

## HAZARDOUS COMMUNICATIONS PROGRAM AREA SERVICE PORT OF CHAMPLAIN

References: 19 CFR Parts 12 and 141  
29 CFR Parts 1910 and 1960  
40 CFR Parts 260 to 268, 300 to 302  
49 CFR Parts 100 to 178, 262

### 1. PURPOSE

The purpose of this notice is to inform members of the import/export and transportation industry of the action that U.S. Customs and Border Protection (CBP) will be taking concerning the inspection and handling of hazardous cargo, hazardous waste and hazardous material by CBP personnel.

### 2. BACKGROUND

As a result of the increasing volume of hazardous substances entering and departing the United States, CBP has recognized the need to develop safe, uniform and environmentally sound procedures for processing this type of merchandise. CBP is committed to taking all steps necessary to reduce the risk of injury or illness caused by hazardous materials in the workplace.

The **Hazardous Communications Standard** was issued by the Occupational Safety and Health Administration (OSHA) in 1983 and revised in 1987. Executive Order 12196 (1960) provides the authority for implementing this standard within the Federal Sector. This **Hazardous Cargo Plan** will become part of the Hazardous Communication Program, which has been established within CBP to provide necessary information concerning hazardous cargo to CBP employees.

### 3. ACTION

#### A. DOCUMENTATION REQUIREMENTS FOR THE IDENTIFICATION AND PROCESSING OF HAZARDOUS CARGO (40 CFR 262, 49 CFR 171 & 172)

##### (1) Manifest Requirements

- a. Any cargo that is considered hazardous must be manifested in accordance with existing regulations.
- b. It should be noted that **hazardous waste** can be more dangerous than other types of hazardous cargo because of the infinite variety of chemical combinations, which may be present, and because it is more likely to be transported in old, recycled, and possibly damaged shipping containers. **EPA Form 8700-22** (Uniform Hazardous Waste Manifest) must be presented to CBP Officers.

- (2) Marking/Labeling/Packaging/Placarding Requirements
  - a. CBP Officers should ensure that all hazardous cargo is clearly marked, labeled, packaged and/or placarded in accordance with the requirements of all Federal agencies.
  - b. Leaking, improperly marked, labeled, packaged and/or placarded hazardous cargo will not be released by CBP.
- (3) Import/Export Requirements
  - a. Hazardous cargo will not be processed, examined or released until all information and documentation required by law is submitted to CBP.
  - b. Importers and exporters are encouraged to present required documentation **in advance** to allow CBP personnel to review the documentation and make any necessary examination arrangements.
  - c. All importations of hazardous cargo, with one exception, require a formal entry. An informal entry will be accepted only for sample shipments that are being imported for analysis under the EPA Hazardous Waste Program.
  - d. Each **Shipper's Export Declaration** (SED) submitted for hazardous cargo must be clearly noted "HAZARDOUS CARGO" or "HAZARDOUS WASTE" in the description section of this form (15 CFR 30).
  - e. 40 CFR 262.53 requires the [that?] for exports of hazardous waste, a primary exporter must notify the EPA of the intended export sixty (60) days prior to the shipment so that EPA can obtain consent of the government of the importing country. Also, a copy of the EPA Acknowledgement of Consent must be attached to the Uniform Hazardous Waste Manifest (40 CFR 262, Subpart E).
- (4) Additional Documentation Required
  - a. Filers must provide and CBP will ensure that a **Material Safety Data Sheet** (MSDS) or **Profile** [29 CFR 1910.1200 (g)] is submitted as part of the required import documentation for all hazardous cargo shipments [19 CFR 142.3 (a) (5)].

- b. CBP Officers should request a copy of the Uniform **Hazardous Waste Manifest** (EPA Form 8700-22) that a generator who transports or offers for transportation Hazardous Waste must prepare in accordance with 40 CFR 262, Subpart B, unless exempted from manifest requirements under the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act of 1976 (42 USC Section 6901 et seq.).
- c. If the cargo is hazardous waste and the required manifest is not presented, the generator must satisfy CBP that an exemption applies.

## B. TRANSPORTATION AND STORAGE

### (1) Transportation Requirements

- a. **Minimum Levels of Financial Responsibility for Motor Carriers.** Motor carriers operating motor vehicles transporting hazardous materials, hazardous substances, or hazardous waste in interstate, foreign, or intrastate commerce must maintain the minimum levels as specified in 49 CFR 387, Subpart A and must have in board the vehicle proof of the required financial responsibility.
- b. All transporters of manifested hazardous waste must have an **identification number** issued by EPA (40 CFR 263.11).
- c. The Port Director is obligated to maintain custody for not more than 48 hours after the date of detention (19 CFR 12.122). After this time, the shipment is considered unclaimed or abandoned and must be turned over to EPA for storage or disposition. Therefore, hazardous cargo should generally never be entered into General Order.

### (2) Discharge Cleanup/Bond Requirements

- a. A transporter must clean up any hazardous waste discharge that occurs during transportation or take such action as may required or approved by federal, state or local officials so that the hazardous waste discharge no longer presents a hazard to human health or the environment (40 CFR 263, Subpart C).
- b. *In addition, the Port Director may require a bond or other security considered necessary for the protection of the revenue or to assure compliance with any pertinent law, regulation or instruction* (19 CFR 12.3 and 113). Therefore,

an importer may be required to post an entry bond to cover any costs related to the containment, cleanup, and disposal of hazardous cargo that is in CBP custody [19 CFR 113.62 (g) (2)].

C. EXAMINATION AND SAMPLING OF HAZARDOUS CARGO

(1) General

- a. CBP personnel must ensure that confined spaces, such as shipping containers, truck trailers and rail cars, have been properly ventilated before conducting an examination of the contents.
- b. If properly trained CBP personnel and examination facilities are not available to safely inspect or sample hazardous cargo, the importer/exporter can select a qualified hazardous material contractor (from a list compiled locally) to perform the examination or sampling under CBP supervision. All costs incurred will be borne by the importer/exporter.

(2) Examination for Compliance or Sampling

- a. Compliance examinations of hazardous cargo will not be performed unless all the proper CBP documentation has been presented. If it is determined that a physical sample cannot be safely obtained at the Port of Entry, **CBP Form 28** will be issued to the importer of record and the merchandise conditionally released to the importer's premises. The CBP Form 28 will specifically indicate that if a physical sample is required (depending on the import specialist's discretion), it is the importer's responsibility under the provisions of the conditional release to forward the sample to the appropriate CBP servicing Laboratory.
- b. Any shipment for which any documentation or information is deficient may be detained, refused entry or returned to the shipper until all CBP requirements have been met. All costs incurred, as a result of this transportation and/or storage will be borne by the importer.

D. POINTS OF CONTACT

- (1) Area Service Port Hazardous Materials Coordinator/  
Program Supervisor
  - a. SCBPO William Prudhon II  
518-298-7225 (voice)  
518-298-7222 (fax)
  
- (2) Area Service Port Hazardous Materials Coordinators
  - a. CBPO Marcos Penera  
518-298-8346
  - b. CBPO Eron Paul  
518-298-7210
  - c. SCBPO Vincent Nigro  
518-298-8332

**Attachment:**

**Information Notice 06-FO-19  
Area Port of Champlain  
May 1, 2006**

**File: <Hazmat#2.doc>**