

## § 122.188

## 19 CFR Ch. I (4-1-05 Edition)

(f) *Decision.* After consideration of the recommendation of the hearing officer and any additional written submissions and replies made under paragraph (e) of this section, the director of field operations will render a written decision. The decision will be transmitted to the port director and served by the port director on the employee. A decision on an appeal rendered under this paragraph will constitute the final administrative action on the matter.

[T.D. 02-40, 67 FR 48986, July 29, 2002; 67 FR 51928, Aug. 9, 2002; 67 FR 54023, Aug. 20, 2002]

### § 122.188 Issuance of temporary Customs access seal.

(a) *Conditions for issuance.* When an approved Customs access seal is required under § 122.182(a) of this part and the port director determines that the application cannot be administratively processed in a reasonable period of time, an employer may, upon written request, be issued a temporary Customs access seal for his employee. The employer must satisfy the port director that a hardship would result if the request is not granted. Surety on the bond, as required by § 122.182(c), may be waived in the discretion of the port director but only for the period of the temporary Customs access seal and its renewal period.

(b) *Validation period.* The temporary Customs access seal shall be valid for a period of 60 days. The port director may renew the temporary Customs access seal for additional 30 day periods where the circumstances under which the temporary Customs access seal was originally issued continue to exist. The temporary Customs access seal shall be destroyed by the port director when the permanent approved Customs access seal is issued, or the privileges granted thereby are withdrawn.

(c) *Temporary employees and official visitors.* The provisions of this section shall also apply to temporary employees and official visitors requiring access to the Customs security area. In the case of temporary employees, the Customs access seal shall be valid for a period of 30 days. In the case of official visitors, the temporary Customs access seal shall be valid for the day of issuance only. Temporary employee and official visitor Customs access seal

are renewable for periods equal to their original period of validity.

(d) *Revocation of denial and access.* The temporary Customs access seal may be revoked and access to the Customs security area denied at any time if the holder of the temporary Customs access seal refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation, or if, in the judgment of the port director, continuation of the privileges granted thereby would endanger the revenue or pose a threat to the Customs security area.

[T.D. 90-82, 55 FR 42557, Oct. 22, 1990, as amended by T.D. 02-40, 67 FR 48988, July 29, 2002]

### § 122.189 Bond liability.

Any failure on the part of a principal to comply with the conditions of the bond required under § 122.182(c), including a failure of an employer to comply with any requirement applicable to the employer under this subpart, will constitute a breach of the bond and may result in a claim for liquidated damages under the bond.

[T.D. 02-40, 67 FR 48988, July 29, 2002]

## PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

Sec.  
123.0 Scope.

### Subpart A—General Provisions

- 123.1 Report of arrival from Canada or Mexico and permission to proceed.
- 123.2 Penalty for failure to report arrival or for proceeding without a permit.
- 123.3 Inward foreign manifest required.
- 123.4 Inward foreign manifest forms to be used.
- 123.5 Certification and filing of inward foreign manifest.
- 123.6 Train sheet for arriving railroad trains.
- 123.7 Manifest used as an entry for unconditionally free merchandise valued not over \$250.
- 123.8 Permit or special license to unlade or lade a vessel or vehicle.
- 123.9 Explanation of a discrepancy in a manifest.
- 123.10 General order merchandise.

### Subpart B—International Traffic

- 123.11 Supplies on international trains.

- 123.12 Entry of foreign locomotives and equipment in international traffic.
- 123.13 Foreign repairs to domestic locomotives and other domestic railroad equipment.
- 123.14 Entry of foreign-based trucks, busses, and taxicabs in international traffic.
- 123.15 Vehicles of foreign origin used between communities of the United States and Canada or Mexico.
- 123.16 Entry of returning trucks, busses, or taxicabs in international traffic.
- 123.17 Foreign repairs to domestic trucks, busses, taxicabs and their equipment.
- 123.18 Equipment and materials for constructing bridges or tunnels between the United States and Canada or Mexico.

#### **Subpart C—Shipments In Transit Through Canada or Mexico**

- 123.21 Merchandise in transit.
- 123.22 In-transit manifest.
- 123.23 Train sheet for in-transit rail shipments.
- 123.24 Sealing of conveyances or compartments.
- 123.25 Certification and disposition of manifests.
- 123.26 Transshipment of merchandise moving through Canada or Mexico.
- 123.27 Feeding and watering animals in Canada.
- 123.28 Merchandise remaining in or exported to Canada or Mexico.
- 123.29 Procedure on arrival at port of re-entry.

#### **Subpart D—Shipments in Transit Through the United States**

- 123.31 Merchandise in transit.
- 123.32 Manifests.
- 123.33 [Reserved]
- 123.34 Certain vehicle and vessel shipments.

#### **Subpart E—United States and Canada In-Transit Truck Procedures**

- 123.41 Truck shipments transiting Canada.
- 123.42 Truck shipments transiting the United States.

#### **Subpart F—Commercial Traveler's Samples in Transit Through the United States or Canada**

- 123.51 Commercial samples transported by automobile through Canada between ports in the United States.
- 123.52 Commercial samples transported by automobile through the United States between ports in Canada.

#### **Subpart G—Baggage**

- 123.61 Baggage arriving in baggage car.

- 123.62 Baggage in possession of traveler.
- 123.63 Examination of baggage from Canada or Mexico.
- 123.64 Baggage in transit through the United States between ports in Canada or in Mexico.
- 123.65 Domestic baggage transiting Canada or Mexico between ports in the United States.

#### **Subpart H—Land Border Carrier Initiative Program**

- 123.71 Description of program.
- 123.72 Written agreement requirement.
- 123.73 Application to participate.
- 123.74 Notice of selection; appeal of determination.
- 123.75 Notice of revocation; appeal of decision.
- 123.76 Authorization by Customs for participants to use certain drivers.

#### **Subpart I—Miscellaneous Provisions**

- 123.81 Merchandise found in building on the boundary.
- 123.82 Treatment of stolen vehicles returned from Mexico.

#### **Subpart J—Advance Information for Cargo Arriving by Rail or Truck**

- 123.91 Electronic information for rail cargo required in advance of arrival.
- 123.92 Electronic information for truck cargo required in advance of arrival.

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624, 2071 note.

Section 123.1 also issued under 19 U.S.C. 1459;

Section 123.2 also issued under 19 U.S.C. 1460;

Section 123.3 also issued under 19 U.S.C. 1459;

Section 123.4 also issued under 19 U.S.C. 1484, 1498;

Section 123.7 also issued under 19 U.S.C. 1498;

Section 123.8 also issued under 19 U.S.C. 1450-1454, 1459;

Section 123.9 also issued under 19 U.S.C. 1460, 1584, 1618;

Section 123.12 also issued under 19 U.S.C. 1202 (Chapter 86, Additional U.S. Note 1, HTSUS), 1322;

Sections 123.13-123.18 also issued under 19 U.S.C. 1322;

Sections 123.21-123.23, 123.25-123.29, 123.41, 123.51 also issued under 19 U.S.C. 1554;

Section 123.24 also issued under 19 U.S.C. 1551;

Sections 123.31-123.34, 123.42, 123.52, 123.64 also issued under 19 U.S.C. 1553;

## § 123.0

Section 123.63 also issued under 19 U.S.C. 1461, 1462;

Sections 123.71–123.76 also issued under 19 U.S.C. 1618;

Section 123.81 also issued under 19 U.S.C. 1595.

SOURCE: T.D. 70–121, 35 FR 8215, May 26, 1970, unless otherwise noted.

### § 123.0 Scope.

This part contains special regulations pertaining to Customs procedures at the Canadian and Mexican borders. Included are provisions governing report of arrival, manifesting, unloading and lading, instruments of international traffic, shipments in transit through Canada or Mexico or through the United States, commercial traveler's samples transiting the United States or Canada, and baggage arriving from Canada or Mexico including baggage transiting the United States or Canada or Mexico. Aircraft arriving from or departing for Canada or Mexico are governed by the provisions of part 122 of this chapter. The arrival of all vessels from, and clearance of all vessels departing for, Canada or Mexico are governed by the provisions of part 4 of this chapter. Fees for services provided in connection with the arrival of aircraft, vessels, vehicles and other conveyances from Canada or Mexico are set forth in §24.22 of this chapter. Regulations pertaining to the treatment of goods from Canada or Mexico under the North American Free Trade Agreement are contained in part 181 of this chapter.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 88–12, 53 FR 9315, Mar. 22, 1988; T.D. 93–85, 58 FR 54286, Oct. 21, 1993; T.D. 93–96, 58 FR 67317, Dec. 21, 1993; T.D. 94–1, 58 FR 69471, Dec. 30, 1993; 59 FR 10283, Mar. 4, 1994]

### Subpart A—General Provisions

#### § 123.1 Report of arrival from Canada or Mexico and permission to proceed.

(a) *Individuals.* Individuals arriving in the United States, unless excepted by voluntary enrollment in and compliance with PORTPASS—a joint Customs Service/Immigration and Naturalization Service facilitated entry program (See, Immigration and Naturalization Regulations at 8 CFR 235.7),

## 19 CFR Ch. I (4–1–05 Edition)

must report their arrival to Customs, and failure to report arrival may result in the individual being liable for certain civil and criminal penalties, as provided under 19 U.S.C. 1459, in addition to other penalties applicable under other provisions of law. The specific reporting requirements are as follows:

(1) *Individuals not arriving by conveyance.* Persons arriving otherwise than by conveyance may enter the U.S. only at those locations specified by the Commissioner of Customs, or his designee, and shall then immediately report their arrival to Customs. Such persons shall not depart from the Customs port or station until authorized to do so by the appropriate Customs officer.

(2) *Persons arriving aboard a conveyance that reported its arrival.* Persons aboard a conveyance the arrival of which has been reported to Customs at locations specified by the Commissioner of Customs, or his designee in accordance with section 1433, 1644 or 1644a of title 19, United States Code (19 U.S.C. 1433, 1644, 1644a), shall remain on board until authorized by Customs to depart, and shall then immediately report to the designated Customs facility together with all articles accompanying them.

(3) *Persons arriving aboard a conveyance that has not reported its arrival.* Persons aboard a conveyance the arrival of which has not been reported in accordance with the laws referred to in paragraph (a)(2) of this section, shall immediately notify a Customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived, at a location or locations specified by the Commissioner of Customs, or his designee and shall present themselves and their property for Customs inspection and examination.

(b) *Vehicles.* Vehicles may arrive in the U.S. only at a designated port of entry (see §101.3 of this chapter) or Customs station if the Commissioner of Customs, or his designee authorizes entry at that station (see §101.4 of this chapter). Upon arrival of the vehicle in the U.S., the driver, unless he or she and all of the vehicle's occupants are

excepted by enrollment in, and in compliance with, PORTPASS—a joint Customs Service/Immigration and Naturalization Service facilitated entry program (See, Immigration and Naturalization Regulations at 8 CFR 235.1 and 286.8), immediately shall report such arrival to Customs, and shall not depart or discharge any passenger or merchandise (including baggage) without authorization by the appropriate Customs officer.

(c) *Vessels.* For report of arrival requirements applicable to all vessels, regardless of tonnage, and arriving from any location, see § 4.2 of this chapter.

(d) *Method of reporting.* Report of arrival under paragraphs (a), (b), and (c) of this section shall be made in person unless the port director, by local instructions, requires that it be made by some other specific means. Such local instructions issued by the port director will be made available to interested parties by posting in Customs offices, publication in a newspaper of general circulation in the Customs port that supervises the location, and/or other appropriate means.

[T.D. 93-96, 58 FR 67317, Dec. 21, 1993, as amended by T.D. 94-44, 59 FR 23795, May 9, 1994; T.D. 97-48, 62 FR 32031, June 12, 1997; T.D. 98-74, 63 FR 51289, Sept. 25, 1998; CBP Dec. 04-28, 69 FR 52599, Aug. 27, 2004]

**§ 123.2 Penalty for failure to report arrival or for proceeding without a permit.**

(a) *Persons.* Any person arriving otherwise than by conveyance who enters the U.S. at other than a designated port of entry, or Customs station if authorization exists for entry at that station, who fails to report arrival as required in § 123.1(a) of this part, or who departs from the port of entry or Customs station without authorization by the appropriate Customs officer, whether or not intentionally, shall be subject to such civil and criminal penalties as are prescribed under 19 U.S.C. 1459 and provided for in § 123.1 of this part.

(b) *Vessels.* The penalty provisions applicable to vessels for failure to report arrival or for proceeding without a permit are those as provided in § 4.3a.

(c) *Vehicles.* (1) *Civil penalties.* The person in charge of any vehicle who—

(i) Enters the vehicle into the U.S. at other than a designated port of entry, or Customs station if authorization exists for entry at that station;

(ii) Fails to report arrival and present the vehicle and all persons and merchandise (including baggage) on board for inspection as required in § 123.1(b) of this part;

(iii) Fails to file a manifest or any other document required to be filed in connection with arrival in the U.S. under this part; or

(iv) Without authorization by the appropriate Customs officer, removes such vehicle from the port of entry or Customs station or discharges any passenger or merchandise (including baggage) shall be subject to such civil penalties as are prescribed in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436), and any conveyance used in connection with any such violation shall be subject to seizure and forfeiture. The person also may be subject to an additional civil penalty equal to the value of the merchandise on the conveyance which was not entered or reported as required by § 123.1(b) of this part, and that merchandise may be subject to seizure and forfeiture unless properly entered by the importer or consignee. If the merchandise consists of any controlled substances, additional penalties may be assessed, as prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584).

(2) *Criminal penalties.* Upon conviction, any person in charge of a vehicle who intentionally commits any of the violations described in paragraph (c)(1) of this section shall, in addition to the penalties described therein, be subject to such additional criminal penalties as are prescribed in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436). If the vehicle has or is discovered to have had on board any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the U.S. is prohibited, the person in charge of the vehicle is subject to such additional criminal penalties as are prescribed in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436).

[T.D. 93-96, 58 FR 67318, Dec. 21, 1993]

## § 123.3

### § 123.3 Inward foreign manifest required.

(a) *General requirements.* Baggage or other merchandise carried on a vehicle or on a vessel of less than 5 net tons arriving otherwise than by sea from Canada or Mexico shall be listed on a manifest as prescribed by § 123.4. Vessels which are required to make entry under § 4.3 of this chapter because they are arriving by sea or are 5 net tons or over shall have manifests on board as provided in § 4.7(a) of this chapter.

(b) *Exception where in possession of traveler.* When baggage arrives in the actual possession of a traveler, his declaration will be accepted in lieu of a manifest. Merchandise imported by a person otherwise than in a vessel or vehicle need not be covered by a manifest but shall be presented for inspection, and entry shall be made in accordance with the applicable laws and regulations.

### § 123.4 Inward foreign manifest forms to be used.

The inward foreign manifest required by § 123.3 for a vehicle or a vessel of less than 5 net tons arriving in the United States from Canada or Mexico otherwise than by sea with baggage or merchandise, shall be on Customs Form 7533, except as provided for shipments in transit in subparts C, D, E, F, and G of this part, and in the following special cases:

(a) For merchandise free of duty entered on Customs Form 7523, the same form may be used as a manifest in lieu of other forms. (See § 143.23 of this chapter.)

(b) For dutiable merchandise not exceeding \$2,000 in value entered on Customs Form 368 or 368A, (serially numbered) or Customs Form 7501 the same form may be used as a manifest in lieu of other forms. (See § 143.21 of this chapter.) The port director may also allow such merchandise to be entered informally upon the presentation of a commercial invoice which contains the following declaration, signed by the importer or his agent:

I declare that the information on this invoice is accurate to the best of my knowledge and belief; that the invoice quantities are true and correct manifest quantities; and

## 19 CFR Ch. I (4-1-05 Edition)

that I have not received and do not know of any invoice other than this one.

(c) For a shipment not exceeding \$250 in value consisting of articles of American origin entered free of duty under the provisions of § 10.1(i) of this chapter and imported in a vehicle, Customs Form 3311 used in entering the goods, in duplicate, may be accepted in lieu of a manifest.

(d) For baggage arriving in baggage cars, Customs Form 7533 shall be used. (See subpart G of this part.)

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 73-175, 38 FR 17447, July 2, 1973; T.D. 75-105, 40 FR 19813, May 7, 1975; T.D. 82-145, 47 FR 35478, Aug. 16, 1982; T.D. 87-75, 52 FR 26142, July 13, 1987; T.D. 92-56, 57 FR 24944, June 12, 1992; T.D. 94-47, 59 FR 25570, May 17, 1994; T.D. 98-28, 63 FR 16416, Apr. 3, 1998]

### § 123.5 Certification and filing of inward foreign manifest.

The manifest listing baggage and other merchandise, certified by the master of the vessel or the person in charge of the vehicle, shall be presented to the Customs officer at the time the report of arrival is made. It shall be filed in the original only, unless additional copies are required in this part.

### § 123.6 Train sheet for arriving railroad trains.

The conductor of a railroad train arriving from Canada or Mexico shall present to the Customs officer at the port of arrival individual car manifests and a train sheet, sometimes called a consist, bridge sheet, or trip sheet, listing each car and showing the car numbers and initials.

### § 123.7 Manifest used as an entry for unconditionally free merchandise value not over \$250.

When a shipment not exceeding \$250 in value which is unconditionally free of duty and not subject to quota or to internal revenue tax arrives on a vessel of less than 5 net tons arriving otherwise than by sea, the inward foreign manifest on Customs Form 7533 may be presented in duplicate and used as an entry if:

(a) No merchandise for a different entrant is listed on the same page of the manifest,

(b) The country of exportation of the merchandise, its value, and the provision of law under which free entry is claimed are noted thereon, and

(c) Evidence of the right to make entry is furnished as required by §141.11 of this chapter.

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 73-175, 38 FR 17447, July 2, 1973]

**§ 123.8 Permit or special license to unlade or lade a vessel or vehicle.**

(a) *Permission to unlade or lade.* Before any passenger or merchandise, including baggage, may be landed or discharged from any vessel of less than 5 net tons arriving from Canada or Mexico by any route, or from a vehicle, permission to unlade shall be obtained from a Customs officer. Permission to unlade during overtime hours, on a Sunday or holiday, or to lade during overtime hours on a Sunday or holiday merchandise requiring Customs supervision, shall be obtained from the port director. Permission to unlade or lade a truck will be denied for any cargo with respect to which advance electronic information has not been received as provided in §123.92 or 192.14 of this chapter, as applicable. In cases in which CBP does not receive complete cargo information in the time and manner and in the electronic format required by §123.92 or 192.14 of this chapter, as applicable, CBP may delay issuance of a permit or special license to unlade or lade a truck. Permission to unlade is not required for a vessel of less than 5 net tons arriving otherwise than by sea carrying no baggage or other merchandise. For permission to unlade or lade for vessels of 5 net tons or over, see § 4.30 of this chapter.

(b) *Application for permit or special license to unlade or lade—(1) Permit to unlade during regular hours.* Application for a permit to unlade any vehicle or a vessel of less than 5 net tons may be made and permission may be granted orally. The port director may require that the application and permission to unlade be on Customs Form 3171.

(2) *Special license to unlade or lade at night, on a Sunday or holiday.* Applica-

tion for permission to unlade passengers or merchandise from, or lade any merchandise requiring Customs supervision on, a vessel of less than 5 net tons or a vehicle arriving from or departing for Canada or Mexico by any route at night, on a Sunday or holiday, and requests for any reimbursable overtime services shall be made on Customs Form 3171. In the discretion of the port director and under such condition as he may deem advisable the application may be made orally for vessels of less than 5 net tons and vehicles not carrying persons or property for hire, but requests for reimbursable overtime services shall be on Customs Form 3171. The port director may authorize Customs inspectors to approve the request for overtime services and to grant oral permission to unlade or lade.

(c) *Cash deposit or bond for overtime services.* A request for reimbursable overtime services shall not be approved unless the required cash deposit or bond on Customs Form 301, containing the bond conditions set forth in §113.64 of this chapter, is on file or is filed with the request.

(d) *Term permit or special license.* A permit or special license required by this section may be issued on a term basis in the manner, and under the conditions applicable, described in § 4.30 (f) or (g) of this chapter. A term permit or special license to unlade or lade a truck already issued will not be applicable as to any cargo with respect to which advance electronic information has not been received as provided in §123.92 or 192.14 of this chapter, as applicable.

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 84-213, 49 FR 41183, Oct. 19, 1984; T.D. 94-2, 58 FR 68526, Dec. 28, 1993; CBP Dec. 03-32, 68 FR 68173, Dec. 5, 2003]

**§ 123.9 Explanation of a discrepancy in a manifest.**

(a) *Provisions applicable—(1) Overages.* If any merchandise (including sea stores or its equivalent) is found on board a vessel or vehicle arriving in the U.S. that is not listed on a manifest filed in accordance with §123.5 of this part, or after having been unladen from such vessel or vehicle, is found not to have been included or described in the

manifest or does not agree therewith (an overage), the master, person in charge, or owner of the vessel or vehicle or any person directly or indirectly responsible for the discrepancy is subject to such penalties as are prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), and any such merchandise belonging or consigned to the master, person in charge, or owner of the vehicle is subject to seizure and forfeiture.

(2) *Shortages.* If merchandise is manifested but not found on board a vessel or vehicle arriving in the U.S. (a shortage), the master, person in charge, or owner of the vessel or vehicle or any person directly or indirectly responsible for the discrepancy is subject to such penalties as are prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584).

(3) *Failure to file a manifest.* The master or person in charge of a vessel or vehicle arriving in the U.S. or the U.S. Virgin Islands who fails to present a manifest to Customs is liable for civil penalties as are provided by law, and the conveyance used in connection with the failure to file is subject to seizure and forfeiture. A criminal conviction for intentional failure to file shall make the master or person in charge liable for criminal penalties, as provided by statute, and if any merchandise is found or determined to have been on board (other than sea stores or the equivalent for vehicles), the importation of which is prohibited, additional penalties may apply.

(b) *Report of discrepancies*—(1) *Discrepancies discovered by master, person in charge, owner, agent, or person directly or indirectly responsible.* The master, person in charge, owner, or agent of the vessel or vehicle, or any person directly or indirectly responsible for any discrepancy between the merchandise and the manifest, shall report any discrepancy to the port director within 60 days after the date of arrival by completing a report for an overage or a declaration for a shortage. The overage report or shortage declaration may be made on the appropriate manifest form, as listed in §123.4, or on Customs Form 5931, Discrepancy Report and Declaration. If no manifest has been filed, an original copy of the appro-

priate form, as listed in §123.4, should be used. In each case in which a manifest form is used, the form shall be marked or stamped “Overage Report” or “Shortage Declaration”, as appropriate. The form used shall list the merchandise involved and state the reasons for the discrepancy.

(2) *Discrepancies discovered by Customs.* The port director immediately shall advise the master, person in charge, owner, agent, or any person directly or indirectly responsible for the discrepancy between the merchandise and the manifest of any discrepancy discovered by Customs officers which has not been reported. The person so notified shall file an explanation of the discrepancy, as required by paragraph (b)(1) of this section, within 30 days of notification, or within 60 days after arrival of the vessel or vehicle, whichever is later. The port director may notify the master, person in charge, owner, agent, or any person directly or indirectly responsible for the discrepancy by furnishing a copy of Customs Form 5931 to that person, or by any other appropriate written means. Use of Customs Form 5931 shall not preclude assessment of any penalty or liability to forfeiture otherwise incurred.

(c) *Statement on report of discrepancy required.* The overage report or shortage declaration shall bear the following statement signed by the master of the vessel, the person in charge of the vehicle, the owner of the vessel or vehicle, an authorized agent, or the person directly or indirectly responsible for the discrepancy:

I declare to the best of my knowledge and belief that the discrepancy described herein occurred for the reasons stated. I also certify that evidence to support a claim of non-importation or proper disposition of merchandise will be retained in the carrier's files for a period of at least one year from the date of this report of discrepancy and will be made available to Customs upon demand.

(d) *Action on the discrepancy report.* (1) In accordance with the proviso to 19 U.S.C. 1584, no penalty shall be incurred under that section if—

- (i) The manifest discrepancy relates only to a shortage;
- (ii) There is timely filing of the discrepancy report;

(iii) There has been no loss of revenue;

(iv) The port director is satisfied that the discrepancy resulted from clerical error or other mistake; and

(v) In the case of a discrepancy not reported initially by the master, person in charge, owner, agent, or the person directly or indirectly responsible, the port director is satisfied that there is a valid reason for failure to file the discrepancy report.

(2) If the criteria in paragraph (d)(1) of this section are not met, applicable penalties under 19 U.S.C. 1584 shall be assessed.

(3) Any penalty or liability to forfeiture incurred under 19 U.S.C. 1584 may be mitigated or remitted under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618).

(e) *Penalty assessment.* For the purpose of assessing penalties under 19 U.S.C. 1584, the value of the merchandise shall be determined as described in section 162.43 of this chapter.

(f) *Lack of knowledge does not relieve liability.* The fact that the master of the vessel, the person in charge of the vehicle, or the owner of the vessel or vehicle had no knowledge of a discrepancy shall not relieve the master, the person in charge, or the owner from a penalty, or the vessel or vehicle from liability to forfeiture, incurred under 19 U.S.C. 1584.

(g) *Clerical error or other mistake defined.* For the purpose of this section, the term “clerical error or other mistake” is defined as a non-negligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of manifests. However, repeated similar manifest discrepancies by the same persons may be considered the result of negligence and not clerical error or other mistake.

[T.D. 80-236, 45 FR 64172, Sept. 29, 1980, as amended by T.D. 93-96, 58 FR 67318, Dec. 21, 1993]

#### § 123.10 General order merchandise.

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain at the place of unloading until the fifteenth calendar day after landing. No later than 20 calendar days after landing, the owner or operator of

the vehicle or the agent thereof shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. Failure to provide such notification may result in assessment of a monetary penalty of up to \$1,000 per bill of lading against the owner or operator of the vehicle or the agent thereof. If the value of the merchandise on the bill is less than \$1,000, the penalty shall be equal to the value of such merchandise.

(b) Any merchandise or baggage that is taken into custody from an arriving carrier by any party under a Customs-authorized permit to transfer or in-bond entry may remain in the custody of that party for 15 calendar days after receipt under such permit to transfer or 15 calendar days after arrival at the port of destination. No later than 20 calendar days after receipt under the permit to transfer or 20 calendar days after arrival under bond at the port of destination, the party shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. If the party fails to notify Customs of the unentered merchandise or baggage in the allotted time, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(c)(4) of this chapter).

(c) In addition to the notification to Customs required under paragraphs (a) and (b) of this section, the carrier (or any other party to whom custody of the unentered merchandise has been transferred by a Customs authorized permit to transfer or in-bond entry) shall provide notification of the presence of such unreleased and unentered merchandise or baggage to a bonded warehouse certified by the port director as qualified to receive general order merchandise. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system and shall be provided within the applicable 20-day period specified in paragraph (a) or (b)



## § 123.11

## 19 CFR Ch. I (4–1–05 Edition)

of this section. It shall then be the responsibility of the bonded warehouse proprietor to arrange for the transportation and storage of the merchandise or baggage at the risk and expense of the consignee. The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see § 19.9 of this chapter). Any unentered merchandise or baggage shall remain the responsibility of the carrier, master, or person in charge of the importing vehicle or the agent thereof or party to whom the merchandise has been transferred under a Customs authorized permit to transfer or in-bond entry until it is properly transferred from his control in accordance with this paragraph. If the party to whom custody of the unentered merchandise or baggage has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to notify a Customs-approved bonded warehouse of such merchandise or baggage within the applicable 20-calendar-day period, he may be liable for the payment of liquidated damages of \$1,000 per bill of lading under the terms and conditions of his international carrier or custodial bond (see §§ 113.63(b), 113.63(c) and 113.64(b) of this chapter).

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) If the bonded warehouse operator fails to take possession of unentered and unreleased merchandise or baggage within five calendar days after receipt of notification of the presence of such merchandise or baggage under this section, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(a)(1) of this chapter). If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (see § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see §§ 113.63(c)(3) and 113.64(b) of this chapter).

(f) In ports where there is no bonded warehouse authorized to accept general order merchandise, or if merchandise requires specialized storage facilities which are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, shall direct the storage of the merchandise by the carrier or by any other appropriate means.

(g) Merchandise taken into the custody of the port director pursuant to section 490(b), Tariff Act of 1930, as amended (19 U.S.C. 1490(b)), shall be sent to a general order warehouse after 1 day after the day the vehicle arrived, to be held there at the risk and expense of the consignee.

[T.D. 98-74, 63 FR 51289, Sept. 25, 1998, as amended by T.D. 02-65, 67 FR 68033, Nov. 8, 2002]

### Subpart B—International Traffic

#### § 123.11 Supplies on international trains.

(a) *Articles acquired abroad.* Articles subject to internal revenue tax and other merchandise acquired abroad constituting supplies arriving on international trains crossing and recrossing the boundary line, for which the train

crew elects not to file an inventory as provided for in paragraph (b) of this section, shall be subject to duty and tax unless locked or sealed in a separate compartment or locker upon arrival, and the lock or seal remains unbroken until the train departs from the United States at the final port of exit.

(b) *Inventory procedure.* Supplies acquired abroad for which internal revenue stamps are not required may be used in the United States under the following procedure:

(1) *Port of arrival.* An inventory executed in duplicate consisting of an itemized list showing the kind and quantity of each class of supplies on hand in the car with space for a parallel column in which to show at the port of exit the quantity used, shall be certified by the person in charge of the car and furnished to the Customs officer upon arrival. The Customs officer shall certify the correctness of both copies of the inventory, return the original to the person in charge of the car and retain the duplicate, or forward it to the port of exit if this differs from the port of arrival.

(2) *Port of exit.* Upon arrival at the port of exit, the inventory returned at the port of arrival to the person in charge of the car shall be submitted to the Customs officer after completion by showing the quantity of each item used in the United States, and being certified by the person in charge of the car. Entries must be filed and applicable duties and taxes paid at the port of exit on the quantity of supplies consumed in the United States.

(c) *Supplies purchased in the United States.* Supplies purchased in the United States shall be passed free of duty without inventory or entry.

**§ 123.12 Entry of foreign locomotives and equipment in international traffic.**

(a) *Use on a continuous route.* Foreign locomotives or other foreign railroad equipment in use on a continuous route crossing the boundary into the United States shall be admitted without formal entry or the payment of duty to proceed to the end of the run and depart for a foreign country, in accordance with the following:

(1) *On inward trip.* Unless formally entered and cleared through Customs into the United States, or unless exempt from entry as provided in §141.4(b)(4) of this chapter, a foreign locomotive shall be used on the inward trip only in connection with taking the inbound train to the last place in a continuous haul, including the switching of cars which it has hauled into the United States. Other foreign railroad equipment may proceed to the place of complete unloading for any merchandise imported therein.

(2) *On outward trip.* Unless formally entered and cleared through Customs into the United States, or unless exempt from entry as provided in §141.4(b)(4) of this chapter, foreign locomotives may be used on the outward trip only in connection with through trains crossing the boundary, including switching to make up such trains. Other foreign railroad equipment may be used in such trains or for such local traffic as is reasonably incidental to its economical and prompt departure for a foreign country.

(b) *Admission of empty equipment.* Empty foreign railroad equipment shall be admitted to the United States without formal entry and payment of duty only if:

(1) The passengers or goods to be loaded are to be transported directly to or through a foreign country; or

(2) The equipment is exempt from entry as provided in §141.4(b)(4) of this chapter.

(c) *Penalty for improper use.* The use of any foreign locomotive and other foreign railroad equipment in violation of this section may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

(d) *Domestic and foreign locomotives and other railroad equipment defined.* For the purpose of this section and §123.13, locomotives or other railroad equipment manufactured in, or regularly imported into, the United States, shall be considered "domestic" if not subsequently formally entered and cleared through foreign customs into another country, nor used in foreign local traffic otherwise than as an incident of the return of the equipment to the United States. Other locomotives

### § 123.13

and railroad equipment shall be considered "foreign".

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 73-73, 38 FR 6991, Mar. 15, 1973; T.D. 79-160, 44 FR 31956, June 4, 1979; T.D. 83-118, 48 FR 23385, May 25, 1983; T.D. 94-51, 59 FR 30294, June 13, 1994]

#### **§ 123.13 Foreign repairs to domestic locomotives and other domestic railroad equipment.**

A report of the first arrival in the United States of a domestic locomotive or other railroad equipment after repairs have been made in a foreign country other than those required to restore it to the condition in which it last left the United States ("running repairs"), shall be made promptly, in writing, to the Customs officer at the port of re-entry. The report shall state the time and place of arrival, and the nature and value of the repairs. Each such locomotive or other piece of railroad equipment when withdrawn from international traffic shall be subject to duty upon the value of the repairs (other than "running repairs"), made abroad at the rate at which the repaired article would be dutiable if imported. For the appropriate determination as to whether the locomotive or other railroad equipment should be considered "domestic" or "foreign", see § 123.12(d).

[T.D. 73-73, 38 FR 6991, Mar. 15, 1973]

#### **§ 123.14 Entry of foreign-based trucks, busses, and taxicabs in international traffic.**

(a) *Admission without entry or payment of duty.* Trucks, busses, and taxicabs, however owned, which have their principal base of operations in a foreign country and which are engaged in international traffic, arriving with merchandise or passengers destined to points in the United States, or arriving empty or loaded for the purpose of taking out merchandise or passengers, may be admitted without formal entry or the payment of duty. Such vehicles shall not engage in local traffic except as provided in paragraph (c) of this section.

(b) *Deposit of registration by vehicle not on regular trip.* In any case in which a foreign-based truck, bus, or taxicab admitted under this section is not in use

### 19 CFR Ch. I (4-1-05 Edition)

on a regularly scheduled trip, the port director may require that the registration card for the vehicle be deposited pending the return of the vehicle for departure to the country from which it arrived, or the port director may take other appropriate measures to assure the proper use and departure of the vehicle.

(c) *Use in local traffic.* Foreign-based trucks, busses, and taxicabs admitted under this section shall not engage in local traffic in the United States unless the vehicle comes within one of the following exceptions:

(1) The vehicle may carry merchandise or passengers between points in the United States if such carriage is incidental to the immediately prior or subsequent engagement of that vehicle in international traffic. Any such carriage by the vehicle in the general direction of an export move or as part of the return of the vehicle to its base country shall be considered incidental to its engagement in international traffic. An alien driver will not be permitted to operate a vehicle under this paragraph, unless the driver is in compliance with the applicable regulations of the Immigration and Naturalization Service.

(2) A foreign-based truck trailer may carry merchandise between points in the United States on its departure for a foreign country under the same conditions as are prescribed for "other foreign railroad equipment" in § 123.12(a)(2).

(d) *Penalty for improper use.* The use of any vehicle referred to in this section in violation of this section may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 79-160, 44 FR 31956, June 4, 1979; T.D. 83-118, 48 FR 23385, May 25, 1983; T.D. 99-10, 64 FR 7504, Feb. 16, 1999]

#### **§ 123.15 Vehicles of foreign origin used between communities of the United States and Canada or Mexico.**

Vehicles of foreign origin which are used for commercial purposes between adjoining or neighboring communities of the United States and Canada or Mexico, such as delivery, peddlers', and service trucks, or wagons, are subject

to duty on first arrival, but may thereafter be admitted without formal entry or the payment of duty so long as they are continuously employed in such service.

**§ 123.16 Entry of returning trucks, busses, or taxicabs in international traffic.**

(a) *Admission without entry or payment of duty.* Trucks, busses, and taxicabs, whether of foreign or domestic origin, taking out merchandise or passengers for hire or leaving empty for the purpose of bringing back merchandise or passengers for hire shall on their return to the United States be admitted without formal entry or the payment of duty upon their identity being established by State registration cards.

(b) *Use in local traffic.* Trucks, busses, and taxicabs in use in international traffic, which may include the incidental carrying of merchandise or passengers for hire between points in a foreign country, or between points in this country, shall be admitted under this section. However, such vehicles taken abroad for commercial use between points in a foreign country, otherwise than in the course of their use in international traffic, shall be considered to have been exported and must be regularly entered on return.

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 99-10, 64 FR 7504, Feb. 16, 1999]

**§ 123.17 Foreign repairs to domestic trucks, busses, taxicabs and their equipment.**

(a) *Domestic trucks, busses, and taxicabs and their equipment defined.* For the purpose of this section, trucks, busses, and taxicabs and their equipment manufactured in, or regularly imported into the United States, shall be considered “domestic” if not subsequently formally entered and cleared through foreign customs into another country, nor used in foreign local traffic otherwise than as an incident of their return to the United States.

(b) *Report of arrival and payment of duty on repairs.* A report of the first arrival in the United States of domestic trucks, busses, and taxicabs and their equipment after repairs have been made in a foreign country, other than

those required to restore such vehicle or equipment to the condition in which it last left the United States (“running repairs”), shall be made by the driver or person in charge of the vehicle promptly, in writing, to the Customs officer at the port of reentry. The report shall state the time and place of arrival and the nature and value of the repairs. Each such vehicle or its equipment when withdrawn from international traffic shall be subject to duty upon the value of the repairs (other than “running repairs”) made abroad at the rate at which the repaired article would be dutiable if imported.

**§ 123.18 Equipment and materials for constructing bridges or tunnels between the United States and Canada or Mexico.**

(a) *Admission of equipment and materials.* Equipment for use in construction of bridges or tunnels between the United States and Canada or Mexico shall be admitted without entry or the payment of duty. Materials for such use shall be admitted without entry or payment of duty only for installation in the bridge or tunnel proper, and not in the approaches on land at the United States end of such bridge or tunnel.

(b) *Customs supervision.* All articles admitted under paragraph (a) of this section shall be subject to Customs supervision at the expense of the builder until installed, entered, or exported.

**Subpart C—Shipments in Transit Through Canada or Mexico**

**§ 123.21 Merchandise in transit.**

(a) *Status.* Merchandise may be transported from one port to another in the United States through Canada or Mexico in accordance with the regulations in this subpart or subparts E for trucks transiting Canada, F for commercial traveler’s samples, or G for baggage. Merchandise so transported is not subject to treatment as an importation when returned to the United States, and no inward foreign manifest is required for merchandise returned under an in-transit manifest. In-transit merchandise returned to the United States shall be treated as an importation as are shipments made from Canada or Mexico if:

§ 123.22

19 CFR Ch. I (4-1-05 Edition)

(1) An in-transit manifest is not furnished for the merchandise upon its return to the United States;

(2) The merchandise has been transshipped in foreign territory without Customs supervision when the transshipment required the breaking of Customs seals; or

(3) The Customs inspector finds any of the Customs seals applied to the conveyance or compartment unlocked or missing.

(b) *Use of certain vessels prohibited.* Merchandise shall not be transported from port to port in the United States through Canada or Mexico by vessel in violation of the provisions of section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883), or section 588, Tariff Act of 1930, as amended (19 U.S.C. 1588). (See § 4.80 of this chapter.)

(c) *Regulations applicable.* The provisions of this subpart shall govern all merchandise transported from one port to another in the United States through Canada or Mexico under in-transit procedures, except as otherwise provided in this subpart or in subpart E for truck shipments transiting Canada, subpart F for commercial traveler's samples transiting Canada, and subpart G for baggage transiting Canada or Mexico.

§ 123.22 **In-transit manifest.**

(a) *Manifest required.* A manifest in duplicate covering the in-transit merchandise which is to proceed under the provisions of this subpart shall be presented by the carrier to the Customs officer at each port of lading of a vessel, or at the port of exit of a vehicle. Where the merchandise is transported under Customs red in-bond seals and is accompanied by a transportation in-bond manifest, a separate in-transit manifest is not required.

(b) *Additional copies.* In the following cases additional copies of the manifest shall be presented:

(1) When the merchandise is to be transshipped in foreign territory under Customs supervision, a copy of the manifest for each place of transshipment shall be presented.

(2) When a Customs officer requests an extra copy of the manifest as a record of the transaction.

(c) *Manifest forms to be used.* The in-transit manifest forms to be used are:

(1) For trucks, railroad cars or other overland carriers transiting Mexico a manifest on Customs Form 7512-B or 7533-C shall be presented.

(2) For vessels of less than 5 net tons departing and arriving otherwise than by sea, a manifest on Customs Form 7512-B or 7533-C shall be presented. All other vessels are subject to the manifesting requirements contained in § 4.82 of this chapter.

(3) For rail cars transiting Canada, a manifest on Customs Form 7533-C (Canada A4-1/2) shall be presented. For trains which will remain intact while transiting Canadian territory, a consolidated train manifest containing all the information included in the individual car manifests and the train sheet required by § 123.23 may be used in lieu of individual car manifests. For a number of cars which will transit Canada as a group, a consolidated manifest may be used, but a train sheet shall also be presented.

(4) In all other cases where no in-transit manifest form is specified in this subpart, or in subpart E relating to truck shipments on the Canadian border, subpart F relating to commercial traveler's samples, and subpart G relating to baggage, Customs Form 7512-B or 7533-C shall be presented.

(d) *Contents of in-transit manifest.* The information contained in the manifest shall correspond to the information contained in the waybill accompanying the shipment, except that:

(1) The conveyance shall be identified in a suitable manner in the place provided for such identification.

(2) The description of loadings made up of several shipments which are to go forward in a conveyance or compartment sealed with Customs seals shall be "miscellaneous shipments."

(3) When an in-transit rail shipment will enter and reenter Canada in a continuing movement en route to a final destination in the United States, only the final United States port of reentry shall be shown on the manifest.

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 82-145, 47 FR 35478, Aug. 16, 1982]

**§ 123.23 Train sheet for in-transit rail shipments.**

Before an in-transit train proceeding under the provisions of this subpart departs from the United States, the carrier shall furnish to the customs officer at the port of exit a train sheet, sometimes called a consist, bridge sheet or trip sheet, listing each car of the train and specifically identifying the in-transit cars, unless a consolidated manifest containing this information has been presented for a train which will remain intact.

**§ 123.24 Sealing of conveyances or compartments.**

(a) *Sealing required.* Merchandise in transit proceeding under the provisions of this subpart shall be transported in sealed conveyances or compartments, except that:

(1) Less than load or compartment lots may be forwarded in unsealed conveyances or compartments, without cording and sealing;

(2) The Commissioner of Customs may authorize treatment of full loads or lots in the same manner as less than load or compartment lots;

(3) Live animals identifiable by specific description in the manifest may be transported in the care of an attendant or customs inspector at the expense of the parties in interest, in unsealed conveyances or compartments.

(b) *Seals to be affixed.* The carrier shall affix blue in-transit seals to all openings of conveyances and compartments containing in-transit merchandise except that:

(1) Sealable carload shipments on the Canadian border shall be sealed with yellow in-transit seals.

(2) Conveyances or compartments sealed with U.S. Customs red in-bound seals may go forward without additional seals.

(c) *Carrier relieved of responsibility.* The port director may relieve the carrier of the responsibility of affixing in-transit seals by notification in writing that Customs inspectors will assume it.

**§ 123.25 Certification and disposition of manifests.**

(a) *Certification.* Conveyances proceeding under the provisions of this subpart shall not proceed until the

Customs inspector has certified the in-transit manifest or verified its certification by the carrier. The port director may require the carrier to execute the certificate as an alternative to certification by the Customs officer. When the carrier is to execute the certificate, and the merchandise will be forwarded without being under Customs seals, the agent of the carrier shall carefully examine the packages covered by the manifests to satisfy himself that the merchandise agrees with the manifest as to quantity and description.

(b) *Disposition of manifest.* The original manifest, after certification, shall accompany the merchandise. Additional copies required when the merchandise is to be transshipped in Canada or Mexico under Customs supervision shall be given to the person in charge of the conveyance for delivery to the Customs officers who will supervise transshipment.

**§ 123.26 Transshipment of merchandise moving through Canada or Mexico.**

(a) *General.* Merchandise in transit proceeding under the provisions of this subpart may be transshipped from one conveyance to another in foreign territory. When transshipment requires the breaking of Customs seals, the breaking of the seals, transshipment and sealing of the conveyance or compartment to which the merchandise is transshipped shall be under the supervision of a Customs officer. He shall note his action on both the additional copy of the manifest presented to him, in accordance with §123.25(b), and on the original copy, which shall be returned to the person in charge of the conveyance to accompany the merchandise. Merchandise transshipped in foreign territory without customs supervision when Customs seals were broken shall be treated upon return to the United States as imported merchandise.

(b) *Storage awaiting transshipment.* Merchandise moving under in-transit manifests and Customs seals which is to be stored in foreign territory awaiting transshipment shall be checked into a storehouse by the Customs officer at the place of transshipment. It

**§ 123.27**

shall remain under Customs locks and seals until transshipment is completed under Customs supervision.

(c) *Manifests where contents broken up.* When transshipment involves the breaking up of the in-transit contents of a conveyance or compartment, in such a manner as to require separate manifests for articles previously covered by a single manifest, the Customs officer supervising the transshipment shall take up the carrier's copy of the manifest and require the carrier to prepare a new manifest, in duplicate, for each conveyance to which the merchandise is transshipped. If there is to be further transshipment, an additional copy of each new manifest shall be presented by the carrier, and shall be returned to the person in charge of the carrier for delivery to the Customs officer at the point of further transshipment in accordance with §123.25(b). After the transshipment and sealing of the conveyances and compartments has been supervised and the new manifests certified the originals of the new manifests shall be returned to the carrier to accompany the merchandise to the point of reentry into the United States.

**§ 123.27 Feeding and watering animals in Canada.**

If animals in sealed conveyances or compartments cannot be fed and watered in Canada without breaking customs seals, the seals shall be broken and the animals fed and watered under the supervision of a United States or Canadian Customs officer. The supervising officer shall reseal the conveyance or compartment, and make notation as to the resealing on the manifest.

**§ 123.28 Merchandise remaining in or exported to Canada or Mexico.**

(a) *In-transit status abandoned.* When the in-transit status of merchandise transiting Canada or Mexico is abandoned and the merchandise is entered for consumption or other disposition in Canada or Mexico, the carrier shall send the in-transit seals and manifests to the port where the manifests were first filed with U.S. Customs, or in the case of trucks under subpart E, the port of exit, with an endorsement by the carrier's agent on each manifest

**19 CFR Ch. I (4-1-05 Edition)**

showing that the merchandise was so entered. The carriers shall comply with the export control regulations, 15 CFR part 370.

(b) *In-transit merchandise exported to Canada or Mexico.* Merchandise to be exported to Canada or Mexico after moving in-transit through a contiguous country shall be treated as exported when it has passed through the last port of exit from the United States. This paragraph shall control whether or not the merchandise to be exported is domestic or foreign and whether or not it is exported with benefit of drawback. The manifest, shipper's export declaration, and the notice of exportation, if any, shall be filed at the last port of exit from the United States.

**§ 123.29 Procedure on arrival at port of reentry.**

(a) *Presentation of documents.* At the first port in the United States after transportation through Canada or Mexico under the provisions of this subpart, the carrier shall present to Customs the in-transit manifest or manifests for each loaded conveyance. For mixed loadings, that is, loadings made up of several shipments, the waybills shall be available at the port of return or discharge for use by Customs officers. For a railroad train for which a consolidated manifest was not used the conductor shall also present a train sheet showing the car numbers and initials.

(b) *Vessels and rail shipments continuing in-transit movement—(1) Vessels.* In the case of a vessel carrying in-transit merchandise, the master's copies of the in-transit or in-bond manifest covering the merchandise given final Customs release at that port shall be retained by Customs at that port and the manifests covering merchandise to be discharged at subsequent ports of arrival shall be returned to the master of the vessel for presentation to Customs at the next port.

(2) *Rail shipments.* An in-transit rail shipment arriving at an intermediate port of reentry or exit intended for further in-transit movement through Canada may be permitted to go forward under the accompanying in-transit manifest after verification by Customs

that the manifest satisfactorily identifies the shipment.

(c) *Checking and breaking of seals*—(1) *Checking seals.* The Customs officer at the port of arrival shall check customs seals applied to the conveyance or compartment for unlocked or missing seals. Where the seals are unlocked or missing, the merchandise shall be treated as having been imported from the transited country.

(2) *Breaking seals.* In-bond seals shall be broken only by a Customs officer or by a person acting under the direction of a Customs officer. In-transit seals may be broken by any carrier's employee, or by a consignee at any time or place after the merchandise under such seals has been released by Customs.

(d) *Proper manifest.* In-transit merchandise shall not be released until proper in-transit manifests are received except that it may be treated as imported merchandise.

(e) *Substitution of merchandise.* Any instance of substitution of merchandise shall be reported to the Commissioner of Customs, and the merchandise shall be detained.

### Subpart D—Shipments in Transit Through the United States

#### § 123.31 Merchandise in transit.

(a) *From one contiguous country to another.* Merchandise may be transported in transit across the United States between Canada and Mexico under the procedures set forth in part 18 of this chapter for merchandise entered for transportation and exportation.

(b) *From one point in a contiguous country to another through the United States.* Merchandise may be transported from point to point in Canada or in Mexico through the United States in bond in accordance with the procedures set forth in §§ 18.20 to 18.24 of this chapter except where those procedures are modified by this subpart or subparts E for trucks transiting the United States, F for commercial traveler's samples, or G for baggage.

#### § 123.32 Manifests.

(a) *Form and number of copies required.* Three copies of the transportation entry and manifest on Customs Form

7512 shall be presented upon arrival of merchandise which is to proceed under the provisions of this subpart.

(b) *Consolidated train manifest.* When the route is such that a train will remain intact while proceeding through the United States, a consolidated train manifest containing the same information as is required on individual manifests may be used.

(c) *Disposition of manifest form.* One copy of the manifest shall be delivered to the person in charge of the carrier to accompany the conveyance and be delivered to the Customs officer at the final port of exit.

#### § 123.33 [Reserved]

#### § 123.34 Certain vehicle and vessel shipments.

In the following circumstances, the copy of Customs Form 7512 to be retained at the port of first arrival may be adapted for use as a combined inward foreign manifest and in-bond transportation or direct exportation entry:

(a) When all the merchandise arriving on one vehicle (except on trucks on the Canadian border) is to move in bond in the importing vehicle in a continuing movement through the United States; or

(b) When all the merchandise arriving on one vessel or on one vehicle (except on trucks on the Canadian border) is entered immediately upon arrival either under a single immediate transportation entry or a single transportation and exportation or direct exportation entry.

When Customs Form 7512 is to be used in this manner, the foreign port of lading and the name of the shipper shall be shown in every case, and a certificate in the following form shall be legibly stamped on the manifest or on a separate paper securely fastened thereto and executed by the master of the vessel or the person in charge of the vehicle:

This entry correctly covers all the merchandise on the vessel or vehicle, of which I am the master or person in charge, when it first arrived in the United States. If an error in the quantity, kind of article, or other details is discovered, I will immediately report the correct information to the port director.



### Subpart E—United States and Canada In-Transit Truck Procedures

#### § 123.41 Truck shipments transiting Canada.

(a) *Manifest required.* Trucks with merchandise transiting Canada from point to point in the United States will be manifested on United States-Canada Transit Manifest, Customs Form 7512-B Canada 8½. The driver shall present the manifest in four copies to U.S. Customs at the United States port of departure for review and validation.

(b) *Procedure at United States port of departure.* The Customs officer receiving the manifest shall validate it by stamping each copy in the lower right hand corner to show the port name and date and by initialing each copy. All copies of the validated manifest then will be returned to the driver for presentation to Canadian Customs at the Canadian port of entry.

(c) *Procedure at Canadian ports of arrival and exit.* Truck shipments transiting Canada shall comply with Canadian Customs regulations. These procedures generally are as follows:

(1) *Canadian port of arrival.* The driver shall present a validated United States-Canada Transit Manifest Customs Form 7512-B Canada 8½, in four copies to the Canadian Customs officer, who shall review the manifest for accuracy and verify its validation by U.S. Customs. If the manifest is found not to be properly validated, the truck shall be required to be returned to the United States port of departure so that the manifest may be validated. If the manifest is validated properly and no irregularity is found, the truck will be sealed unless sealing is waived by Canadian Customs. The original manifest will be retained by Canadian Customs at the port of arrival, and the three copies will be returned to the driver for presentation to Canadian Customs at the Canadian port of exit.

(2) *Canadian port of exit.* The driver shall present the three copies of the validated manifest to the Canadian Customs officer at the Canadian port of exit for certification. That officer shall verify that the seals are intact if the vehicle has been sealed or, if sealing has been waived, that there are no

irregularities. After verification and certification of the manifest, two certified copies will be returned to the driver (one to be presented to U.S. Customs at the United States port of re-entry, the other for the carrier's records), and the truck will be allowed to proceed to the United States.

(d) *Procedure at United States port of reentry.* The driver of a truck reentering the United States after transiting Canada shall present a certified copy of the United States-Canada Transit Manifest, Customs Form 7512-B Canada 8½, to the U.S. Customs officer. If this copy of the manifest does not bear the certification of a Canadian Customs officer at the Canadian port of exit, the driver will be allowed to return to that port to have it certified. The driver will be allowed to break any seals affixed by Canadian Customs upon presentation of a certified manifest. If sealing has been waived, the U.S. Customs officer shall satisfy himself that the truck contains only that merchandise covered by the manifest which moved on the truck from the United States through Canada.

(e) *Proof of exportation from Canada.* The certified copy of the manifest returned to the driver by Canadian Customs at the Canadian port of exit will serve as proof of exportation of the shipment from Canada.

[T.D. 81-85, 46 FR 21990, Apr. 15, 1981]

#### § 123.42 Truck shipments transiting the United States.

(a) *Manifest required.* Trucks with merchandise transiting the United States from point to point in Canada will be manifested on United States-Canada Transit Manifest, Customs Form 7512-B Canada 8½. The driver, in accordance with Canadian Customs regulations, shall present the manifest in four copies to Canadian Customs at the Canadian port of departure for review and validation.

(b) *Procedure at Canadian port of departure.* The Customs officer receiving the manifest shall validate it by stamping each copy in the lower right hand corner to show the port name and date and by initialing each copy. All copies of the validated manifest then

will be returned to the driver for presentation to U.S. Customs at the United States port of entry.

(c) *Procedure at United States port of arrival*—(1) *Presentation of manifest*. The driver shall present a validated United States-Canada Transit Manifest, Customs Form 7512-B Canada 8½, in four copies to the U.S. Customs officer, who shall review the manifest for accuracy and verify its validation by Canadian Customs. If the manifest is found not to be validated properly, the truck will be required to be returned to the Canadian port of departure so that the manifest may be validated in accordance with Canadian Customs regulations. If the manifest is validated properly and no irregularity is found the truck will be sealed unless sealing is waived by U.S. Customs. The U.S. Customs officer shall note on the manifest over his initials the seal numbers or the waiver of sealing, retain the original, and return three copies of the manifest to the driver for presentation to U.S. Customs at the United States port of exit.

(2) *Sealing or waiver of sealing*. Trucks transiting the United States will be sealed with red in-bond seals at the United States port of arrival unless sealing is waived in accordance with §18.4 of this chapter. If a truck cannot be sealed effectively and sealing is deemed necessary to protect the revenue or to prevent violation of the Customs laws or regulations, the truck will not be permitted to transit the United States under bond.

(d) *Procedure at United States port of exit*. The driver shall present the three validated copies of the manifest to the U.S. Customs officer at the U.S. port of exit. The Customs officer shall check the numbers and condition of the seals and record and certify his findings on all copies of the manifest, returning two certified copies to the driver (one to be presented to Canadian Customs at the Canadian port of reentry, the other for the carrier's records), and the truck will be allowed to proceed to Canada. The check of the seals shall be made as follows:

(1) If the seals are intact, they will be left unbroken unless there is indication that the contents should be verified.

(2) If the seals have been broken, or there is other indication that the contents should be verified, all merchandise will be required to be unladen and a detailed inventory made against the waybills.

If sealing has been waived, the Customs officer shall verify the goods against the accompanying waybills in sufficient detail to detect any irregularity.

(e) *Procedure at Canadian port of re-entry*. The driver of a truck reentering Canada after transiting the United States shall present a certified copy of the United States-Canada Transit Manifest, Customs Forms 7512-B Canada 8½, to the Canadian Customs officer. If this copy of the manifest does not bear the certification of a U.S. Customs officer at the United States port of exit, the driver will be allowed to return to that port to have it certified.

(f) *Proof of exportation from United States*. The certified copy of the manifest returned to the driver by the U.S. Customs officer at the U.S. port of exit will serve as proof of exportation of the shipment from the U.S.

(g) *Forwarding procedure*. Except as otherwise provided in this section, merchandise transported in trucks shall be forwarded in accordance with the general provisions for transportation in bond (§§18.1–18.8 of this chapter).

[T.D. 81–85, 46 FR 21991, Apr. 15, 1981, as amended by T.D. 84–212, 49 FR 39047, Oct. 3, 1984; T.D. 00–22, 65 FR 16518, Mar. 29, 2000]

### Subpart F—Commercial Traveler's Samples in Transit Through the United States or Canada

#### § 123.51 Commercial samples transported by automobile through Canada between ports in the United States.

(a) *General provisions*. A commercial traveler arriving at a U.S. frontier port desiring to transport his commercial samples by automobile through Canada to another place in the United States without displaying the samples in Canada may request a U.S. Customs officer at the port of departure to cord and seal the outer containers of the samples if they can be effectively corded and sealed.

§ 123.52

19 CFR Ch. I (4-1-05 Edition)

(b) *List of samples.* The traveler shall furnish the U.S. Customs officer at the port of exit a list, in duplicate, of all the articles in the containers, with their approximate values, in substantially the following form:

SAMPLES CARRIED IN TRANSIT THROUGH CANADA IN PRIVATE VEHICLE

(U.S. port of exit printed here) (Date)  
 I have checked the quantity and values of the below-listed articles carried by \_\_\_\_\_ (Name and address of traveler) and owned by \_\_\_\_\_ (Name and address of firm or company)  
 These articles are contained in \_\_\_\_\_ (Number) packages which have been corded and sealed for in-transit movement through Canada to \_\_\_\_\_ (U.S. port of reentry) in \_\_\_\_\_ (Year, make and license number of vehicle)

Description of merchandise	(U.S. Customs Inspector) Value

When the traveler arrives at Customs with lists already prepared, the form may be inscribed "as per list attached."

(c) *Checking, cording, and sealing by U.S. Customs officers.* The Customs officer shall check the list with the articles and satisfy himself that the values shown are approximately correct. The Customs officer will cord and seal the containers with yellow in-transit seals. The traveler may be required to assist the Customs officer in the cording and sealing. The original of the list, signed by the Customs officer over his title and showing that the articles on the list have been checked by the officer against those in the containers shall be returned to the traveler for submission by him to Canadian customs upon his arrival in Canada.

(d) *In-transit manifest.* The traveler shall execute and file Customs Form 7512-B or 7533-C, in the original only, at the U.S. port of departure, as an in-transit manifest covering the movement of the samples to the U.S. port through which the traveler will return. Descriptions, quantities, and values may be shown thereon by noting "Commercial Samples" and the number of corded and sealed containers.

The manifest shall be returned to the traveler to accompany the samples after being signed and dated by the Customs officer.

(e) *Presentation of in-transit manifest at U.S. port of reentry.* Upon return to the United States, the traveler shall present Customs Form 7512-B or 7533-C and the corded and sealed samples to the U.S. Customs officer at the port where the samples are returned to this country. The Customs officer shall verify that there has been no irregularity.

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 82-145, 47 FR 35478, Aug. 16, 1982]

§ 123.52 **Commercial samples transported by automobile through the United States between ports in Canada.**

(a) *General provisions.* A commercial traveler arriving from Canada may be permitted to transport effectively corded and sealed samples in his automobile without further sealing in the United States, upon compliance with this section and subject to the conditions of § 18.20(b), since Customs bonded carriers as described in § 18.1 of this chapter are not considered to be reasonably available. Samples having a total value of not more than \$200 may be carried by a nonresident commercial traveler through the United States without cording and sealing and without an in-transit manifest in accordance with § 148.41 of this chapter.

(b) *Presentation of sample list at Canadian port of exit.* A commercial traveler arriving from Canada desiring to transport without display in the United States commercial samples in his automobile through the United States to another port in Canada, may present his samples to a Canadian Customs officer at the Canadian port of exit. The traveler will be required to furnish the Canadian Customs officer a list in duplicate of all articles presented showing their approximate values. The list shall bear the traveler's name and address, and the name and address of the firm represented.

(c) *Checking, cording, and sealing by Canadian Customs officers.* The Canadian Customs officer will examine the articles, identify them with the list,

and satisfy himself that the values shown are approximately correct. The Canadian Customs officer will cord and seal the outer containers with uncolored in-transit seals and authenticate the list of samples with his signature and title. Cording and sealing may be waived with the concurrence of the United States and Canadian Customs officers.

(d) *Treatment at U.S. port of arrival.* The list of samples properly authenticated shall be submitted upon arrival to the U.S. Customs officer at the port of arrival. After ascertaining that the samples are effectively corded and sealed, or that sealing has been waived, notation of the number of corded and sealed containers, or of the waiver shall be made on the list of samples and the list shall be retained by the Customs officer as a record of the shipment.

(e) *In-transit manifest.* Movement of the samples from the port of arrival to the port of exit from the United States under this procedure shall be under an in-transit manifest on Customs Form 7512 executed and filed in triplicate by the traveler at the port of arrival in the United States. Descriptions, quantities, and values may be shown thereon by noting "Commercial Samples," the number of corded and sealed containers, and the approximate total value of the samples. When cording and sealing has been waived with the concurrence of a Canadian Customs officer, samples must be identified on the manifest by suitable itemized descriptions and approximate values, or by attaching to the manifest a copy of the list of samples which has been initialed by the Customs officer.

(f) *Presentation of samples and manifest at U.S. port of exit.* The manifest on Customs Form 7512 shall be presented to the Customs officer at the U.S. port of exit, together with the samples covered. If the seals are broken or cording and sealing has been waived, the Customs officer shall verify that there are no irregularities.

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 73-27, 38 FR 2449, Jan. 26, 1973; T.D. 87-75, 52 FR 20068, May 29, 1987]

### Subpart G—Baggage

#### § 123.61 Baggage arriving in baggage car.

An inward foreign manifest on Customs Form 7533 shall be used for all baggage arriving in baggage cars.

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 82-145, 47 FR 35478, Aug. 16, 1982]

#### § 123.62 Baggage in possession of traveler.

For baggage arriving in the actual possession of a traveler, his declaration shall be accepted in lieu of an inward foreign manifest. (See § 123.3.)

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 73-72, 38 FR 2449, Jan. 26, 1973]

#### § 123.63 Examination of baggage from Canada or Mexico.

(a) *Opening vehicle or compartment to examine baggage.* Customs officers are authorized to unlock, open, and examine vehicles and compartments thereof for the purposes of examining baggage under sections 461, 462, 496, 581(a) and 582, Tariff Act of 1930, as amended (19 U.S.C. 1461, 1462, 1496, 1581(a), and 1582) and 19 U.S.C. 482. However, to the extent practical, the Customs officer should ask the owner or operator to unlock such vehicle or compartment first. Where the owner or operator is unavailable or refuses to unlock the vehicle or compartment or where it is not practical to ask the owner or operator to unlock the same, it shall be opened by the Customs officer. If any article is subject to duty, or any prohibited article is found upon opening by the Customs officer, the whole contents and the vehicle shall be subject to forfeiture pursuant to 19 U.S.C. 1462.

(b) *Inspection of baggage.* A Customs officer has the right to inspect all merchandise and baggage brought into the United States from contiguous countries under 19 U.S.C. 1461. He also has the right, under the same statute, to require that owners of such baggage open it or furnish keys for doing so. Where the owner or agent is unavailable or refuses to open the baggage or furnish keys or where it is not practical to ask the owner or agent to open or furnish keys to the same, it shall be

§ 123.64

19 CFR Ch. I (4-1-05 Edition)

opened by the Customs officer. If any article is subject to duty, or any prohibited article is found upon opening by the Customs officer, the baggage shall be subject to forfeiture pursuant to 19 U.S.C. 1462.

[T.D. 95-86, 60 FR 54188, Oct. 20, 1995]

§ 123.64 Baggage in transit through the United States between ports in Canada or in Mexico.

(a) Procedure. Baggage in transit from point to point in Canada or Mexico through the United States may be transported in bond through the United States in accordance with the procedures set forth in §§18.13, 18.14, and 18.20 through 18.24 of this chapter except where those procedures are modified by this section.

(b) In-transit manifest. Three copies of the manifest on Customs Form 7512 shall be required. One copy of the Form 7512 shall be delivered to the person in charge of the carrier to accompany the baggage and shall be delivered by the carrier to the Customs officer at the port of departure from the United States.

(c) Consolidated train manifest. When the route is such that a train carrying baggage in bond will remain intact while proceeding through the United States, a consolidated train manifest containing the same information as is required on individual manifests may be used in lieu of individual manifest on Customs Form 7512.

(d) Baggage cards—(1) Baggage arriving from Mexico. For baggage arriving at a port on the Mexican border for in-transit movement through the United States in bond and return to Mexico, the in-transit baggage card described in §18.14 of this chapter shall be used.

(2) Baggage arriving from Canada. For baggage arriving at a port on the Canadian border for in-transit movement through the United States in bond and return to Canada, the joint United States-Canada in-transit baggage card, Customs Form 7512-B (Canada 8½) or Customs Form 7533-C (Canada A4-½), shall be used. The baggage card will be filled out and securely attached to the baggage and the attachment verified by a Canadian Customs officer before the baggage leaves Canada. If the joint in-transit baggage card is found to be

improperly prepared or attached upon arrival of the baggage in the United States for movement in bond, the carrier may be required to furnish the baggage card described in §18.14 of this chapter for attachment to the baggage before being allowed to proceed. At the port of exit from the United States the joint in-transit baggage card shall be allowed to remain on the baggage.

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 71-70, 36 FR 4491, Mar. 6, 1971; T.D. 84-212, 49 FR 39047, Oct. 3, 1984; T.D. 87-75, 52 FR 20068, May 29, 1987; T.D. 00-22, 65 FR 16518, Mar. 29, 2000]

§ 123.65 Domestic baggage transiting Canada or Mexico between ports in the United States.

(a) General provision. Upon request of the carrier, checked baggage of domestic origin may be transported from one port in the United States to another through Canada or through Mexico in accord with the procedure set forth in this section. The provisions of this section shall not apply to domestic hand baggage crossing Canada or Mexico which, upon reentry into the United States, shall be examined in the same manner as baggage of foreign origin.

(b) Special in-transit tag manifest. The carrier shall complete and attach to each piece of baggage by wire or cord under Customs supervision a special in-transit tag manifest furnished by the carrier as follows:

(1) Baggage transiting Mexico. For baggage of domestic origin to be transported through Mexico between ports of the United States, the special in-transit tag manifest attached to each piece of baggage shall be on white cardboard not less than 2½ x 4½ inches in size printed in substantially the following form:

UNITED STATES CUSTOMS
IN-TRANSIT BAGGAGE MANIFEST
Carrier's Baggage-man: Destroy this tag if owner has access to baggage before its return to United States.
Check No. \_\_\_\_
This baggage is in transit from \_\_\_\_\_ (Port of exit) through \_\_\_\_\_ foreign territory to \_\_\_\_\_ (Port of reentry) in the United States.
This baggage was laden for transportation as above stated.
Date \_\_\_\_\_

(U.S. Customs Officer)

(2) *Baggage transiting Canada.* For baggage of domestic origin to be transported through Canada between ports in the United States, the joint United States-Canada in-transit baggage card, Customs Form 7512-B (Canada 8½) or Customs Form 7533-C (Canada A4-½), shall be used as the special in-transit tag manifest attached to each piece of baggage.

(c) *Removal of special in-transit tag manifest.* The special in-transit tag manifest shall be removed only by the Customs officers at the final port of re-entry into the United States. If the officer finds the special in-transit tag manifest missing or not intact, or for any other reason believes that the baggage has been tampered with while outside the United States, he shall detain it for examination. Otherwise, baggage transported under the procedure in this section may be passed without examination.

(d) *Procedure in lieu of special in-transit tag manifest.* In lieu of attaching the special in-transit tag manifest to each piece of baggage as set forth in paragraph (b) of this section, baggage of domestic origin may be forwarded in a car or compartment sealed with in-transit seals and manifested as in the case of other merchandise in transit through Canada or Mexico, as provided in subpart C of this part.

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 87-75, 52 FR 20068, May 29, 1987]

### Subpart H—Land Border Carrier Initiative Program

SOURCE: T.D. 99-2, 64 FR 31, Jan. 4, 1999, unless otherwise noted.

#### § 123.71 Description of program.

The Land Border Carrier Initiative Program (LBCIP) is a program designed to enlist the voluntary cooperation of commercial conveyance entities in Customs effort to prevent the smuggling of controlled substances into the United States. Participation in the LBCIP requires the land or rail commercial carrier to enter into a written agreement with Customs that describes

the responsibilities of participants in the LBCIP. The agreement generally provides that the carrier agrees to enhance the security of its facilities and the conveyances employed to transport merchandise. The carrier also agrees to cooperate closely with Customs in identifying and reporting suspected smuggling attempts. In exchange for this cooperation, Customs agrees to provide training to carrier personnel in the areas of cargo and personnel security, document review techniques, drug awareness, and conveyance searches. Customs also agrees that should a controlled substance be found aboard a conveyance owned or operated by a participating carrier, special administrative procedures relating to the assessment and mitigation of drug-related penalties will be followed; the degree of compliance with the terms of the agreement will be considered as an additional positive mitigating factor in any seizure or penalties decision or recommendation. Lastly, at certain high-risk locations, for the use of Line Release, imported merchandise, which otherwise qualifies for Line Release entry (*see*, subpart D of part 142 of this chapter), must be transported over the border by carriers that participate in the LBCIP. The locations where the use of Line Release will be conditioned on participation in the LBCIP will be published in the FEDERAL REGISTER.

#### § 123.72 Written agreement requirement.

Commercial carriers desiring to participate in the LBCIP shall enter into a written agreement with Customs regarding the mutual obligations of the carrier-participant and Customs. The terms and conditions in the written agreement shall generally provide that the carrier-applicant agrees:

(a) To participate in Customs training regarding cargo and personnel security, document review techniques, drug awareness, and conveyance searches;

(b) To establish security systems at the place of business for the safe storage and handling of cargo intended to be imported into the United States; and security procedures aimed at restricting access to transporting conveyances and preventing the unauthorized lading of illegal drugs while the

**§ 123.73**

**19 CFR Ch. I (4-1-05 Edition)**

conveyance is en route to the United States;

(c) To conduct, to the extent allowed by law, employment and criminal history record checks on all personnel designated to participate in the LBCIP and to exercise responsible supervision and control over those personnel;

(d) To ensure that only authorized drivers and properly registered conveyances are utilized in the transportation of merchandise into the United States, and to maintain current lists of such drivers and conveyances for Customs inspection upon request;

(e) To immediately report to the appropriate port director any criminal or dishonest conduct on the part of drivers designated to participate in the LBCIP, or attempts by others to impede, influence, or coerce the carrier or drivers into violating any United States law, including Customs regulations, especially those concerned with trafficking in illegal drugs; and

(f) To notify the appropriate port director in writing by mail within 5 days of any change in legal name, business address, business principals, ownership, drivers, or conveyances that affects the basis for continued participation in the LBCIP.

**§ 123.73 Application to participate.**

To request participation in the LBCIP, the carrier-applicant must submit an application containing the information requested in this section. The application must be accompanied by two copies of a LBCIP written agreement (see §123.72 of this part; upon request, the local port director will provide copies of an unsigned written agreement) containing original signatures of corporate officers or owners of the common carrier. The application shall be prepared by the common carrier, be signed by corporate officers or owners, and submitted to the port director. If a submitted application does not provide all of the information specified in this section, the processing of the application will either be delayed or the application will be rejected. The application shall include the following information:

(a) *General business identification and site condition information.* The name and address of the commercial conveyance

entity, the names of all principals or corporate officers, the name and telephone number of an individual to be contacted for further information, and a complete and detailed description of the premises where business operations are conducted, to include all working/storage areas and security features employed;

(b) *Designated driver information.* A listing of the drivers designated by the carrier who will be transporting merchandise into the U.S. The listing shall set forth the name(s), address(es), date of birth, nationality, driver's license number, and any other personal identifying information regarding the drivers listed, *e.g.*, social security number (if available), to enable Customs to conduct background checks and to aid Customs officers at the border crossing point in identifying individual LBCIP-authorized drivers;

(c) *Conveyance identification information.* A listing of the conveyances, *e.g.*, trucks and locomotives, that the carrier will utilize to transport merchandise into the U.S. The listing shall set forth the type and make of conveyances, country of registration and license number(s), conveyance-specific identifying markings, *e.g.*, vehicle identification numbers (VINs), and any other general conveyance identifying information, *e.g.*, weight, color, recognizable modifications, etc., to aid Customs officers at the border crossing point in identifying particular LBCIP-registered conveyances; and

(d) *Affidavit of business character.* A statement signed by the carrier-applicant which attests to each principal's or corporate officer's past and present business relations, *e.g.*, a list of past companies worked for and positions held, which fully explains the presence of any past or present crime involving theft or smuggling or investigations into such crimes, or other dishonest conduct on the part of a principal.

**§ 123.74 Notice of selection; appeal of determination.**

The information provided pursuant to paragraphs (b) through (d) of §123.73 shall constitute the criteria used to evaluate the competency of the carrier-applicant to participate in the LBCIP. Following Customs evaluation

of the information provided, Customs shall notify the carrier-applicant in writing of Customs determination as to whether the carrier-applicant is qualified to participate in the LBCIP. In cases of selection, Customs will sign and return one of the copies of the written agreement. In cases of non-selection, the written notice shall clearly state the reason(s) for denial and recite the applicant's appeal rights under paragraph (b) of this section.

(a) *Grounds for nonselection.* The port director may deny a carrier's application to participate in the LBCIP for any of the following reasons:

(1) Evidence of any criminal or dishonest conduct involving the carrier, a corporate officer, designated drivers, or other person the port director determines is exercising substantial ownership or control over the carrier operation or corporate officer;

(2) Evidence of improper use of designated conveyances;

(3) Evidence that the written agreement was entered into by fraud or misstatement of a material fact; or

(4) A determination is made that the grant of LBCIP privileges would endanger the revenue or security of the Customs area.

(b) *Appeal of determination.* Carrier-applicants not selected to participate in the LBCIP and who wish to appeal the decision shall either:

(1) Appeal the adverse determination in accordance with the appeal procedure set forth in § 123.75(c) of this part; or

(2) Cure any deficiency in the first application by submitting a new application to the port director who denied the previous application after waiting 60 days from the date of issuance of the first determination.

**§ 123.75 Notice of revocation; appeal of decision.**

(a) *Revocation.* The port director may immediately revoke a carrier's participation in the LBCIP and cancel the written agreement for any of the following applicable reasons:

(1) The selection and written agreement were obtained through fraud or the misstatement of a material fact by the carrier;

(2) The carrier, a corporate officer, or other person the port director determines is exercising substantial ownership or control over the carrier operation or corporate officer, is indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, the port director must have probable cause to believe the proscribed acts occurred;

(3) The carrier-participant allows an unauthorized person or entity to use its LBCIP certificate or other approved form of identification;

(4) The carrier-participant misuses authorized conveyances;

(5) The carrier-participant refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation;

(6) The carrier-participant fails to operate in accordance with the terms of the written agreement; or

(7) Continuation of LBCIP privileges would endanger the revenue or security of the Customs area in the judgment of the port director.

(b) *Notice.* When a decision revoking participation has been made, the port director shall notify the carrier-participant of the decision in writing. The notice of revocation shall clearly state the reason(s) for revocation and recite the applicant's appeal rights under paragraph (c) of this section.

(c) *Appeal of decision.* Carrier-participants that receive a notice of revocation and who wish to appeal the decision shall file a written appeal with the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, Washington, DC 20229, within 10 calendar days of receipt of the notice. The appeal shall be filed in duplicate and shall set forth the carrier's responses to the grounds specified by the port director in the notice. Within 30 working days of receipt of the appeal, the Assistant Commissioner, or his designee, shall make a determination regarding the appeal and notify the applicant in writing.



**§ 123.76 Authorization by Customs for participants to use certain drivers.**

(a) *Responsibilities of LBCIP participants.* An LBCIP participant is required, pursuant to § 123.73 of this part, to list the drivers designated to transport merchandise into the United States for the carrier to enable Customs to conduct background checks. An LBCIP participant is also required, pursuant to § 123.72 of this part, to conduct, to the extent allowed by law, employment and criminal history checks on all personnel designated to participate in the LBCIP; these personnel include drivers.

(b) *Authorization of drivers by Customs.* Customs may not approve a carrier for participation in the LBCIP if it determines that there is evidence that a driver designated by a carrier has been involved in criminal or dishonest conduct or it may request that the carrier not use that driver before approving the carrier for participation. Once a carrier has been accepted in the LBCIP, Customs may determine to cancel a particular driver's authorization to transport merchandise for a LBCIP carrier for the reasons set forth in paragraph (c) of this section.

(c) *Reasons for cancellation of driver's authorization.* Customs may cancel a driver's authorization to transport merchandise for an LBCIP participant for any of the following reasons:

(1) The designated driver is indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, the port director must have probable cause to believe the proscribed acts occurred;

(2) The designated driver allows an unauthorized person or entity to use his LBCIP certificate or other approved form of identification;

(3) The designated driver misuses authorized conveyances;

(4) The designated driver refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation; or

(5) The designated driver fails to operate in accordance with the terms of the written agreement.

(d) *Notice; rights of driver.* (1) *If driver not acceptable to Customs at time of review of carrier's application.* When Customs notifies a carrier-applicant, pursuant to § 123.74 of this part, of its nonselection into the LBCIP because of conduct committed by a driver designated by the carrier or when Customs conditionally approves a carrier-applicant's participation in the LBCIP, but does not approve a driver designated on the application to be authorized to transport merchandise under the LBCIP, Customs will also notify the driver of the decision in writing and recite the driver's appeal rights under paragraph (e) of this section.

(2) *If driver's authorization cancelled.* When Customs makes a determination to cancel the authorization of a particular designated driver, pursuant to § 123.76(b) of this section, Customs will notify both the carrier-participant and the driver of the decision in writing; the notice to the driver will recite the driver's appeal rights under paragraph (e) of this section.

(e) *Appeal rights of drivers.* Drivers who receive a notice of nonselection or cancellation and who wish to appeal the decision shall file a written appeal with the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, Washington, D.C. 20229, within 10 calendar days of receipt of the notice. The appeal shall be filed in duplicate and shall set forth the driver's responses to the grounds specified by the port director in the notice. Within 30 working days of receipt of the appeal, the Assistant Commissioner, or his designee, shall make a determination regarding the appeal and notify the applicant in writing.

**Subpart I—Miscellaneous Provisions**

**§ 123.81 Merchandise found in building on the boundary.**

When any merchandise on which the duty has not been paid or which was imported contrary to law is found in any building upon or within 10 feet of the boundary line between the United States and Canada or Mexico, such merchandise shall be seized and a report of the facts shall be made to the Commissioner. With his approval the

building or that portion thereof which is within the United States shall be taken down or removed. The provisions of subpart B of part 162, of this chapter shall be applicable to the search of any such building.

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 72-211, 37 FR 16487, Aug. 15, 1972. Redesignated by T.D. 99-2, 64 FR 31, Jan. 4, 1999]

**§ 123.82 Treatment of stolen vehicles returned from Mexico.**

Port directors shall admit without entry and payment of duty allegedly stolen or embezzled vehicles, trailers, airplanes, or component parts of any of them, under the provisions of The Convention between the United States of America and the United Mexican States for the Recovery and Return of Stolen or Embezzled Vehicles and Aircraft (Treaties and Other International Acts Series [TIAS] 10653), of June 28, 1983, if accompanied by a letter from the U.S. Embassy in Mexico City containing:

(a) A statement that the Embassy is satisfied from information furnished it that the property is stolen property being returned to the U.S. under the provisions of the convention between the U.S. and Mexico concluded January 15, 1981, and

(b) An adequate description of the property for identification purposes.

[T.D. 86-118, 51 FR 22515, June 20, 1986. Redesignated by T.D. 99-2, 64 FR 31, Jan. 4, 1999]

**Subpart J—Advance Information for Cargo Arriving by Rail or Truck**

SOURCE: CBP Dec. 03-32, 68 FR 68173, Dec. 5, 2003, unless otherwise noted.

**§ 123.91 Electronic information for rail cargo required in advance of arrival.**

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any train requiring a train sheet under § 123.6, that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the rail carrier certain information concerning the incoming cargo, as enu-

merated in paragraph (d) of this section, no later than 2 hours prior to the cargo reaching the first port of arrival in the United States. Specifically, to effect the advance electronic transmission of the required rail cargo information to CBP, the rail carrier must use a CBP-approved electronic data interchange system.

(1) *Through cargo in transit to a foreign country.* Cargo arriving by train for transportation in transit across the United States from one foreign country to another; and cargo arriving by train for transportation through the United States from point to point in the same foreign country are subject to the advance electronic information filing requirement for incoming cargo under paragraph (a) of this section.

(2) *Cargo under bond.* Cargo that is to be unladed from the arriving train and entered, in bond, for exportation, or for transportation and exportation, in another vehicle or conveyance is also subject to the advance electronic information filing requirement under paragraph (a) of this section.

(b) *Exception; cargo in transit from point to point in the United States.* Domestic cargo transported by train to one port from another in the United States by way of Canada or Mexico is not subject to the advance electronic information filing requirement for incoming cargo under paragraph (a) of this section.

(c) *Incoming rail carrier.* (1) *Receipt of data; acceptance of cargo.* As a pre-requisite to accepting the cargo, the carrier must receive, from the foreign shipper and owner of the cargo or from a freight forwarder, as applicable, any necessary cargo shipment information, as listed in paragraph (d) of this section, for electronic transmission to CBP.

(2) *Accuracy of information received by rail carrier.* Where the rail carrier electronically presenting the cargo information required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the rail carrier acquired such information, and whether and how the

carrier is able to verify this information. Where the rail carrier is not reasonably able to verify such information, CBP will permit the carrier to electronically present the information on the basis of what the carrier reasonably believes to be true.

(d) *Cargo information required.* The rail carrier must electronically transmit to CBP the following information for all required incoming cargo that will arrive in the United States by train:

(1) The rail carrier identification SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier by the National Motor Freight Traffic Association; see §4.7a(c)(2)(iii) of this chapter);

(2) The carrier-assigned conveyance name, equipment number and trip number;

(3) The scheduled date and time of arrival of the train at the first port of entry in the United States;

(4) The numbers and quantities of the cargo laden aboard the train as contained in the carrier's bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(5) A precise cargo description (or the Harmonized Tariff Schedule (HTS) number(s) 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);

(6) The shipper's complete name and address, or identification number, from the bill(s) of lading (for each house bill in a consolidated shipment, the identity of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of the carrier, freight forwarder, consolidator, or broker, is not acceptable; the identi-

fication number will be a unique number to be assigned by CBP upon the implementation of the Automated Commercial Environment);

(7) The complete name and address of the consignee, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo will be delivered in the United States. However, in the case of cargo shipped "to order of [a named party]," the carrier must identify this named "to order" party as the consignee; and, if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information (address) in the "Notify Party" field of the advance electronic data transmission to CBP, to the extent that the CBP-approved electronic data interchange system is capable of receiving this data. The identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment);

(8) The place where the rail carrier takes possession of the cargo shipment;

(9) Internationally recognized hazardous material code when such materials are being shipped by rail;

(10) Container numbers (for containerized shipments) or the rail car numbers; and

(11) The seal numbers for all seals affixed to containers and/or rail cars to the extent that CBP's data system can accept this information (for example, if a container has more than two seals, and only two seal numbers can be accepted through the system per container, the carrier's electronic presentation of two of these seal numbers for the container would be considered as constituting full compliance with this data element).

(e) *Date for compliance with this section.* Rail carriers must commence the advance electronic transmission to CBP of the required cargo information, 90 days from the date that CBP publishes notice in the FEDERAL REGISTER informing affected carriers that the approved electronic data interchange system is in place and operational at the port of entry where the train will first arrive in the United States.

**§ 123.92 Electronic information for truck cargo required in advance of arrival.**

(a) *General requirement.* Pursuant to section 343(a) of the Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any truck required to report its arrival under §123.1(b), that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the party described in paragraph (c) of this section certain information concerning the cargo, as enumerated in paragraph (d) of this section. The CBP must receive such cargo information by means of a CBP-approved electronic data interchange system no later than either 30 minutes or 1 hour prior to the carrier's reaching the first port of arrival in the United States, or such lesser time as authorized, based upon the CBP-approved system employed to present the information.

(1) *Through cargo in transit to a foreign country.* Cargo arriving by truck in transit through the United States from one foreign country to another (§123.31(a)); and cargo arriving by truck for transportation through the United States from one point to another in the same foreign country (§123.31(b); §123.42) are subject to the advance electronic information filing requirement in paragraph (a) of this section.

(2) *Cargo entered under bond.* Cargo that is to be unladed from the arriving truck and entered, in bond, for exportation, or for transportation and exportation, in another vehicle or conveyance are also subject to the advance electronic information filing requirement in paragraph (a) of this section.

(b) *Exceptions from advance reporting requirements.* (1) *Cargo in transit from point to point in the United States.* Domestic cargo transported by truck and arriving at one port from another in the United States after transiting Canada or Mexico (§123.21; §123.41) is exempt from the advance electronic filing requirement for incoming cargo under paragraph (a) of this section.

(2) *Certain informal entries.* The following merchandise is exempt from the advance cargo information reporting requirements under paragraph (a) of this section, to the extent that such

merchandise qualifies for informal entry pursuant to part 143, subpart C, of this chapter:

(i) Merchandise which may be informally entered on Customs Form (CF) 368 or 368A (cash collection or receipt);

(ii) Merchandise unconditionally or conditionally free, not exceeding \$2,000 in value, eligible for entry on CF 7523; and

(iii) Products of the United States being returned, for which entry is prescribed on CF 3311.

(c) *Carrier; and importer or broker.* (1) *Single party presentation.* Except as provided in paragraph (c)(2) of this section, the incoming truck carrier must present all required information to CBP in the time and manner prescribed in paragraph (a) of this section.

(2) *Dual party presentation.* The United States importer, or its Customs broker, may elect to present to CBP a portion of the required information that it possesses in relation to the cargo. Where the broker, or the importer (see §113.62(j)(2) of this chapter), elects to submit such data, the carrier is responsible for presenting to CBP the remainder of the information specified in paragraph (d) of this section.

(3) *Party receiving information believed to be accurate.* Where the party electronically presenting the cargo information required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what the party reasonably believes to be true.

(d) *Cargo information required.* The following commodity and transportation information, as applicable, must be electronically transmitted to and received by CBP for all required incoming cargo arriving in the United States by truck, to the extent that the particular CBP-approved electronic data interchange system employed can accept this information:

(1) Conveyance number, and (if applicable) equipment number (the number of the conveyance is its Vehicle Identification Number (VIN) or its license plate number and state of issuance; the equipment number, if applicable, refers to the identification number of any trailing equipment or container attached to the power unit);

(2) Carrier identification (this is the truck carrier identification SCAC code (the unique Standard Carrier Alpha Code) assigned for each carrier by the National Motor Freight Traffic Association; see § 4.7a(c)(2)(iii) of this chapter);

(3) Trip number and, if applicable, the transportation reference number for each shipment (the transportation reference number is the freight bill number, or Pro Number, if such a number has been generated by the carrier);

(4) Container number(s) (for any containerized shipment) (if different from the equipment number), and the seal numbers for all seals affixed to the equipment or container(s);

(5) The foreign location where the truck carrier takes possession of the cargo destined for the United States;

(6) The scheduled date and time of arrival of the truck at the first port of entry in the United States;

(7) The numbers and quantities for the cargo laden aboard the truck as contained in the bill(s) of lading (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(8) The weight of the cargo, or, for a sealed container, the shipper's declared weight of the cargo;

(9) A precise description of the cargo or the Harmonized Tariff Schedule (HTS) numbers to the 6-digit level under which the cargo will be classified (generic descriptions, specifically those such as FAK ("freight of all kinds"), "general cargo," and "STC" ("said to contain") are not acceptable);

(10) Internationally recognized hazardous material code when such cargo is being shipped by truck;

(11) The shipper's complete name and address, or identification number, from the bill(s) of lading (for each house bill

in a consolidated shipment, the identity of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of the carrier, freight forwarder, consolidator, or broker, is not acceptable; the identification number will be a unique number to be assigned by CBP upon the implementation of the Automated Commercial Environment); and

(12) The complete name and address of the consignee, or identification number, from the bill(s) of lading (the consignee is the party to whom the cargo will be delivered in the United States, with the exception of "FROB" (Foreign Cargo Remaining On Board); the identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment).

(e) *Date for compliance with this section.* The incoming truck carrier and, if electing to do so, the United States importer, or its Customs broker, must present the necessary cargo data to CBP at the particular port of entry where the truck will arrive in the United States on and after 90 days from the date that CBP has published a notice in the FEDERAL REGISTER informing affected carriers that:

(1) The approved data interchange is in place and fully operational at that port; and

(2) The carrier must commence the presentation of the required cargo information through the approved system.

## PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

Sec.  
125.0 Scope.

### Subpart A—General Provisions

125.1 Classes of cartage.  
125.2 Supervision of cartage and lighterage.  
125.3 Contracts for Government cartage.

### Subpart B—Cartage of Packages for Examination

125.11 Cartage for examination in public stores.  
125.12 Cartage for examination at importers' premises or other place.