in the **Federal Register**, by proposing to require advance filing of Cargo Declaration information, specifies that only a *portion* of a vessel's manifest, the CF 1302 information, must be presented or transmitted prior to foreign lading. This requirement goes only to certain data which is made part of the larger manifest requirement. The manifest itself is filed with Customs at the time of vessel entry in any of the various ports of the United States. No information can be said to be contained in a "vessel manifest" as provided in section 1431, until the complete manifest is made available to Customs. Therefore, the release of information from manifests must await their filing of the entire and complete manifest with Customs at the time of formal entry of vessels in the United States.

#### **Bonds for Non Vessel Operating Common Carriers (NVOCCs)**

*Comment:* One commenter stated that the proposal to amend provisions of the

Customs International Carrier Bond as presently set forth in § 113.64 (19 CFR 113.64) would be inappropriate since an NVOCC did not actually transport merchandise. Concern was also expressed that an NVOCC could be held accountable by Customs for delivery of cargo to an incorrect port of unloading by a carrier. Likewise, there was concern that an NVOCC could incur manifest violation penalties in instances where data was relayed to Customs by the NVOCC at least 24 hours in advance of scheduled vessel sailing time, but the vessel then loaded and departed earlier than scheduled.

**Customs Response:** It is the current practice that vessel agents in the United States carry continuous International Carrier Bond coverage (19 CFR 113.1). They, likewise, do not transport cargoes. They are bonded in order that Customs may be assured that the revenue is protected and that prompt satisfaction of any liabilities incurred in the course of their dealings with Customs may occur. Likewise, the NVOCC community will be dealing with Customs and will be required to provide the same level of assurance with respect to the correctness of the information they submit. Provided the NVOCC adequately demonstrates that cargo declaration information was timely submitted to Customs and the carrier then loaded the containers prematurely, the NVOCC will not be liable.

**Comment:** A commenter inquired as to how Customs would set bond amounts for NVOCC activities, and whether guidance to the ports would be forthcoming. The concern was that guidelines be made proportional to any claims for liquidated damages assessed against these parties.

**Customs Response:** Customs port directors retain discretion for setting bond amounts in their respective jurisdictions. Customs Headquarters does intend to issue policy guidance on bond coverage specific to NVOCC activity. As in the past, such guidance will establish a minimum bond amount to be required. Using their discretion under our regulations, port directors are authorized to set higher amounts based upon their experience in the ports of entry.

The guidelines provided to ports will not include guidance regarding proportionality of liquidated damages claims. Such claims are, as always, dependent upon the factual circumstances involved in any particular transaction relating to the breach of the bond conditions.

### **Permits To Unlade in United States Ports**

**Comment:** A few commenters addressed the issue of Customs granting permits to unlade merchandise in ports of the United States. The concern was that an entire vessel could be denied permission to unlade in circumstances where only a portion of the cargo was non-compliant with the rule on 24 hour advance notification to Customs. Port Authorities also expressed concern over potential port congestion.

**Customs Response:** The statute governing the issuance of permits to unlade merchandise in the United States, 19 U.S.C. 1448, expressly provides that no merchandise shall be unladen from any vessel until entry has been made and a permit for the unloading of the same has been issued by the Customs Service. To the extent that Customs has identified a portion of arriving cargo which has not been laden in accordance with the requirements of the regulations, Customs has the authority to process that portion differently from the remainder. Customs will allow unloading of that portion of the cargo that has been laden in accordance with the regulations, unless circumstances require otherwise.

### **Liability Concerns and Legal Responsibilities**

**Comment:** Several commenters raised questions about various liability issues specifically relating to which party was legally responsible under penalty of law for submitting accurate manifest information to Customs; for any errors and omissions that were contained in submitted manifests; and for the failure to file manifests timely. Additionally, it was asked who would be responsible when manifested freight was left behind and was not delivered to the port for which it was manifested; or when diversions from or changes to the original port of call resulted in freight being delivered to a port other than the one for which the freight was manifested.

**Customs Response:** Customs may initiate penalty actions against any party responsible for providing the required information. For example, if a non-vessel operating common carrier (NVOCC) elects to participate in the vessel Automated Manifest System (AMS) and transmits its information directly to Customs, the NVOCC is the responsible party and will be held liable for any manifest information found to be untimely presented and/or containing errors or omissions. This would also be the case if the NVOCC manifested cargo and the cargo is left behind. Timely

communication between the vessel carrier and the NVOCC is required in order for the NVOCC to amend its manifest information to accurately list the cargo that is on board the vessel. Likewise, effective communication between the vessel carrier and the NVOCC is essential for changes to the ports of call and diversions of the vessel.

If an NVOCC is a participant in the vessel AMS program, the NVOCC will be treated as a carrier for Customs purposes. Vessel operators who currently slot charter to other vessel AMS carriers will utilize the same procedures for notification that the slot charterer has used in providing its manifest to Customs. A slot charterer is a carrier leasing space on a vessel owned or operated by another carrier on a space available basis. The vessel operator is only responsible for ensuring that the NVOCC's Standard Carrier Alpha Code (SCAC), as described in 19 CFR 4.7a(c)(2)(iii), is included on the Customs Form (CF) 3171 that is presented to Customs. Failure to present the SCAC of all NVOCCs and slot charterers on board the vessel will result in a penalty against the vessel carrier under 19 U.S.C. 1436.

**Comment:** A number of commenters asked for confirmation that Customs would not require containers to be off loaded for examination once clearance to load had been given. It was asked who would be liable for the costs incurred if Customs required unloading of a container at an intermediate foreign port.

**Customs Response:** Customs will follow the current procedures for the examination of containers. Customs does not anticipate that a container already loaded in compliance with this rule would be required to be unloaded for examination except in exigent circumstances. In these rare instances, the carrier will be assessed the costs.

### **Automated Commercial Environment (ACE)**

**Comment:** Several commenters questioned how the proposed rule would link to the Automated Commercial Environment (ACE) program and whether partial bill of lading information could be reported to Customs. It was also requested that Customs enlarge the scope of those participants who were eligible to provide manifest information to include brokers, shippers and importers.

**Customs Response:** The current system that Customs utilizes for electronic transmissions of vessel manifest data is the Vessel Automated Manifest System (AMS) which is a

component of the Customs Automated Commercial System (ACS). This system will not allow for brokers, importers or shippers to input manifest information. Additionally, this system will not accept partial bill of lading data to be transmitted by the carrier. The carrier will receive a reject message on that bill of lading.

The ACE system is the new automated system being designed by Customs and it is in the developmental stages, consequently a precise answer as to how this will be handled under ACE is not available now. Working groups consisting of representatives from several Government agencies and the trade community have been continually meeting to ensure all issues and concerns are discussed and presented properly. The Trade Support Network (TSN) is one of these working groups and the appropriate subcommittee of the TSN will examine how the ACE program will meet the objectives of this rulemaking. Interested parties can get additional information as to the development of the ACE program at [www.customs.gov](http://www.customs.gov). Users should select the Customs Modernization icon on the website, then type the letters "TSN" into the search box.

#### **Maintaining a Paper Manifest on Board the Vessel**

*Comment:* Several commenters referred to the need for vessel carriers to maintain an original/copy of the manifest on board the vessel.

*Customs Response:* The requirement to carry the paper manifest on board the vessel was waived during a Vessel Paperless Manifest Test. The test procedures will be amended by the effective date of this rule to state that vessel carriers must submit their cargo declaration information to Customs 24 hours prior to lading at a foreign port. The participants in the Vessel Paperless Manifest Test will not be required to maintain a paper copy of the manifest on board the vessel; however, one must be provided upon request. All carriers not participating in the test must maintain a paper copy of the complete manifest on board the vessel.

*Comment:* Several commenters inquired whether carriers would be required to submit a final manifest prior to arrival in order to be permitted to unlade or whether the individual manifest reports submitted in advance would suffice.

*Customs Response:* The distinction between a manifest and a cargo declaration must be appreciated. The cargo declaration is one of several documents which, when taken together, constitute a vessel manifest. In this

rulemaking, by requiring the submission of cargo declaration information 24 hours prior to lading, Customs is eliminating the requirement for vessel carriers to submit an additional cargo declaration upon arrival in the United States. However, the remaining documents comprising the vessel manifest must be available for presentation upon entry of the vessel.

#### **Requirements for U.S. Virgin Islands**

*Comment:* Various commenters sought clarification as to whether vessels operating from the U.S. Virgin Islands to the United States were included in the proposal. It was pointed out that shipments from the continental United States to Puerto Rico, Hawaii or Alaska would not be subject to the proposed advance manifest regulations.

*Customs Response:* Vessels destined to Puerto Rico, Hawaii, and Alaska from the continental United States are considered to be operating between points in the Customs Territory. The U.S. Virgin Islands is located outside the Customs Territory and therefore vessels departing from there to the U.S. are subject to the 24 hour advanced manifest rule.

#### **Military Cargo**

*Comment:* A number of commenters asked if the proposed rule applied to military cargo or other government shipments.

*Customs Response:* Carriers of military cargo and other U.S. Government shipments are required to comply with the advance manifest regulations.

#### **Clarification of Data Elements**

*Comment:* Several commenters requested clarification of the data elements required to be included on the cargo manifest.

*Customs Response:* Customs has revised the regulations to include additional explanation and descriptive information, where appropriate, for those data elements that must be contained in the vessel's cargo manifest.

*Comment:* Several commenters stated that requiring a precise description of the cargo would result in "dummy" information being presented to Customs and that certain data elements were not known until after the lading of containers. Additionally, if shippers were to attempt precise cargo descriptions, the result would be numerous corrections having to be made to the manifest as the vessel approached the United States.

*Customs Response:* The so called "dummy" cargo descriptions are exactly what Customs cannot accept because

they undermine our efforts to target threats to national security. Therefore, Customs is now requiring accurate cargo descriptions. Generic descriptions, specifically those such as "FAK" ("freight of all kinds"), "general cargo," and "STC" ("said to contain") are not acceptable. Moreover, general characterizations such as "chemicals" or "foodstuffs" will be considered overbroad.

*Comment:* Several commenters requested clarification on whether the proposed rule required the consignee name to be listed, or if it required the consignee name only if one were already provided when cargo was presented for shipment. Clarification was specifically requested on: Whether the owner or owner's representative meant the cargo owner; if there were a consignee, whether the shipper could decline to disclose the consignee by naming the cargo owner; and, whether the owner was to be listed only if there were no consignee indicated.

*Customs Response:* The only time a consignee name would not be recorded is in the case of "to order" shipments where the merchandise is sold in transit. Many "to order" entities are listed as the consignee. A "to order" consignee is not the true consignee, but rather only an interested party, such as a bank, which is securing payment. Either the party holding title to the goods (the owner) or that party's representative has the real interest in a shipment. Accordingly, the owner or owner's representative is the party that must be listed in place of the consignee in the case of "to order" shipments. If the consignee's name is available, however, the shipper must disclose this information.

*Comment:* A number of commenters requested that Customs clarify which seal number had to be provided: The seal of the shipper, the seal of the shipping line, or the Customs seal. Other commenters requested clarification on whether all loaded containers had to have an affixed seal.

*Customs Response:* For all sealed containers, the number that must be identified is the seal number of the last person/company to load the container. Participants in C-TPAT (The Customs-Trade Partnership Against Terrorism) must affix seals to all loaded containers.

*Comment:* Some commenters asserted that it was impossible to report the "actual boarded quantities" as required by proposed § 4.7a(c)(4)(x) 24 hours before the cargo was "actually" boarded.

*Customs Response:* Customs recognizes the validity of the comments. Accordingly, we are removing this data element from the final rule. This matter



will be addressed in a separate **Federal Register** Notice of Proposed Rulemaking concerning Manifest Discrepancy Report filing.

#### Co-Loading

*Comment:* Commenters questioned whether the proposed rulemaking would put an end to "co-loading." Co-loading would occur when several NVOCC firms combined their cargo for movement under one NVOCC's master bill of lading, and each NVOCC had its own sub-set of house bills of lading and related manifests. Specifically, the scenario was presented where an automated NVOCC co-loaded with a non-automated NVOCC and the non-automated NVOCC presented the container to the vessel carrier. The question posed in this context was whether the manifest information would remain confidential and not be provided to the vessel carrier. In addition, clarification was requested as to whether the shipper, consignee, and cargo description information from all NVOCC house bills of lading (Master NVOCC and co-loading NVOCC) had to be included in the advance cargo manifest filing.

*Customs Response:* The rulemaking will not put an end to co-loading. If an automated NVOCC co-loads with a non-automated NVOCC and the non-automated NVOCC presents the container to the vessel carrier, the automated NVOCC is required to present its own bill of lading for that shipment directly to Customs via vessel AMS. The non-automated NVOCC must fully disclose and present the required manifest information for the related cargo to the vessel carrier for presentation to Customs via vessel AMS. Automated NVOCCs will not be authorized to submit paper manifests to the vessel carrier. The automated NVOCC who is co-loading should be aware, however, that its shipment could be held for examination based on Customs not receiving timely manifest information in the United States.

If the situation is reversed and the non-automated NVOCC co-loads with the automated NVOCC with the automated NVOCC presenting the container to the vessel carrier, the automated NVOCC is required to transmit all bills of lading in the container via vessel AMS. Non-automated NVOCCs that have shipments as part of a co-loaded container must fully disclose and present the required manifest information for their cargo to the automated NVOCC who would be required to present this information to Customs via vessel AMS. Each

individual shipment must be input into the vessel AMS program with each individual shipper and consignee being identified along with the cargo description. Bills of lading stating the non-automated NVOCC to be either the shipper or consignee or setting forth the cargo description as "consolidation" is not authorized.

Non-automated NVOCCs thus have two options to submit manifest information to Customs. The options are: (1) Submit manifest information, in paper, directly to the vessel carrier who is required to input all bills of lading from the non-automated NVOCC into the vessel AMS program; or (2) Become a participant in the vessel AMS program and submit manifest information to U.S. Customs either directly or through an automated Service Provider, Port Authority, or Vessel Agent. Only under the second option will the manifest information of a non-automated NVOCC remain confidential (not be disclosed to the vessel carrier). In any case, regardless of the option chosen, the non-automated NVOCC is required to abide by the 24 hour advance manifest rule.

As stated in 19 CFR 4.7a, NVOCCs that receive cargo in sealed containers from the shipper can rely on the shipper's declaration. This section provides specific language to be used with "shippers load and count." However, in vessel AMS the shipper must be identified, not the NVOCC.

#### Vessel AMS Procedures

*Comment:* Several commenters indicated that vessel AMS needed to be programmed to allow for the ocean carrier to update certain data elements even if the ocean carrier had not initiated the data transmission. In addition, requests were made to allow for a single transmission of individual bills of lading to Customs.

*Customs Response:* The AMS program does not allow parties to change, add or delete manifest information on a transaction they have not initiated. Ocean carriers, NVOCCs and slot charterers need to communicate and provide lading information to the responsible parties in order to eliminate the possibilities that either cargo is laden on board without being properly manifested, or without appropriate changes being made to the bills of lading. The vessel AMS program was not designed to allow for the transmission of individual bills of lading, and such transmissions must be sent by batch. This matter is under review for inclusion in the ACE program.

*Comment:* Several commenters requested clarification of the procedures

upon vessel arrival in the first U.S. port relating to manifest filing, and time frames for submitting to Customs a permit to unlade on Customs Form (CF) 3171.

*Customs Response:* Vessel carriers must submit their CF 3171s 48 hours prior to arrival in the United States. Except for participants in the vessel paperless manifest test, vessel carriers, NVOCCs and slot charterers are required to submit manifests for empty containers on board to U.S. Customs 24 hours prior to arrival in the United States.

*Comment:* Some commenters requested clarification on the process by which vessel carriers and NVOCCs, who were not automated, would present their paper manifests to Customs for both CSI and non-CSI ports. Clarification was also requested on the process for submitting manifest information to Customs during computer down times and when unsuccessful transmissions occurred.

*Customs Response:* In presenting paper cargo declaration information to Customs at a CSI port, the authorized representative for the vessel carrier is required to submit directly to U.S. Customs officials at a designated site for that CSI port. The exact procedures for this process will vary from country to country based on various agreements signed under the CSI program. Each CSI location will determine the process based on these agreements. The U.S. Customs Service will provide detailed information to the trade community upon completion of signed agreements in each of the CSI locations.

For those vessel carriers presenting paper cargo declaration information to Customs at non-CSI ports, the companies are responsible for ensuring that their cargo declaration information is provided to Customs in the United States 24 hours prior to lading at the foreign port. Facsimiles and non-AMS electronic messages sent directly to Customs are not authorized. Non-automated vessel carriers may either enlist the automated services of a Vessel Agent, Service Provider, local Port Authority, or a business partner in the U.S. The domestic party in receipt would deliver the cargo declaration information directly to Customs. Paper cargo declaration information must be presented to each intended U.S. port of arrival 24 hours prior to lading at a foreign port. However, due to the fact that the non-automated vessel carrier has elected to submit paper cargo declaration information directly to Customs in the United States, the non-automated carrier is responsible for ensuring that complete cargo



declaration information for each port of call in the United States (via the paper procedure outlined in the paragraph below) is submitted to each Customs location for review 24 hours prior to lading at the foreign port. Failure to do so could result in penalties or denial of unloading privileges.

In presenting cargo declaration information to Customs, a non-automated vessel carrier may utilize an automated domestic Vessel Agent, Service Provider, or Port Authority; or the non-automated carrier may utilize either an automated or non-automated business partner. Where the carrier utilizes an automated party to present cargo declaration information electronically to Customs, notification of holds will be conducted via the vessel AMS program. However, if a non-automated vessel carrier chooses to submit its information via a domestic representative using paper, Customs will notify the local U.S. representative of any holds. This notification will be indicated on a document that the local representative may pick up at the Customs port offices. It will be the local U.S. representative's responsibility either to provide necessary information to the ocean carrier or to provide a copy of relevant documentation to the foreign entity who in turn must provide a copy to the ocean carrier. Port directors in local ports will provide the details on the location for submitting paper cargo declaration information and the location and time that the notification document can be obtained.

In presenting cargo declaration information to Customs, non-automated NVOCCs may utilize an automated Service Provider, Vessel Agent, or Port Authority; however, a non-automated NVOCC may not utilize a non-automated business partner. U.S. Customs will not accept paper cargo declaration information from any automated party, which has originated from a non-automated NVOCC.

With reference to unsuccessful transmissions through the vessel AMS program, Customs conducts testing programs with the participants prior to their going on-line to ensure that their computers are both sending and receiving accurate messages. Customs will not allow a company to go on-line if they have not successfully completed this testing program.

The down time issues that have been raised are outlined in current Customs Directive 3240-075, Vessel Automated Manifest System, that is available to the trade community. Current acceptable down time is 2 hours; however, it is within the port director's discretion to allow more than the recommended 2

hours if circumstances warrant. Carriers whose systems are down for extended periods of time should notify their assigned client representative and refer to the procedures outlined in the directive on how to submit paper cargo declaration information to Customs.

*Comment:* Various commenters asked that Customs authorize exemptions for submission of any data elements which were viewed as being out of the control of an NVOCC.

*Customs Response:* The vessel AMS program will not accept an absence of data elements. If all required information is not entered, the vessel AMS program will send a rejection message to the transmitting party. We note that there are slot charterers who are automated and who have been consistently operating without any difficulty. Vessel carriers, NVOCCs and slot charterers must have procedures in place so that if containers have been manifested by an NVOCC or a slot charterer and subsequently are not laden, the vessel carrier must notify the NVOCC or slot charterer in order that they may amend their manifests to show corrected information.

*Comment:* Some commenters inquired as to how Customs would know when goods had been laden since the lading process was one that occurred over a period of time.

*Customs Response:* Customs considered requiring an additional data element for carriers to indicate the estimated time of lading. It was determined that such a requirement would be an additional burden to the carriers, and potentially unnecessary. Carriers understand the logistics of their business, and Customs will rely on them to provide the required information 24 hours prior to lading. Indeed, they have every incentive to do so—in addition to penalties, any carrier that begins the lading process without providing manifest information 24 hours before will be required to remove any containers that are identified for examination and which have already been laden.

*Comment:* Several commenters asked about the procedures needed to identify the initial manifest transmission to Customs and when amendment transmissions were made to the manifest.

*Customs Response:* The vessel AMS program has a transaction screen that allows the inspector to view all postings against each bill of lading. This means that each time a bill of lading is changed, added or deleted, Customs receives these transactions.

*Comment:* A few commenters requested clarification on how the ocean

carrier would determine if an automated NVOCC had submitted manifest information directly to Customs.

*Customs Response:* Vessel AMS has a field identified as the Second Notify Party. The Second Notify Party lets the vessel carrier know when a bill is on file, and gives the vessel carrier the hold messages as well as all associated releases. Although this has not been a mandatory field in the past, Customs will now require this field to be completed by all automated NVOCCs and slot charterers.

*Comment:* It was asserted that if a hold notification were not sent to the carrier at the port of loading but rather to an NVOCC located in a different time zone from the carrier, it would affect being able to respond rapidly to requests from Customs. It was observed that different time zones could cause confusion as to when the 24 hour period had expired.

*Customs Response:* Carriers and NVOCCs will have to establish lines of communication for such circumstances. Customs will send notifications of a bill of lading on file to the party that provided the information to Customs in vessel AMS. The bill on file with Customs has a date and time stamp in vessel AMS, using Eastern Standard Time. Additionally, utilization of the Second Notify Party function in vessel AMS will allow for provision of additional information to the vessel carrier when an automated NVOCC or slot charterer receives hold messages on containers.

#### **Load/No Load Messages to the Carriers**

*Comment:* Several commenters requested that carriers be given confirmation for every container or shipment that Customs approved for lading. Some commenters inquired as to whether an absence of notification to carriers by Customs would serve as an authorization for lading. Other commenters requested that carriers be allowed to begin lading after a specified period of time, but prior to the expiration of the 24 hour period.

*Customs Response:* Customs agrees in principle with the notion of providing electronic confirmation messages to carriers which would authorize the lading of containers. However, the necessary programming cannot be accomplished before the regulations are implemented. Research will be undertaken to determine whether this capability in the vessel AMS program is feasible.

Until the completion of work in vessel AMS allowing confirmation messages, Customs will not allow lading prior to expiration of the 24 hour period and

will utilize the current operating procedures under which filers receive hold messages only.

#### Business Practice Issues

*Comment:* Numerous commenters questioned the viability of obtaining detailed manifest information 24 hours prior to loading of cargo on board a vessel. In this respect, some commenters expressed concern over the impact of the requirement on the efficiency of their commercial operations, while other commenters focused more on the financial impact of the 24 hour requirement on their operations.

A major concern was that movement of cargo would be disrupted and/or delayed due to the detailed level of manifest information required because the information may not readily be available before cargo is loaded onto a vessel. It was feared that the new requirements could cause cargo to miss sailing dates and remain at docks which did not have adequate security or space available to store containers.

The issue concerning financial impact involved changing business practices such as: Routing of vessels, work practices, personnel increases, automation costs including the cost of acquiring a bond, and the leasing of storage facilities.

*Customs Response:* With regard to the concern that the proposed rule may adversely affect the efficiency of international shipping operations, Customs recognizes this legitimate concern and has taken at least three steps to address it in the development of the CSI and this rulemaking. First, it is important to note that it is the information about the contents of a shipping container, not the container itself, that must be presented to Customs 24 hours prior to lading at a foreign seaport. Under this rule, so long as the required information is provided to Customs 24 hours in advance of lading, the container itself may be brought to the seaport at a later time. Second, the development of this rule and the CSI have been designed to take advantage of the existing shipping cycle. In most foreign seaports, containers destined for the United States are often stored at terminals for several hours or several days before lading. This provides ample opportunity for Customs and its foreign CSI partners to identify and screen potentially high-risk containers within the normal shipping cycle and without causing any unnecessary delays. Third, as noted above, by screening potentially high-risk containers at foreign seaports during the normal shipping cycle, Customs should be able to significantly expedite the movement of containers

upon arrival in the United States. This should not only reduce delays associated with targeting and screening containers upon arrival in the United States, it should also add greater predictability to the movement of containers through domestic seaports.

Customs recognizes that some changes to business practices may be required in order to transmit the manifest data required under this rule. For example, although much, if not all, of the data required by Customs is available prior to lading because it is derived from information in the possession of carriers and NVOCCs or contained in the commercial documents generated prior to lading, Customs recognizes that businesses may not currently be configured to collect and transmit such information in compliance with the rule. This is one of the reasons that Customs has elected to phase-in enforcement of the rule over a 60 day period after the regulation goes into effect—to strike an appropriate balance between the needs of business and the need of the government to address the immediate threat that international terrorist organizations pose to the United States and the global economy.

Customs also recognizes that not all potential changes to supply chain or business practices can be anticipated in the promulgation of a proposed rule or in the comments it generates. Accordingly, Customs will carefully monitor the implementation of the rule and, as noted above, Treasury is inviting COAC to create a subcommittee to advise Customs on operational concerns arising from the implementation.

*Comment:* It was contended that requiring cargo manifest information to be submitted to Customs 24 hours before lading the cargo aboard the vessel at a foreign port would run counter to the “just in time” inventory practices in wide use today.

*Customs Response:* Customs is requiring transmissions of cargo declaration information 24 hours in advance. Customs is not requiring that the cargo be ready for inspection or that the cargo be at the dock. However, Customs recognizes that this final rule could cause vessel carriers to change the current practice of sometimes adding last minute loads to vessels, but only if such loads were not manifested 24 hours prior to their lading.

Nonetheless, as noted above, most cargo destined for the United States sits at the foreign port for several hours to several days before lading. This regulation will have no effect on that practice.

*Comment:* Numerous commenters requested generally that procedures required under the proposed rule be clarified. Many of these commenters addressed issues involving private contractual agreements between trade partners. Other matters where it was stated that further clarification was needed dealt with process and manifesting requirements of carriers, NVOCCs, involved ports, transshipment, and feeder vessels.

*Customs Response:* To the extent that trade partners may enter into private contractual agreements, Customs would have no involvement. Required information will include the data elements mentioned in the rulemaking along with the information that is required on the cargo declaration (CF 1302). These requirements apply at all foreign ports where an inward foreign vessel carrier lades cargo destined to the U.S., including FROB (Foreign Cargo Remaining On Board) which is not going to be unladen in the United States. The term “inward foreign carrier” applies to all vessels coming from foreign locations to the U.S. A vessel that transships cargo between foreign locations or a vessel that does not call on a U.S. port is not required to submit manifest information under this rulemaking.

The inward foreign vessel carrier that calls on many foreign ports before the U.S. will not have to re-transmit cargo declaration information already provided from previous foreign ports. Multiple original manifest transmissions can be submitted for the same carrier, vessel or voyage so long as AMS vessel arrival has not occurred. Carriers will only be required to transmit new cargo declaration information for each port of lading. Any NVOCCs and slot charterers, who are authorized to transmit manifest data in vessel AMS, will be subject to the same requirements as the vessel carrier to provide manifest information on cargo destined to the U.S., including FROB, as defined later in this document, at each foreign port of lading.

#### Lead Time

*Comment:* Several commenters asked about the time frame that would be given to implement the proposed rulemaking. There were two suggested time frames for implementing the advance manifest regulations that were mentioned repetitively by the commenters: one requested a lead time of six months, and the other requested one year to implement a phased-in approach.

*Customs Response:* This rulemaking responds to an urgent national security

issue and must be implemented promptly. Customs must begin receiving advanced cargo declaration information to strengthen CSI and to reduce the risk of smuggling weapons of mass destruction and other contraband into the United States. As previously mentioned, however, in recognition of industry concerns, Customs has determined to delay full enforcement for a period of 60 days following the effective date of the new requirements. This, when taken together with the 30-day post publication period generally provided, will allow a total of 90 days from publication date to full enforcement.

#### **Proposed Rule Will Result in Loss of U.S. Ports Business to Canadian Ports**

*Comment:* A number of the commenters were concerned that they would lose business to Canadian ports due to the new regulations. They feared that cargo would initially go to Canada and then come to the U.S. via truck/rail to circumvent the regulations.

*Customs Response:* Customs has targeting personnel stationed at seaports in Canada and cooperation with Canadian authorities has been excellent. If either Customs administration suspected that goods were being routed in an attempt to evade scrutiny, those goods would be likely to be treated as high risk.

#### **Requirements for "FROB" CARGO and NVOCCs**

*Comment:* Several commenters questioned whether the new regulations would apply to FROB cargo (Foreign Cargo Remaining On Board). They also stated that carriers could refuse U.S. bound cargo once faced with the new requirements.

*Customs Response:* The definition of "FROB" cargo is cargo that is loaded in a foreign port and which is to be unloaded in another foreign port with an intervening vessel stop in one or more ports in the United States. Customs considers "FROB" cargo a security concern because although the cargo does not have a final destination in the U.S., the cargo is transiting the U.S. Currently, carriers must correctly report FROB cargo upon arrival in the United States. Under the new regulations, FROB cargo must be reported 24 hours in advance of loading.

#### **Request That Carrier Be Exempt From Rule if Participant in C-TPAT**

*Comment:* Several commenters that were participants in C-TPAT (the Customs-Trade Partnership Against Terrorism) requested that they either be exempted from the advance manifest

regulations or that they be allowed to present cargo manifest information at some point before the vessel arrived in the United States, rather than before the vessel departed from the foreign country. It was further requested that there be maintained a "known shipper list" which could enable Customs to expedite cargo clearance. These commenters also sought the ability to make changes to manifest information without time constraints being imposed.

*Customs Response:* While C-TPAT participants will not be excluded from the advance reporting requirements, their participation will be taken into account during the targeting process.

#### **A Denial/Delay in Granting Permit To Unlade Will Cause Port Congestion**

*Comment:* A number of commenters, specifically Port Authorities, were concerned that if permits to unlade were denied the result could be congestion at U.S. ports.

*Customs Response:* Permits may be granted to unlade properly manifested merchandise on a vessel but denied for the remainder of the cargo for which manifest information has not been accurately and/or timely received by Customs. Thus, depending on the circumstances, only that portion of the cargo for which advance information is not provided may not be unladen. Moreover, if the advance information is not timely provided, the subject cargo should not be laden on the vessel. Therefore, there is no reason to conclude that this final rule will cause congestion at U.S. ports.

#### **Time for Presenting Manifest Should Be When Vessel Departs or Later**

*Comment:* Several commenters stated that the ability to submit their manifest at time of foreign departure or later would be more feasible.

*Customs Response:* The purpose of this rulemaking is to allow sufficient time for U.S. Customs to review and target cargo that may pose a threat to the U.S., specifically weapons of mass destruction, including nuclear and radiological materials and weapons, and to deny that cargo from being loaded on board vessels before they depart for the U.S. Having to interdict such cargo once it reaches our shores would simply be too late. Customs believes that the 24 hour period specified in the advance cargo declaration regulations is essential to achieving this goal.

#### **Need for Risk Analysis Regarding Implementation of 24 Hour Rule**

*Comment:* Some commenters suggested that Customs conduct a risk

analysis before implementing the 24 hour rule.

*Customs Response:* As noted above, Customs has analyzed the risks that international terrorists pose to the United States and the global trading system. These risks are profound. This analysis led to the development of CSI and the promulgation of this 24 hour advance cargo declaration rule.

#### **The 24 Hour Requirement Is Too Long for Short Voyages/Hauls**

*Comment:* Several commenters indicated that 24 hours was too much time to ask for information in advance for voyages that were less than 24 hours in length.

*Customs Response:* Customs will not exempt short hauls from the regulation. Cargoes placed aboard vessels on short voyages pose the same potential risks as those laded aboard vessels on longer voyages. Customs recognizes that compliance with the regulations may require certain changes in business practices, as previously discussed, but these changes are necessary to protect the United States and global shipping.

#### **Handling of Empty Containers Aboard Vessels**

*Comment:* Several commenters asked whether the advance manifest regulations required that empty containers be manifested and whether, if so, information would have to be submitted to Customs 24 hours in advance. Additionally, it was stated in this connection that empty containers were used to complete stowage plans and were loaded at the last minute, depending on available space. It was stated that carriers would be faced with additional costs for the storage of empty containers if they did not make the voyage.

*Customs Response:* Carriers will not be required to submit information on empty containers 24 hours in advance of lading. For vessel AMS participants, information on empty containers must be submitted on a single bill of lading which lists all container numbers. For those carriers that present paper cargo declarations, empty containers must be listed on a single paper bill of lading with all container numbers listed. Submission of the empty container manifest information, whether paper or automated, will be due to U.S. Customs at least 24 hours prior to arrival in the United States, with the exception of those participants in the current vessel paperless manifest test, who must continue to file manifest information for empty containers 48 hours prior to arrival in the United States.

### Correction of Manifest Information

*Comment:* Several commenters raised the question of whether they would be permitted to update information which was provided to Customs prior to lading while they were enroute to the United States.

*Customs Response:* The main goals of the advance cargo declaration information program are (1) to receive accurate information (2) prior to lading in a foreign port. Only in this way can Customs use all of its targeting tools to identify potentially high risk shipments and prevent them from being placed aboard vessels in the first place. Accurate information is essential if Customs is going to be successful in preventing terrorists from using sea carriers to transport instruments of terrorism to the United States. We recognize, however, that updated or different information may be provided to carriers after lading. As this information would assist in our efforts to assess the risks associated with those shipments, we would expect to be provided with such information, and will ensure that there are mechanisms to do so. It must be understood, however, that an acceptance of certain changes in information after foreign lading will not justify any initial submission which is not, to the best information and belief of the filer, true and complete at the time of submission. Indeed, Customs will not tolerate such practices.

Customs recognizes that to accommodate manifest updates and changes, amendments will be necessary to our regulations governing the filing of Manifest Discrepancy Reports. Such changes will be the subject of a separate **Federal Register** publication as soon as possible.

*Comment:* Several commenters inquired about manifest discrepancy reports. It was asked whether carriers would be able to rely on the shippers' declaration regarding the contents of sealed containers. In addition, confirmation was requested that carriers would not be subject to penalties for incorrect manifest information provided by shippers.

*Customs Response:* As indicated in the prior response, Customs will be providing new rules for manifest discrepancy reports. A Notice of Proposed Rulemaking covering that matter will be published in the **Federal Register**. Until such time, carriers must continue to follow the current regulations concerning manifest discrepancy reports. This includes the guidelines for carriers using the shipper's declaration on sealed containers. Customs will not allow the

manifest discrepancy report to be utilized in lieu of the provision of accurate and complete manifest information under the 24 hour rule.

### Regulatory Flexibility Act; Executive Order 12866

*Comment:* Three commenters contended that the proposed advance manifest regulations would have a significant economic impact on a substantial number of small businesses, specifically non-vessel operating common carriers (NVOCCs), under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), and thus should be subject to the preparation of a regulatory flexibility analysis as provided under the RFA. Two of these commenters also asserted in this context that the proposed rule constituted a "significant regulatory action" under E.O. 12866.

*Customs Response:* Customs is requiring advance manifest information in order to improve security at our nation's seaports and to more effectively enforce against all types of smuggling through our nation's borders. The information that Customs is collecting pursuant to this rulemaking is a necessary part of accomplishing these goals. Because the information being requested is information to which the master of the vessel should already have access, there is no indication that providing the additional information on the Customs Form (CF) 1302 to Customs 24 hours in advance of lading at the foreign port would result in a significant economic impact on a substantial number of small businesses.

Moreover, Customs has given the option to any small businesses involved in providing this information of providing the advance manifest information in paper form, rather than electronically, for those businesses that are not yet automated. Likewise, for those businesses that are automated, the advanced electronic filing would ultimately reduce filing costs because of the ability to submit the information electronically directly to Customs. Further, Customs has allowed for a delay of implementation of the new regulations in order to allow time for businesses to adjust to the new filing requirements.

Finally, none of the commenters has submitted evidence to Customs demonstrating the way in which these regulations would have a significant economic impact on small businesses. As such, Customs stands by its initial certification that a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act is not applicable here.

Additionally, whether the Regulatory Flexibility Act applies to certain entities

in a rulemaking turns on whether such entities are the "targets" of the rulemaking. To this end, the advance cargo manifest regulations that are the subject of this rulemaking are based upon 19 U.S.C. 1431. In pertinent part, 19 U.S.C. 1431(b) requires the master of a vessel (that is, the vessel carrier) to provide vessel cargo manifest information to Customs. It is thus the vessel carriers themselves to which these regulations are directed, and carriers are ultimately responsible under these regulations for providing mandatory cargo manifest information to Customs.

There is no requirement that NVOCCs participate in these advance manifest regulations; rather, Customs is merely affording NVOCCs the option under these regulations to provide cargo manifest data directly to Customs on behalf of the vessel carrier in order to protect what the NVOCC believes to be confidential business information. If NVOCCs do not wish to participate in the filing of advance cargo manifest information with Customs, the NVOCCs may properly elect to provide such information to the vessel carriers directly, for it is the vessel carriers, as emphasized above, that are obligated under these regulations to furnish this information to Customs. At most, therefore, the NVOCCs referenced in this rule are only indirectly affected by the subject regulations due to the nature of their business relationship with the vessel carriers.

In sum, no specific evidence was submitted by commenters establishing that there are a substantial number of small entities that are "targets" of the rulemaking.

Because Customs recognizes there will be costs involved in businesses changing their practices to comply with these national security-driven regulations, Customs will phase-in full implementation of this advance manifest rule over a period of 90 days. Specifically, these regulations will not be effective until 30 days after the date of publication of this final rule in the **Federal Register**. In addition, Customs will not initiate any enforcement actions such as assessing penalties for non-fraudulent violations of these regulations until 60 days after the effective date of this final rule. This phased-in implementation regime should reduce and minimize costs involved in complying with the new regulations.

Accordingly, the certification set forth in the proposed rule relating to the inapplicability of the Regulatory Flexibility Act in this case is revised in

this final rule to reflect the foregoing considerations.

Also, we do not believe that this national security-related rule constitutes a "significant regulatory action" under E.O. 12866.

#### **Paperwork Burden**

*Comment:* Several commenters stated that the accuracy of the agency's estimate of the information collection burden published in the proposed rule was vastly understated. It was stated that the numbers did not take into consideration the added time and paperwork, even in an automated environment, that will be required by the need for earlier information as supply chain documentation requirements will need to be overhauled.

*Customs Response:* Customs agrees with the commenters that the estimate of the information collection burden published in the notice of proposed rulemaking is understated and, accordingly, is upwardly adjusting the estimate of the burden.

Customs notes that the adjustment it is making to the estimated burden hours is not entirely due to the requirement to provide manifest information 24 hours prior to lading. Based upon the comments, Customs reviewed the previously approved information collection burden for preparing the vessel manifest and concluded that those numbers needed an upward adjustment. Accordingly, the upward adjustment stated in this document reflects both an adjustment due to this rule and an adjustment to the numbers that existed for the previous long-standing manifesting requirement.

Regarding any increase in burden due to overhaul of supply chain documentation requirements, Customs agrees that the number of hours spent collecting information may initially be high while business practices are adjusting. Eventually, however, Customs expects that the burden will decrease as the supply chain gets used to the new way of doing business.

#### **Adoption of Proposal**

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has concluded that the proposed regulations with the modifications discussed above should be adopted as a final rule.

#### **Regulatory Flexibility Act and Executive Order 12866**

As stated in Customs response above, Customs is requiring advance manifest information in order to improve security

at our nation's seaports and to more effectively enforce against all types of smuggling through our nation's borders. The information that Customs is collecting pursuant to this rulemaking is a necessary part of accomplishing these goals. Because the information being requested is information to which the master of the vessel should already have access, there is no indication that providing the additional information on the Customs Form (CF) 1302 to Customs 24 hours in advance of lading at the foreign port would result in a significant economic impact on a substantial number of small businesses.

Moreover, Customs has given the option to any small businesses involved in providing this information of providing the advance manifest information in paper form, rather than electronically, for those businesses that are not yet automated. Likewise, for those businesses that are automated, the advanced electronic filing would ultimately reduce filing costs because of the ability to submit the information electronically directly to Customs. Further, Customs has allowed for a delay of implementation of the new regulations in order to allow time for businesses to adjust to the new filing requirements.

Finally, none of the commenters has submitted evidence to Customs demonstrating the way in which these regulations would have a significant economic impact on small businesses. As such, Customs stands by its initial certification that a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act is not applicable here.

The advance presentation to Customs of vessel manifest information for cargo destined for the United States as prescribed in this final rule is intended to expedite the release of incoming cargo while, at the same time, ensuring maritime safety and protecting national security. To this end, it is the vessel carriers themselves, which are mostly very large concerns, to which these regulations are targeted and that are ultimately responsible under these regulations for providing mandatory cargo manifest information to Customs.

By contrast, regarding non-vessel operating common carriers (NVOCCs), many of which are asserted to be small businesses, there is no requirement whatever that these entities participate in these advance manifest regulations; rather, Customs is merely affording NVOCCs the option under these regulations of providing cargo manifest data directly to Customs on behalf of the vessel carrier in order to protect what the NVOCC believes to be confidential business information. At best, therefore,

the NVOCCs referenced in this rule are only indirectly affected by the subject regulations due to the nature of their business relationship with the vessel carriers. Hence, if NVOCCs do not wish to participate in the filing of advance cargo manifest information with Customs, the NVOCCs may properly elect to provide such information to the vessel carriers directly, for it is the vessel carriers, as emphasized above, that are obligated under these regulations to furnish this information to Customs.

Given the above reasons, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these final regulations do not have a significant economic impact on a substantial number of small entities. Accordingly, these amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor do they meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

#### **Paperwork Reduction Act**

The collection of information in this final rule document was submitted for review and has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1515-0001 (Transportation Manifest (Cargo Declaration)). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in this final rule document is contained in § 4.7a(c)(4). This information is required and will be used to deter smuggling by determining the security conditions under which cargo was maintained prior to and following its delivery for lading aboard a vessel for shipment to the United States. The likely respondents and/or recordkeepers are business or other for-profit institutions. The estimated average annual burden associated with this information collection is 49.8 hours per respondent or recordkeeper.

Comments on the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S.

Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, is revised to reflect this additional information collection.

## List of Subjects

### 19 CFR Part 4

Administrative practice and procedure, Arrival, Cargo vessels, Customs duties and inspection, Declarations, Entry, Freight, Harbors, Hazardous substances, Imports, Inspection, Landing, Maritime carriers, Merchandise, Reporting and recordkeeping requirements, Shipping, Vessels.

### 19 CFR Part 113

Bonds, Customs duties and inspection, Exports, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements.

### 19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

## Amendments to the Regulations

Parts 4, 113 and 178, Customs Regulations (19 CFR parts 4, 113 and 178), are amended as set forth below:

## PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the relevant specific authority citations continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;

\* \* \* \* \*

Section 4.7 also issued under 19 U.S.C. 1581(a); 46 U.S.C. App. 883a, 883b;

Section 4.7a also issued under 19 U.S.C. 1498, 1584;

Section 4.8 also issued under 19 U.S.C. 1448, 1486;

\* \* \* \* \*

Section 4.30 also issued under 19 U.S.C. 288, 1446, 1448, 1450–1454, 1490;

\* \* \* \* \*

2. Section 4.7 is amended by revising its section heading; by redesignating the existing text of paragraph (b) as paragraph (b)(1) and revising the first sentence of newly redesignated paragraph (b)(1); and by adding new paragraphs (b)(2), (b)(3), (b)(4) and (e) to read as follows:

### § 4.7 Inward foreign manifest; production on demand; contents and form; advance filing of cargo declaration.

\* \* \* \* \*

(b)(1) In addition to any Cargo Declaration that has been filed in advance as prescribed in paragraph (b)(2) of this section, the original and one copy of the manifest must be ready for production on demand. \* \* \*

(2) For any vessel subject to paragraph (a) of this section, except for any vessel exclusively carrying bulk or break bulk cargo as prescribed in paragraph (b)(4) of this section, Customs must receive from the carrier the vessel's Cargo Declaration, Customs Form 1302, or a Customs-approved electronic equivalent, 24 hours before such cargo is laden aboard the vessel at the foreign port (see § 4.30(n)(1)). Participants in the Vessel Automated Manifest System (AMS) are required to provide the vessel's cargo declaration electronically.

(3)(i) Where a non-vessel operating common carrier (NVOCC), as defined in paragraph (b)(3)(ii) of this section, delivers cargo to the vessel carrier for lading aboard the vessel at the foreign port, the NVOCC, if licensed by or registered with the Federal Maritime Commission and in possession of an International Carrier Bond containing the provisions of § 113.64 of this chapter, may electronically transmit the corresponding required cargo manifest information directly to Customs through the Vessel Automated Manifest System (AMS) 24 or more hours before the related cargo is laden aboard the vessel at the foreign port (see § 113.64(c) of this chapter); in the alternative, the NVOCC must fully disclose and present the required manifest information for the related cargo to the vessel carrier which, if automated, is required to present this information to Customs via the vessel AMS system.

(ii) A non-vessel operating common carrier (NVOCC) means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier. The term "non-vessel operating common carrier" does not include freight forwarders as defined in part 112 of this chapter.

(4) Carriers of bulk cargo as specified in paragraph (b)(4)(i) of this section and carriers of break bulk cargo to the extent provided in paragraph (b)(4)(ii) of this section are exempt with respect to that cargo from the requirement set forth in paragraph (b)(2) of this section that a cargo declaration be filed with Customs 24 hours before such cargo is laden aboard the vessel at the foreign port. Any carriers of bulk or break bulk cargo

that are exempted from the filing requirement of paragraph (b)(2) of this section must present their cargo declarations to Customs 24 hours prior to arrival in the U.S. if they are participants in the vessel AMS program, or upon arrival if they are non-automated carriers. These carriers must still report 24 hours in advance of loading any containerized or non-qualifying break bulk cargo they will be transporting.

(i) A carrier is exempt from the filing requirement of paragraph (b)(2) of this section with respect to the bulk cargo it is transporting. Bulk cargo is defined for purposes of this section as homogeneous cargo that is stowed loose in the hold and is not enclosed in any container such as a box, bale, bag, cask, or the like. Such cargo is also described as bulk freight. Specifically, bulk cargo is composed of either:

(A) Free flowing articles such as oil, grain, coal, ore, and the like, which can be pumped or run through a chute or handled by dumping; or

(B) Articles that require mechanical handling such as bricks, pig iron, lumber, steel beams, and the like.

(ii) A carrier of break bulk cargo may apply for an exemption from the filing requirement of paragraph (b)(2) of this section with respect to the break bulk cargo it will be transporting. For purposes of this section, break bulk cargo is cargo that is not containerized, but which is otherwise packaged or bundled.

(A) To apply for an exemption, the carrier must submit a written request for exemption to the U.S. Customs Service, National Targeting Center, 1300 Pennsylvania Ave., NW., Washington, DC 20229. Until an application for an exemption is granted, the carrier must comply with the 24 hour advance manifest requirement set out in paragraph (b)(2) of this section. The written request for exemption must clearly set forth information such that Customs may assess whether any security concerns exist, such as: The carrier's IRS number; the source, identity and means of the packaging or bundling of the commodities being shipped; the ports of call, both foreign and domestic; the number of vessels the carrier uses to transport break bulk cargo, along with the names of these vessels and their International Maritime Organization numbers; and the list of the carrier's importers and shippers, identifying any who are members of C-TPAT (The Customs-Trade Partnership Against Terrorism).

(B) Customs will evaluate each application for an exemption on a case by case basis. If Customs, by written

response, provides an exemption to a break bulk carrier, the exemption is only applicable under the circumstances clearly set forth in the application for exemption. If circumstances set forth in the approved application change, it will be necessary to submit a new application.

(C) Customs may rescind an exemption granted to a carrier at any time.

\* \* \* \* \*

(e) *Failure to provide manifest information; penalties/liquidated damages.* Any master who fails to provide manifest information as required by this section, or who presents or transmits electronically any document required by this section that is forged, altered or false, or who fails to present or transmit the information required by this section in a timely manner, may be liable for civil penalties as provided under 19 U.S.C. 1436, in addition to penalties applicable under other provisions of law. In addition, if any non-vessel operating common carrier (NVOCC) as defined in paragraph (b)(3)(ii) of this section elects to transmit cargo manifest information to Customs electronically and fails to do so in the manner and in the time period required by paragraph (b)(3)(i) of this section, or electronically transmits any false, forged or altered document, paper, manifest or data to Customs, such NVOCC may be liable for the payment of liquidated damages as provided in § 113.64(c) of this chapter, in addition to any other penalties applicable under other provisions of law.

3. Section § 4.7a is amended by revising the first sentence of paragraph (c)(1), and by adding new paragraphs (c)(4) and (f) to read as follows:

**§ 4.7a Inward manifest; information required; alternative forms.**

\* \* \* \* \*

(c) *Cargo Declaration.* (1) The Cargo Declaration (Customs Form 1302 or a Customs-approved electronic equivalent) must list all the inward foreign cargo on board the vessel regardless of the U.S. port of discharge, and must separately list any other foreign cargo remaining on board ("FROB"). For the purposes of this part, "FROB" means cargo which is laden in a foreign port, is intended for discharge in a foreign port, and remains aboard a vessel during either direct or indirect stops at one or more intervening United States ports. \* \* \*

\* \* \* \* \*

(4) In addition to the cargo manifest information required in paragraphs (c)(1)–(c)(3) of this section, for all

inward foreign cargo, the Cargo Declaration, either on Customs Form 1302, or on a separate sheet or Customs-approved electronic equivalent, must state the following:

(i) The last foreign port before the vessel departs for the United States;

(ii) The carrier SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier; see paragraph (c)(2)(iii) of this section);

(iii) The carrier-assigned voyage number;

(iv) The date the vessel is scheduled to arrive at the first U.S. port in Customs territory;

(v) The numbers and quantities from the carrier's ocean bills of lading, either master or house, as applicable (this means that the carrier must transmit the quantity of the lowest external packaging unit; containers and pallets are not acceptable manifested quantities; for example, a container containing 10 pallets with 200 cartons should be manifested as 200 cartons);

(vi) The first foreign port where the carrier takes possession of the cargo destined to the United States;

(vii) 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) and weight of the cargo or, for a sealed container, the shipper's declared description and weight of the cargo. Generic descriptions, specifically those such as "FAK" ("freight of all kinds"), "general cargo", and "STC" ("said to contain") are not acceptable;

(viii) The shipper's complete name and address, or identification number, from all bills of lading. (The identification number will be a unique number assigned by U.S. Customs upon the implementation of the Automated Commercial Environment);

(ix) The complete name and address of the consignee or the owner or owner's representative, or identification number, from all bills of lading. (The identification number will be a unique number assigned by U.S. Customs upon implementation of the Automated Commercial Environment);

(x) The vessel name, country of documentation, and official vessel number. (The vessel number is the International Maritime Organization number assigned to the vessel);

(xi) The foreign port where the cargo is laden on board;

(xii) Internationally recognized hazardous material code when such materials are being shipped;

(xiii) Container numbers (for containerized shipments); and

(xiv) The seal numbers for all seals affixed to containers.

\* \* \* \* \*

(f) *Failure to provide manifest information; penalties/liquidated damages.* Any master who fails to provide manifest information as required by this section, or who presents or transmits electronically any document required by this section 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. In addition, if any non-vessel operating common carrier (NVOCC) as defined in § 4.7(b)(3)(ii) elects to transmit cargo manifest information to Customs electronically, and fails to do so as required by this section, or transmits electronically any document required by this section that is forged, altered or false, such NVOCC may be liable for liquidated damages as provided in § 113.64(c) of this chapter, in addition to other penalties applicable under other provisions of law.

4. Section 4.8 is amended by revising the second and third sentences of paragraph (b) to read as follows:

**§ 4.8 Preliminary entry.**

\* \* \* \* \*

(b) *Requirements and conditions.* \* \* \* The granting of preliminary vessel entry by Customs at or subsequent to arrival of the vessel, is conditioned upon the presentation to and acceptance by Customs of all forms, electronically or otherwise, comprising a complete manifest as provided in § 4.7, except that the Cargo Declaration, Customs Form (CF) 1302, must be presented to Customs electronically in the manner provided in § 4.7(b)(2). Vessels seeking preliminary entry in advance of arrival must do so: By presenting to Customs the electronic equivalent of a complete Customs Form 1302 (Cargo Declaration), in the manner provided in § 4.7(b), showing all cargo on board the vessel; and by presenting Customs Form 3171 electronically no less than 48 hours prior to vessel arrival. \* \* \*

\* \* \* \* \*

5. Section 4.30 is amended by adding a new paragraph (n) to read as follows:

**§ 4.30 Permits and special licenses for unloading and lading.**

\* \* \* \* \*

(n)(1) Customs will not issue a permit to unlade before it has received the cargo declaration information pursuant to § 4.7(b). In cases in which Customs does not receive complete cargo manifest information from the carrier or



from the NVOCC, in the manner and format required by § 4.7(b), 24 hours prior to the lading of the cargo aboard the vessel at the foreign port, Customs may delay issuance of a permit to unlade the entire vessel until all required information is received. Customs may also decline to issue a permit to unlade the specific cargo for which a declaration is not received 24 hours before lading in a foreign port. Furthermore, where the carrier does not present an advance cargo manifest to Customs electronically, in the manner provided in § 4.7(b)(2), preliminary entry pursuant to § 4.8(b) will be denied.

(2) In addition, while the advance presentation of the cargo manifest for any vessel subject to § 4.7(b)(2) may be made in paper form or by electronic transmission through a Customs-approved electronic data interchange system, the submission of an electronic manifest for the cargo in this regard, as opposed to a paper manifest, will further facilitate the prompt issuance of a permit to unlade the cargo.

#### PART 113—CUSTOMS BONDS

1. The general authority citation for part 113 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1623, 1624.

2. Section 113.64 is amended by revising the first sentence of paragraph (a); and by redesignating paragraphs (c), (d), (e) and (f) as paragraphs (d), (e), (f) and (g), respectively, and adding a new paragraph (c) to read as follows:

##### **§ 113.64 International carrier bond conditions.**

(a) *Agreement to Pay Penalties, Duties, Taxes, and Other Charges.* If any vessel, vehicle, or aircraft, or any master, owner, or person in charge of a vessel, vehicle or aircraft, or any non-vessel operating common carrier as defined in § 4.7(b)(3)(ii) of this chapter incurs a penalty, duty, tax or other charge provided by law or regulation, the obligors (principal and surety, jointly and severally) agree to pay the sum upon demand by Customs. \* \* \*

(c) *Non-vessel operating common carrier (NVOCC).* If a non-vessel operating common carrier (NVOCC) as defined in § 4.7(b)(3)(ii) of this chapter elects to provide vessel cargo manifest information to Customs electronically, the NVOCC, as a principal under this bond, in addition to compliance with the other provisions of this bond, also agrees to provide such manifest information to Customs in the manner and in the time period required by

§§ 4.7(b) and 4.7a(c) of this chapter. If the NVOCC, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each regulation violated.

\* \* \* \* \*

#### PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding a new listing in the table in appropriate numerical order to read as follows:

19 CFR section	Description	OMB control No.
* * *	* * *	* * *
§ 4.7a(c)(4) ..	Transportation manifest (cargo declaration).	1515-0001
* * *	* * *	* * *

**Robert C. Bonner,**  
*Commissioner of Customs.*

Approved: October 25, 2002.

**Timothy E. Skud,**  
*Deputy Assistant Secretary of the Treasury.*  
[FR Doc. 02-27661 Filed 10-30-02; 8:45 am]  
**BILLING CODE 4820-02-P**

#### DEPARTMENT OF THE TREASURY

##### Customs Service

##### 19 CFR Part 12

[T.D. 02-56]

RIN 1515-AD17

##### Extension of Import Restrictions Imposed on Archaeological Material From Guatemala; Correction

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains corrections to the final rule document (T.D. 02-56) that was published in the **Federal Register** on September 30, 2002, concerning the extension of import restrictions on certain archaeological material from Guatemala. This document corrects two erroneous references to Mali in the final rule document.

**EFFECTIVE DATE:** September 29, 2002.

**FOR FURTHER INFORMATION CONTACT:** (Regulatory Aspects) Joseph Howard, Intellectual Property Rights Branch (202) 572-8701; (Operational Aspects) Al Morawski, Trade Operations (202) 927-0402.

#### SUPPLEMENTARY INFORMATION:

##### Background

A final rule document published as T.D. 02-56 in the **Federal Register** (67 FR 61259) on September 30, 2002, extended for a period of five years import restrictions that were already in place for certain archaeological material from Guatemala. The final rule amended § 12.104g(a) of the Customs Regulations (19 CFR 12.104g(a)).

In the "Summary" and "Background" sections of the final rule, references to the country "Mali" erroneously appeared. This document corrects those references to read "Guatemala."

##### Corrections

In rule FR Doc. 02-24895, published on September 30, 2002, make the following corrections:

1. On page 61259, in the second column, in the "Summary" section, remove the word "Mali" in the fourth sentence and add in its place the word "Guatemala."

2. On page 61259, in the third column, in the "Background" section, third paragraph, second sentence, remove the word "Mali" and add in its place the word "Guatemala."

Dated: October 25, 2002.

**Harold M. Singer,**  
*Chief, Regulations Branch.*  
[FR Doc. 02-27660 Filed 10-30-02; 8:45 am]  
**BILLING CODE 4820-02-P**

#### DEPARTMENT OF TRANSPORTATION

##### Coast Guard

##### 33 CFR Part 165

[COTP San Diego 02-022]

RIN 2115-AA97

##### Safety Zone; Mission Bay, San Diego, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of Mission Bay in San Diego, CA, in support of the San Diego Fall Classic, a marine event consisting of 120 rowing shells racing on a marked course. This temporary safety zone is necessary to provide for