

DISTRIBUTION TO: All Interested Trade Partners

SUBJECT: ACE e-Manifest/Trade Act Enforcement Plan

On October 27, 2006, U.S. Customs and Border Protection (CBP) published a Federal Register Notice establishing the mandatory use of ACE electronic Manifest (e-Manifest) at all land border ports Washington and Arizona as well as the ports of Pembina, Neche, Walhalla, Maida, Hannah, Sarles and Hansboro. This notice established January 25, 2007 as the effective date for establishment of ACE e-Manifest as the approved data interchange for transmission of advance electronic cargo information to CBP. Outreach materials are being distributed at these ports until January 24, 2007 to act as a reminder of the effective date. The purpose of this notice is to provide carriers and other interested trade partners at the affected ports with the specific information regarding enforcement actions they should expect CBP to take beginning January 25, 2007 at the ports listed above.

These enforcement actions are based on the implementing regulations of the Trade Act of 2002 for truck carriers found in the Code of Federal Regulations, Title 19, Part 123.92 (19 CFR 123.92). This regulation requires that advanced electronic cargo information, in the form of an e-Manifest, be provided to CBP one hour (thirty minutes for FAST) prior to the arrival of the conveyance in the first U.S. port of arrival. This rule includes goods moving under bond between U.S. ports of entry as well as goods moving in transit through the U.S. The following shipments are currently exempt from the advance electronic filing requirement for incoming cargo:

- Cargo in transit from point to point in the United States after transiting Canada or Mexico
- Certain informal entries:
  - Merchandise which may be informally entered on Customs Form (CF) 368 or 368A (cash collection or receipt);
  - Merchandise unconditionally or conditionally free, not exceeding \$2,000 in value, eligible for entry on CF 7523
  - Products of the United States being returned, for which entry is prescribed on CF 3311.
- The following shipment types are not specifically exempted by the regulation but use of e-Manifest is not currently required for:
  - Merchandise that is subject to the provisions of 19 USC 1321 (Sec. 321 releases).
  - Empty trucks and truck cabs.
  - Shipments consisting solely of Instruments of International Traffic eligible for release under 19 CFR 10.41(a)

All other shipments are required to provide advance electronic cargo information via an e-Manifest including personal effects using form CBP 3299.

Enforcement discretion will take place in the following phases:

**Phase 1**

Beginning January 25, 2007, CBP will begin to exercise enforcement discretion in the form of an informed compliance period of at least 60 days. This period may be extended based on system performance issues and operational readiness. During this period CBP Officers working in primary lanes will provide an informed compliance notice to the driver of any conveyance that fails to meet the requirement.

**Phase 2**

Beginning no earlier than March 26, 2007, CBP will deny a permit to proceed into the U.S. to any carrier, required to submit an eManifest, which arrives without submitting or attempting an e-Manifest. CBP Officers may accept the ACE e-Manifest cover sheet as initial proof of this attempt. Prior to the beginning of this phase, CBP Officers will also be provided with a process they can use to check for transmission attempts by carriers. Validation of e-Manifest participation should ideally take place in a secondary inspection environment.

**Phase 3**

Beginning no earlier than April 26, 2007 and continuing as ongoing Trade Act enforcement, CBP will deny a permit to proceed into the U.S. for any truck, required to submit an e-Manifest, that arrives at one of the ports covered under this memorandum without first successfully transmitting an e-Manifest for that trip. For egregious violations, a monetary penalty (\$5000 for the first offence and \$10,000 for subsequent offences) may be issued to the driver in care of the carrier under 19 USC 1436. Egregious violators are defined as those carriers that make no attempt to comply with the requirements.

**Additional Phases**

Once CBP achieves substantial compliance with the requirements to file manifests, additional phases will be announced for enforcement of other Trade Act elements including timeliness of submission, accuracy of data and completeness of manifests.

Questions regarding this guidance may be directed to local port.