

## **SUMMARY OF UNITED STATES CUSTOMS SERVICE REQUIREMENT TO PROVIDE MANIFEST DATA 24 HOURS BEFORE CARGO IS LADEN ABOARD VESSEL AT FOREIGN PORT FOR TRANSPORT TO THE USA**

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**WHAT:** 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 Bonded NVOCC to electronically present cargo manifest information to Customs.

**WHY:** 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.

**WHEN:** Approximately December 1, 2002

**CONSEQUENCES FOR NON-COMPLIANCE:** 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.

**SOURCE OF AUTHORITY:** 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 have a manifest that meets the requirements that are prescribed by regulation. The cargo declaration is one of the documents that comprise 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. Furthermore, regulation provides Customs with the authority to prevent cargo from being unladen from a vessel until Customs has issued a permit for its unloading.

**Non-Vessel Operating Common Carriers (NVOCCs):** Under this rule, any NVOCC having such a bond and electing to provide cargo manifest information to Customs electronically, 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.

**Penalties for False or Untimely Filing of Manifest Data:** If the master of a vessel and/or NVOCC failed to present or transmit accurate manifest data in the required time period or presented any false manifest data to Customs, the regulations specify that monetary penalties could be assessed.

**Permit to Unlade Cargo: 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 can, 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.**

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**BACKGROUND: Necessity for Advance Presentation of Vessel Manifest to Customs**

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

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(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.