

the 6-digit HTSUS number; but until such time as these programming changes are adopted, AMS participants which provide the HTSUS number will also have to enter a cargo description in the description field of the electronic transmission. However, as an alternative to providing a precise cargo description in the description field of the transmission, the applicable 6-digit HTSUS number may instead be included in the description field to satisfy the current programming requirement that some text appear in this field.

Comment: In light of the recent final rule regarding corporate compliance activity (CBP Dec. 03–15, 68 FR 47455; August 11, 2003), the question arose as to whether the submission by the electronic filer of the 6-digit HTSUS number via AMS would fall within the purview of “Customs business” under 19 CFR part 111.

CBP Response: “Customs business” does not involve the mere electronic transmission of data received for transmission to CBP (19 CFR 111.1). Moreover, the 6-digit HTSUS number is intended exclusively for ensuring cargo safety and security, and not for determining merchandise entry or for any other commercial admissibility or enforcement purposes which fall within the scope of Customs business. An 8-digit HTSUS number is needed and is used for merchandise entry purposes.

The “corporate compliance activity” rule dealt with the conduct of “Customs Business” as established by statute (19 U.S.C. 1641). The activities covered under that rule all relate to the entry of merchandise, not its manifesting. Reporting commodity identification by use of 6-digit HTSUS numbers, rather than the more specific 8- or 10-digit designations, was included because there is international agreement and uniformity at the 6-digit level. Use of HTSUS designations is merely offered by CBP as an option to be used in place of a precise narrative description of cargo content.

Definition of Shipper; Consignee

Comment: A number of questions were raised with respect to the provision in proposed § 4.7a(c)(4)(viii) that, for consolidated shipments, the shipper listed on the house bill of lading be the owner and exporter of the goods from the foreign country. In sum, it was basically asserted that this would be inconsistent with the commercial practice of the transportation trade which essentially identified the shipper as the party with whom the carrier had a contractual relationship, and that it was improper for the U.S. Government

to unilaterally change this practice. It was also said to be at odds with the prevailing requirement that the foreign vendor or manufacturer be listed as the shipper on a house bill.

CBP Response: In light of the above comments, CBP has closely reviewed what shipper information must be listed on a house bill of lading for a consolidated shipment. Cargo information collected under this rule is not intended for commercial purposes, but rather for purposes of ensuring cargo safety and security as part of an antiterrorism national security initiative (see 19 U.S.C. 2071 note, section (a)(3)(F)). Otherwise stated, it is essential that CBP receive house level information on the identity of the shipper that will enable an accurate national-security risk assessment concerning the related cargo. To this specific end, CBP will thus accept as the shipper on a house bill of lading the identity of the foreign vendor, supplier, manufacturer, or other similar party. Also, the shipper’s address must be a foreign address. By contrast, CBP will not accept the carrier, NVOCC, freight forwarder or consolidator as valid house level information on the identity of the shipper.

Accordingly, proposed § 4.7a(c)(4)(viii), as well as proposed §§ 122.48a(d)(1)(x), 122.48a(d)(2)(vi), 123.91(d)(6) and 123.92(d)(11), are thus revised in this final rule.

Comment: Greater guidance was requested as to what would be acceptable in the Notify Party field of the electronic transmission (proposed § 4.7a(c)(4)(ix)). It was thought that if there was any other commercial party listed in the bill of lading, such party would be included in the Notify Party field; otherwise, this field would be left blank.

CBP Response: The CBP requires that if the cargo has not yet been sold or is shipped “to order”, and there is no consignee information, then the Notify Party field must include the identity of a responsible party in the United States. Such a responsible party could include any other commercial party that is listed in the bill of lading for delivery or contact purposes.

Date and Time of Departure of Vessel From Foreign Port

Comment: With respect to proposed § 4.7a(c)(4)(xv) and (xvi), it was asserted that the information concerning the date and time that the vessel departed for the United States as reflected in the vessel log could not be provided 24 hours prior to foreign lading of the cargo aboard the vessel.

Also, a question arose concerning whether these data elements referred to the date and time of departure from the foreign port of loading with respect to which the 24-hour declaration was made, or the date and time of departure from the last foreign port before sailing to the United States.

CBP Response: The date and time of departure should capture the date and time that the vessel departs from the foreign port of loading with respect to which the 24-hour cargo declaration is made (see § 4.7(b)(2) in this final rule). However, CBP will not require the information as to the date and time of vessel departure to be transmitted 24 hours prior to the lading of the cargo at the foreign port. Instead, the time frame for reporting these two data elements will be either: (1) No later than 24 hours after departure from the foreign port of lading, for those vessels that will arrive in the United States more than 24 hours after sailing from that foreign port; or (2) no later than the time of presentation of a permit to unlade (Customs Form (CF) 3171, or electronic equivalent), for those vessels that will arrive less than 24 hours after sailing from the foreign port of lading. Proposed § 4.7a(c)(4)(xv) and (xvi) are revised in this final rule to include these additional provisions.

Also, the transmission of these date and time data elements may be handled as an amendment to the vessel header, which will eliminate the need for each bill of lading to be amended.

Vessel AMS Issues

Importer Participation in Vessel AMS

Comment: It was stated that the party most likely to have the information needed for targeting was the U.S. importer, while the incoming carrier would only be able to provide information which was received from the charterer of the vessel.

CBP Response: CBP finds that allowing importers to participate in advance electronic filing through Vessel AMS would at this time be neither advisable nor practicable, given the current design and functionality of the Vessel AMS system and the lack of consensus in the trade community as to whether importers should furnish sea cargo data to CBP.

Comment: A shipper should be allowed to file advance cargo data through AMS.

CBP Response: Again, given the prevailing operation of the Vessel AMS, CBP finds that allowing freight forwarders who are not NVOCCs, and other parties identified as “consolidators,” even though they may be NVOCCs (see 68 FR at 43577) to