

**Treasury Advisory Committee on Commercial Operations of the US Customs
Service (COAC)**

COAC Vessel '24-Hour Rule' Subcommittee

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Issue Number	Issue	Recommendation
1	Seals	<p>The "24-hour rule" states that the cargo declaration should provide the "seal numbers for all seals affixed to containers." Inasmuch as the rule requires the carrier to provide the number of the seal that has been affixed to the container, only one aspect of the seal security system has been addressed. The carrier has a role to ensure or validate that the seal the shipper put on the container is still properly affixed; however, the party "stuffing" the container is the one who logically must seal the container.</p> <p>The subcommittee recommends that Customs develop a clear regime identifying seal responsibilities, including (a) an obligation of the party stuffing the container to seal the container immediately upon stuffing; (b) identifying the various commercial parties' and government's responsibilities when a container is received for shipment without an intact seal or with an identified seal anomaly; and (c) developing clear, uniformly applicable SOPs for those situations where Customs or other law enforcement authorities break an affixed seal in order to inspect a container.</p>
2	Break Bulk	<p>The final rule states: "break bulk is cargo that is not containerized, but which is otherwise packaged or bundled."</p> <p>The subcommittee recommends:</p> <p>(a) The definition of "break bulk" should be clarified: "Break bulk is cargo that is not containerized, but which is otherwise packaged, bundled, or stowed by hand. Goods placed and shipped on pallets, heavy machinery and steel coils are examples of break bulk cargo."</p> <p>(b) Customs should design and make available a form to standardize industry requests for exemption using the same information requirements set forth in the Final Rule; and</p> <p>(c) Customs should respond to each petition for exemption within 30 days after receipt of the written request by either granting the exemption, denying the exemption based on security concerns, or informing the carrier of additional information needed to address any security concerns.</p>

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3	Electronic Filing of Comments	<p>Customs has allowed written comments to proposed rulemakings, but not email comments.</p> <p>The subcommittee recommends that Customs accept comments from the public, either by mail, fax or e-mail, with parties and proceeding properly identified in the subject of each submission.</p>
4	C-TPAT Membership.	<p>The subcommittee acknowledges that it could be inappropriate to exempt C-TPAT members from the advance manifest rule. Customs has, however, indicated that C-TPAT membership will be a factor in targeting shipments for inspection. The subcommittee recommends that C-TPAT certification be a mitigating factor in any penalty or liquidated damage action.</p>
5	Initiation of the 24-Hour Clock: "Transmit" versus "Receive"	<p>(a) The subcommittee identified an apparent inconsistency in the Final Rule. Section 4.7(b)(2) states that Customs must <i>receive</i> from the carrier the cargo declaration at least 24 hours before lading. In contrast, Section 4.7(b)(3)(i) indicates that an NVOCC may <i>transmit</i> the required cargo manifest information at least 24 hours before the cargo is laden. There is no clear reason why the requirement should be differently applied to carriers or NVOCC's. There should be a uniform time period required for all parties to provide advance notice under the new rule. The January 14, 2003 Federal Register (Tab 4) published a technical correction clarifying that the information must be <i>received</i> 24 hours before loading.</p> <p>(b) There are inherent difficulties in transmitting information and uncertainties associated with knowing when information has been received by another party. If Customs determines that it is necessary to require that the information be received by Customs at least 24 hours before lading, then Customs must have mechanisms in place to allow for immediate receipt upon submission of data from all CSI and non-CSI ports worldwide. Further, it is essential that Customs have electronic/automated mechanisms in place to immediately confirm to the submitting party that the required information has been received.</p>

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6	Notification of "HOLDS"	<p>(a) Exclusive reliance on a telephone-based system of oral notification of 'holds' fails to satisfy the need for timeliness, global communication, and audit accountability. The subcommittee recommends that the oral system currently in use should be discontinued and replaced immediately with a documented, electronic process.</p> <p>(b) The subcommittee recommends that Customs program a new type of "hold" using "6H" and "6I" and amend appendix F. Until this programming is completed, Customs should utilize AMS status messages "1H" and "1I" to show electronic holds. When Customs finalizes new programming for a "CSI Hold," AMS participants will accommodate the change.</p> <p>(c) The subcommittee recommends that Customs consider implementing a system to provide a "green light" message. Such a message could be transmitted after reviewing the manifest data indicating that it is OK to load without waiting for the entire 24-hour period to pass.</p>
7	Economic Analysis	<p>This subject received extensive comments in the responses to the proposed rule. The subcommittee is inclined to agree with many of these comments. The subcommittee believes that the costs of changed business practices to accommodate the new rule requirements are huge, and the burden on small businesses is significant.</p>
8	Confidentiality	<p>This issue is addressed at Tab 5.</p>
9	AMS Reliability	<p>If Customs' computer systems do not operate quickly and reliably, vessel and marine terminal operations at the world's ports will be disrupted, along with the world's supply chain.</p> <p>(a) Concerning CSI ports, the subcommittee recommends: Customs personnel must be available 24/7 to receive & review paper manifests in the event that either a filer is unable to transmit or Customs is unable to receive the cargo declaration electronically.</p> <p>(b) At all foreign ports, the subcommittee recommends:</p> <p>If AMS is down or non-responsive when a filer attempts to file, and Customs officials are not on duty and available at the port of loading, the filer should be able to 1) notify a designated Customs point-of-contact by telephone and e-mail (to provide a record of the time), and 2) proceed operationally with the assurance that it can load 24 hours after it contacted Customs. This option would allow trade and transportation operations to continue to function.</p>

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10	FROB	Cargo transiting through a US port for discharge at a foreign port will not be associated with a US "shipper," "consignee" or "notify" party. The subcommittee recommends: Customs confirm in writing that FROB cargo need not include a US address in the "shipper," "consignee," or "notify" data fields.
11	Definition of "Shipper"	The subcommittee recommends using the internationally accepted definition which applies equally to ocean carriers and to NVOCC's. In common usage, the "shipper" is the party that enters into a contract of carriage with a carrier.
12	International Carrier Bonds	The subcommittee recommends that Customs issue uniform national guidelines regarding bond amount and procedures.
13	Paper Copy Manifests	The subcommittee recommends that a paper copy of the manifest not be required on board a vessel for those cargos where the manifest is filed electronically.
14	Legal Liability	<p>The 24-hour rule places liability on the party submitting information to Customs.</p> <p>The subcommittee recommends:</p> <p>(a) Regarding errors submitted in manifests, untimely submissions and changes after submission to Customs, the subcommittee recommends guidelines be developed to describe the circumstances warranting issuance of a penalty, as well as mitigation criteria. Any such mitigation guidelines for violations of 19 USC 1431 and penalties imposed pursuant to 1436 should reflect commercial reality and economic reasonableness.</p> <p>(b) The subcommittee recommends that criteria contained in the guidelines include, yet not be limited to, consideration of the exercise of reasonable care, materiality of error; repetitiveness of error; volume of cargo; reasonable reliance on information received and transmitted; existence of internal procedures; policies in place, intent of the parties to the transaction, and participation in C-TPAT.</p>
15	Business Practice Issues	The subcommittee recommends that the staffing plan at Customs accommodate the 24/7 realities of today's international trade.

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16	Data elements: An International standard	<p>The US government should actively work within existing international fora such as the World Customs Organization, the G-8, and APEC for the establishment of a common, internationally agreed upon set of data elements for the pre-screening of cargo before loading. A common set of data elements should only be submitted once for each shipment and should be shared jointly by the exporting and importing customs administrations. Pending the development and implementation of international agreements on key data elements for the pre-screening of cargo, the US should, as a matter of priority, reach agreement with all foreign CSI governments on a common set of data elements. The trade community is concerned that some CSI governments may already be in the process of creating separate cargo declaration reporting systems 24 hours before loading in their ports of export cargoes destined to the US, which may be far more detailed than the data elements required in the US Customs' 24-hour rule.</p> <p>Filing different cargo declarations with different data elements to satisfy disparate country requirements is unnecessary. Additionally, even when the country requirements are harmonized, a requirement to file separate cargo declarations for the same cargo to both the exporting country and US Customs would create another, additional burden on legitimate trade without tangible enhancement to the international supply chain.</p>
17	Manifest Amendments	<p>Last minute changes to shipping information are extremely common. As examples, changes in the shipper, consignee, destination, port of discharge and piece count are common. This will often occur after the cargo manifest is submitted to Customs. There must be accommodation made for the amendment of cargo shipment information.</p> <p>The subcommittee recommends Customs take a commercially realistic view of manifest amendments, with a process for permitting, without penalty, amendments that reflect legitimate changed commercial circumstances affecting the shipment (e.g., split bills). Timely submission of new or more accurate information the carrier has received from the shipper should likewise be encouraged. Existing manifest amendment guidelines were designed for a system that required filing 48 hours before arrival, not the much earlier time period now required. The subcommittee recommends that Customs should work with the trade to determine appropriate procedures for addressing manifest amendments in a way that will enhance security yet promote timely and accurate information submissions.</p>

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18	Perishable Commodities	<p>Perishable commodities may be containerized or not containerized. When not containerized, the bulk and break bulk exemptions may be applicable. For containerized perishable commodity shipments, the rule provides no exception. The subcommittee determined that quantities are often not precisely known 24 hours before lading, and consequently, the exact number and identification of containers and seals may similarly not be known. The subcommittee recommends three options for consideration:</p> <p>Option 1) Exemption for Perishable Commodities: NVOCC's or carriers of perishable commodities who are members of C-TPAT should be eligible for an additional exemption from the 24-hour rule. A written request for exemption should be submitted to Customs following the procedures outlined in the Final Rule for break bulk cargo. 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.</p> <p>Option 2) Overbooking of Cargo Manifest: An NVOCC or carrier may submit cargo manifest information that includes containers of perishable commodities which are not shipped aboard the vessel, provided corrected information is submitted not later than 24 hours after the vessel departs the last foreign port.</p> <p>Option 3) Reduced Advance Filing Time from 24 hours to 4 hours: Carriers may submit the required cargo manifest information for perishable commodities four hours before such cargo is laden aboard the vessel at the last foreign port.</p>
19	Precise cargo descriptions	<p>While there is a general view that Customs needs to provide clearer written guidance as to what level of detail in a text description is acceptable, there is also concern that a third system of descriptors (as distinct from HTS or Schedule B) be created. To date, the most concise explanation from Customs of "precise cargo description" is "Common sense descriptions with specificity that would allow Customs to know what is in the shipment for security purposes." The subcommittee recommends:</p> <p>(a) Rulings or more specific guidance as to what constitutes an acceptable level of description should be made publicly available before enforcement, and should be based on common-sense business descriptions of the goods as well as level of detail required for analysis by the Department of Homeland Security. Customs should work with the trade to develop and disseminate acceptable standards for descriptions.</p> <p>(b) Customs should post a list of acceptable and unacceptable cargo descriptions on their website, and enforcement action for inadequate descriptions should be undertaken only after additional guidance is provided.</p>

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20	In-bond Coordination	<p>Customs currently requires the AMS filer to arrange for automated in-bond movements for cargo. In the case of automated NVOCC's filing and VOCC's moving the cargo, there is the possibility of a disconnect in the in-bond sequence.</p> <p>Exploration of the relationship between the NVOCC and the VOCC in the movement of cargo between the port-of-discharge and the port-of-delivery is needed.</p>
21	"To Order" Consignments	<p>Guidance in Customs' FAQs and subsequent written answers state that, for 'to order' bills, the first notify party can be the owner's representative as long as a U.S. name and address is provided. In multiple cases, however, Customs is rejecting bills that meet this requirement stating that an actual consignee must be provided. The subcommittee requests instructions to the field that "to order" bills are still permitted so long as the owner's representative is so listed as the first notify party.</p>
22	Enforcement Implementation	This issue is addressed at Tab 11.