



On July 1, 2016, a new SOLAS (Safety of Life at Sea convention of the International Maritime Organization or IMO) takes effect requiring shippers whose name appears on the bill of lading to verify the gross mass of a container carrying cargo when tendering the container to the ocean carriers and terminals. Many questions remain unanswered, and rules and legal enforcement are likely to vary potentially widely among countries, ocean carriers and marine terminals, making this rule likely a big headache for shippers to comply with. But a few things are already clear: On July 1 the rule becomes not just international law under the IMO but national law within the 170 countries and three associate members that are signatories to the IMO, and that the legally responsible party for providing a verified gross mass (VGM) signed either electronically or on paper resides with the shipper. Early analysis suggests the ocean carrier and the marine terminal will be strict in not accepting containers lacking an accompanying VGM since under the SOLAS rule they can be held responsible for loading a container for which a VGM hasn't been provided.

The following questions and answers are drawn from a variety of sources, including JOC.com reporting, published commentaries, statements by speakers at JOC events, and an official Q&A published jointly (<http://www.worldshipping.org/>) in December, 2015 by the World Shipping Council, TT Club, Global Shippers Forum and International Cargo Handling Coordination Association (ICHCA). Additional information can be found on the World Shipping Council website here (<http://www.worldshipping.org/industry-issues/safety/cargo-weight>).

At a basic level, what is the new requirement put on shippers?

Under the new SOLAS VGM (verified gross mass) requirement, the shipper named on the ocean bill of lading is the party responsible for providing the container carrier and the terminal operator with the verified gross mass of a packed container. The carrier and the terminal operator must not load a packed container aboard a ship unless they have the verified gross mass for that container. The “shipper” according to MSC 1 / Circ. 1475 (the IMO’s guidance on VGM), is “a legal entity or person named on the bill of lading or sea waybill or equivalent multimodal transport document as shipper, and/or who (or in

whose name or on whose behalf) a contract of carriage has been concluded with a shipping company.” This responsibility shipper doesn’t go away if a shipper uses a forwarder to pack and weigh a container, forward it to the port and even make the booking with the carrier. If the forwarder is acting purely on the instructions of the shipper to undertake that work on his behalf, and the shipper’s name is still what appears on the bill of lading, it’s the shipper that is responsible for verifying the gross mass weight. The shipper will have to ensure that it’s satisfied with the integrity of the forwarders’ weighing process if it’s relying on the forwarder’s measurement.

How will the rule be enforced, and what are the risks for shippers?

Certain basic facts about this are known. It will be enforced by the maritime authorities of individual nations, whose implementing regulations will vary, potentially widely depending on country and region. As a practical matter the real-world “enforcement” that will affect shippers most directly seems most likely to be carried out directly by the container lines and terminal operators, who can be expected not to accept a container without the certified VGM document accompanying it. Enforcement agencies may implement measures to satisfy themselves that compliance is achieved, which could include documentation checks, auditing or random weighing. But the SOLAS rule also places an obligation on the carrier and the terminal operator not to load a packed container for which no verified gross mass has been provided or obtained aboard ship. The carriers and terminals are expected to be disciplined in their unwillingness to accept containers tendered to them without the required VGM documentation in order to avoid penalties on themselves such as delayed sailings, and to avoid costs for the storage and handling of affected containers that might be difficult to recover from the shipper. Thus, “the risk is your container won’t get shipped. It would be turned away from the terminal,” said Global Shippers Forum secretary general Chris Welch told JOC.com in a Q&A in October (http://www.joc.com/regulation-policy/trade-compliance/international-trade-compliance/what-shippers-need-know-about-newcontainer-weight-rules_20151029.html) At the same time, some are speculating that since many shippers are telling carriers that they won’t be ready for implementation of the rule on July 1, there may need to be an initial soft launch, similar to how U.S. container security measures were implemented, following by a hard launch date when penalties would take effect. But that is not yet confirmed.

When does the new regulation take effect?

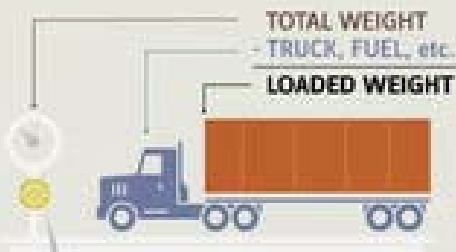
The new regulation, called Verified Gross Mass, takes effect on July 1, 2016 but effectively the implementation date is earlier (http://www.joc.com/regulation-policy/transportation-regulations/international-transportationregulations/cargo-lead-time-brings-forward-verified-weight-deadline-shippers_20151203.html) since some containers that get transshipped after July 1 will depart from their original port of origin as early as May. “There will be many containers leaving ports in May and they will have to be offloaded or transshipped in July. When that happens, someone will check whether the verifiable gross weights have been provided,” said Intra Marketplace President Inna Kuznetsova. Thus, May 2016 “is when the industry has to be ready or experience disruptions and penalties.”

How to meet the container weight mandate

As a shipper, what are your options?

OPTION A.

Take a loaded container over a **weighbridge**, subtract the weight of the truck, chassis, and fuel to get the weight of the packed container.



Scales must be certified and calibrated in line with the national standards of the country where the weighing occurred.



OPTION B.

Weigh each item – including its **packaging, palleting, dunnage and other packing and securing materials** – going into the box.

Add that sum to the weight of the container to find the weight of the packed container.



What are you required to do?

Provide a document signed by the shipper to the shipping line and terminal declaring that the **shipper verified** the weight and that it was weighed properly.



The SOLAS amendment will be enforced by the coast guard or other agency responsible for SOLAS regulations in a given country and punishments for violations will vary by country.

What happens in the case of noncompliance?

There are all kind of possibilities for what could happen to the box that failed to provide the certified weight document but none are settled.



Terminals may choose to hold a container or send it back, but whatever happens, the ship will leave and the container will not.



Will legislation be required by each country to make the convention law at their ports?

No. The rule is law in each of the 159 countries that are signatories to SOLAS. The reason is that SOLAS has international legal status so there need not be any further implementing legislation for states that are party to it. There has been no precedent for non-implementation or delay in the implementation of a SOLAS regulation, so there is no reason to expect any delay in implementation beyond July 1, 2016. At the same time, as a United Nations agency, the IMO leaves it to each of the individual countries to implement the ruling, which means that the exact system of penalties and procedures is left to each government and managed by the agency representing IMO in the respective country, for example the Coast Guard in the U.S., or the Maritime & Coastguard Agency in the U.K. The exact timing of regulations being promulgated and enforced will inevitably vary country by country. That said, it is understood that several countries' agencies are currently investigating how to prevent the loading of container without the VGM submitted.

What is meant by the requirement for a "signature" on the VGM document?

What the SOLAS rule requires is that the shipper communicates the verified gross mass in a "shipping document." It must be signed by a person duly authorized by the shipper, with a first and last name, not just a company name. The signature may be an electronic signature or may be replaced by the name in capitals of the person authorized to sign it. The VGM and signature can be part of the shipping instructions communicated via electronic data interchange (EDI), or be contained within a separate communication including a hard copy document. In either case, the document should clearly highlight that the gross mass provided is the "verified gross mass." There is no requirement that a so-called "weight ticket" generated by a weighbridge be presented, but national implementing regulations may require that shippers using Method 1 (weighing of the cargo and container as one) produce weight tickets or other documentation upon request.

How will the signature and documentation be handed off from one party to the next in the supply chain?

This is an area where regulations won't apply and it will be a matter of coordination among parties, with processes very much still to be worked out as of late 2015. According to a Q&A published in December by the World Shipping Council, the Global Shippers Forum, TT Club and ICHCA International, "There are inevitable process challenges to ensure effective coordination between the shipper and hauler to achieve effective documentary handoff (whether electronic or paper) to avoid in-gate delays. Such processes should be discussed between the commercial parties, including the maritime carrier and the terminal operator."

When sourcing from contract manufacturers at origin countries, will retailers, consumer product firms and others rely on their manufacturers to conduct the weighing at the origin?

Most shippers use third-party logistics companies (3PLs) to pack and transport containers to ports. Therefore, it is fair to expect that contracts for contract logistics and freight forwarding services will be amended to reflect the VGM requirement. Shippers can expect 3PLs to try to assess an incremental fee to weigh containers. It is unrealistic to expect the shipper themselves to perform this work in most cases since they lack resources, space and people able to undertake the actual weighing of cargo or loaded containers. Therefore all 3PLs and freight forwarders will have to offer such services in some form, but in order to minimize supply chain disruption as the implementation date approaches in 2016, a customer should inquire early to be certain that the requirement can be met.

Are shippers that only tender partial loads to a forwarder or master loader responsible for providing VGM?

No. The responsibility for providing the accurate, verified gross mass of a co-loaded container remains with the shipper named on the maritime carrier's bill of lading, i.e. the "master" loader or freight forwarder. The contractual terms between the ultimate shipper and a co-loader may allow the shipper to provide a VGM to the master loader, or the master loader or forwarder might undertake the weighing process themselves, but either way this would be a commercial arrangement between those parties.

Is it most feasible for the weighing process to take place at the port or earlier in the supply chain?

It is unrealistic to expect weighing units to be installed at ports in even close to a necessary quantity to weigh every container prior to loading, according to Intra. In most cases, even if the capital and equipment existed, there is simply not enough physical space or related infrastructure (such as roads and cranes) to accommodate weighing for all containers at every port in the world. Realistically, then, the most likely scenario in most cases will be for the cargo and the container to be weighed separately at origin and the total weight provided as the VGM with a certified signature. However for some cargoes like scrap metal that is loose and difficult to be weighed on its own, it will be necessary to weigh the packed container on a chassis and subtract the chassis. This can be performed at weighing stations at distribution center facilities or independent stations. It means adding time and cost to the contract for the beneficial cargo owner (BCO) with the trucking company and weighing station, as well as capabilities to receive details from them for submission to the carrier. The documentation submitted to the carrier has to come from the BCO or been authorized in a way that prevents fraud and accounts for liabilities. For standard and smaller items — pallets, crates, parts or smaller industrial equipment — the weighing will most likely be performed at the facilities where the packing is done, whether it is BCO owned or a freight forwarder's distribution center. The latter usually have weights for such items but again, the parties need to augment existing commercial agreements to account for labor, costs and time. In some cases it results in adding more weights to the facilities. In a dedicated distribution center, the customer may have to pay, in a multi-customer DC, the freight forwarder has to pay but will most probably pass over the cost.

What will happen if a container is turned away at the terminal gate or allowed into the terminal but not allowed to be loaded?

There are two scenarios, one if the container does not arrive at the terminal with the required VGM document and is turned away, and two if it is allowed into the terminal but is subject to a random check and the weight is determined to be different from the declared VGM weight. In the first case arrangements will have to be made to transport, store and weigh the container so a certified VGM can be presented to the carrier and terminal. In the second, the terminal will initially sequester and store the container and will most likely charge appropriate fees, on top of any fines assessed. How each terminal will handle overweight containers is one of the murkiest issues of the container weight mandate.

What is the shippers' deadline to provide the required container weight verification to the ocean carrier?

This will vary by carrier. It is a commercial issue that will not be determined by regulation and could reflect the specific needs of certain just-in-time or high priority cargo. Shippers are already concerned that the rules may vary widely among carriers. "The primary concern is that there is no standard process that carriers are using to implement this regulation. Many of us have received emails and alerts educating us that this rule is coming, but with no content on the procedure," Donna Lemm, vice president at Mallory Alexander International Logistics, wrote (http://www.joc.com/regulation-policy/what-will-imo-weight-regulations-mean-usexporters_20151016.html) in a JOC.com commentary in October. Carriers will provide shippers with cut-off times within which the carrier must receive the required container weight verification from the shipper for ship stowage planning prior to shipment. Carriers need VGM to prepare the stowage plan of the ship prior to loading, so cutoff times may reflect this.

Can a carrier enforce the rule selectively for certain shippers but not others?

Enforcing the rule will start with government agencies — not carriers — so an agency either will allow the container to be loaded without the required documentation, or not. The size or importance of the customer to the carrier would not matter. The only area where carriers will have flexibility is concerning how penalties that get assessed are passed to customers, and how selectively they do it. This is important, because while the legal responsibility for submitting VGM lies with the shipper, if a carrier cannot load a container, the carrier suffers severe monetary costs — for example terminal and handling costs associated with the rejected container — even before any fines by the relevant maritime authority. The carrier would have to pass these costs back to the shipper, but since no carrier wants to sue its customer, wait for months to recover such costs, or even risk having the costs get absorbed into the broader commercial relationship with the customer, most carriers can be expected to put preventative measures in place, in other words ensuring they receive the VGM and refusing to accept containers without it. The gate-in event for a container becomes the moment of truth — whether at port or railhead since after that point any costs associated with the container's rejection becomes the carrier's responsibility.

Are carriers and terminals required to verify the accuracy of the VGM submitted by the shipper?

No. The requirement is for the carrier and terminal operator to ensure only that the VGM has been communicated in sufficient time to be used in the ship stowage planning process. There is no legal obligation on the carrier or terminal to check the value communicated by the shipper, and there is no requirement for the VGM to be conveyed to relevant governmental authorities. There is also no requirement that the carrier or terminal operator weigh a packed container for which the shipper has already provided the VGM.

What costs is the shipper looking at for non-compliance?

Actual payment fees for non-compliance have largely not been established or published yet by national governments, but the costs for failing to present a certified VGM document can be expected to go way beyond any actual penalties assessed. In terms of penalties, "Depending on national legislation, national maritime administrations can levy punishments ranging from fines and sanctions to jail time. In the U.K., fines and imprisonment are possibilities," said Global Shippers' Forum Secretary General Chris Welsh in a Q&A with JOC.com (http://www.joc.com/regulation-policy/trade-compliance/international-trade-compliance/what-shippers-need-knowabout-new-container-weight-rules_20151029.html). But there will be other costs as well. Taking a container off a ship and resulting storage will result in costs applied to the carrier by the terminal. Therefore shippers can expect a non-selective approach by carriers to cost recovery especially now when historically low freight rates in certain East-West trades are leaving container lines with little in the way of profits and a high motivation to recover costs applied to them by marine terminals. Carriers can thus be expected to put preventative measures in place to avoid these costs by ensuring they receive the VGM and refuse to accept containers without it.

Under the new rule there are two methods by which a shipper may obtain the verified gross mass necessary for submission to the ocean carrier. What are they?

The two options are Method 1 and Method 2. Method 1 is that upon the conclusion of packing and sealing of the container, the shipper weighs the packed container itself, or arranges for a third party to do it. Under Method 2, the shipper or a third party working on behalf of the shipper may weigh all the packages and cargo items in the container, including the mass of pallets, dunnage and other packing and securing material to be packed in the container, and add the tare mass of the container to the sum of the single masses of the container's contents. (The tare mass, also called unladen weight (https://en.wikipedia.org/wiki/Unladen_weight), is the weight of an empty container. The tare mass of every container is marked on the exterior of the container at the time of manufacture. Shippers should solely rely on the tare mass value marked on the container. Where it is missing, or believed to be inaccurate, the container operator should be contacted to take appropriate remedial action.)

What are the necessary requirements for those doing the weighing, the weighing equipment and accuracy?

The weighing equipment to be used must meet the applicable accuracy standards and requirements of the country in which the equipment is being used. There is no such thing under SOLAS as a “verified weigher.” The only obligation under SOLAS for any party weighing a packed container is to use equipment certified by the relevant national standards. But national standards may get more specific, for example national governments may as part of their enforcement policies implement requirements applicable to owners of weighing equipment and could determine acceptable levels of accuracy of the weighing equipment used. There is no provision in the SOLAS rule for any margin of error; the rule is only a physical weighing requirement, thus verified gross mass derived using compliant equipment and procedures will meet the legal requirements. Some cargo products may incur normal, minor changes in mass from the time of packing and weighing until delivery (e.g. due to evaporation or humidity changes) and some containers’ tare mass may change over time and vary somewhat from the tare mass marked on the container. However, these margins of error should not normally present safety concerns.

Why was the container weight rule put into effect?

Simply put, shippers — not all of them but unfortunately still too many — mis-declare cargo on the bill of lading, whether out of sloppiness, negligence or willful intent to ship more cargo than allowed for the same rate. The impact on safety to workers, ships and cargo can be catastrophic, as [these examples \(https://www.bimco.org/~media/About/Press/2011/Synopsis_of_misdeclared_container_weight_incidents_120711.ashx\)](https://www.bimco.org/~media/About/Press/2011/Synopsis_of_misdeclared_container_weight_incidents_120711.ashx) indicate. Mis-declarations apply both to weight and cargo descriptions, though the IMO VGM rule applies only to weight. When cargo is mis-declared, since the cargo itself isn’t visible and the ship master’s knowledge of the cargo is limited to what is stated on shipping documents, there is significant danger inherent in shipping by container. This rule aims to crack down on one aspect of mis-declarations, that applying to weight, in the hope that the safety of container shipping will improve and overall risk be reduced.