

Bureau of Customs and Border Protection

CBP Decisions

19 CFR PARTS 4, 103, 113, 122, 123, 178 AND 192

(CBP Dec. 03-32)

RIN 1651-AA49

REQUIRED ADVANCE ELECTRONIC PRESENTATION OF CARGO INFORMATION

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide that the Bureau of Customs and Border Protection (CBP) must receive, by way of a CBP-approved electronic data interchange system, information pertaining to cargo before the cargo is either brought into or sent from the United States by any mode of commercial transportation (sea, air, rail or truck). The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP. These regulations are specifically intended to effectuate the provisions of section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002.

DATES: This rule is effective January 5, 2004.

The compliance dates for these regulations are set forth, as applicable, in §§ 4.7(b)(5), 122.48a(e), 123.91(e), 123.92(e), and 192.14(e).

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Trade compliance issues:

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SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 343(a) of the Trade Act of 2002 (Public Law 107-210, 116 Stat. 933, enacted on August 6, 2002), as amended by section 108 of the Maritime Transportation Security Act of 2002 (Public Law 107-295, 116 Stat. 2064, enacted on November 25, 2002), required that the Secretary endeavor to promulgate final regulations not later than October 1, 2003, providing for the mandatory collection of electronic cargo information by the Customs Service (now the Bureau of Customs and Border Protection (CBP)), either prior to the arrival of the cargo in the United States or its departure from the United States by any mode of commercial transportation (sea, air, rail or truck). Under section 343(a), as amended (codified at 19 U.S.C. 2071 note), the information required must consist of that information about the cargo which is determined to be reasonably necessary to enable CBP to identify high-risk shipments so as to ensure cargo safety and security and prevent smuggling pursuant to the laws that are enforced and administered by CBP.

Proposed Rulemaking

Consequently, in accordance with the parameters set forth in section 343(a), as amended, a document was published in the **Federal Register** (68 FR 43574) on July 23, 2003, proposing to amend the Customs Regulations in order to require the advance electronic transmission of information pertaining to cargo prior to its being brought into, or sent from, the United States by sea, air, rail or truck.

In part, section 343(a), as amended, required that a broad range of parties likely to be affected by the regulations be consulted and their comments be taken into consideration in developing these regulations. For this reason, separate public meetings were held in January 2003 to address specific issues, and to obtain public input, related to the advance electronic presentation of information, respectively, for sea, air, rail or truck cargo. The CBP also received numerous public comments via e-mail. In addition, extensive meetings were held with workgroups of the subcommittee on advance cargo information requirements of the Treasury Advisory Committee

on the Commercial Operations of the U.S. Customs Service (COAC). For a detailed discussion of the development of the proposed rule, and the evaluation of the comments received as the result of the consultation process, see 68 FR 43574–43592.

Discussion of Comments

A total of 128 commenters responded in timely manner to the July 23, 2003, notice of proposed rulemaking. What follows is a review of, and CBP's response to, the issues and questions that were presented by these commenters concerning the proposed regulations. The CBP also received comments pertaining to the preliminary regulatory impact analysis which was published as an appendix to the proposed rule. Those comments, and the corresponding CBP response, have been addressed separately immediately following this section under the heading, "Comments on Economic Analysis". In addition, a summary of the findings contained in the regulatory impact analysis for this rule can be found in the "REGULATORY ANALYSES" section of this document. For more detailed information, the complete regulatory impact analysis is available on the following Web site, <http://www.cbp.gov>

General; Issues Affecting Multiple Modes

Issuance of Separate House Bills of Lading

COMMENT:

The requirement that a separate house bill of lading be issued for each shipper/consignee relationship imposed significant costs upon commerce. Carriers would now have to issue multiple bills of lading for each container of consolidated cargo, and they would charge a fee for each additional bill of lading, where the consolidated goods were tendered for shipment by a single freight forwarder and were destined to a single consignee in the United States. It was stated that CBP should modify AMS (the Automated Manifest System) so that it could receive vendor information for consolidated shipments without requiring the entry of entirely separate bills of lading.

CBP RESPONSE:

The CBP reasonably needs detailed shipper information on the house bill of lading because this information is critical for targeting purposes under section 343(a)(2) of the Trade Act of 2002, as amended (19 U.S.C. 2071 note, section (a)(2)). Thus, where a freight forwarder or other consolidator receives goods from several foreign vendors (shippers) for consolidation and shipment to a single consignee in the United States, listing the freight forwarder or other consolidator, instead of the foreign vendor, as the shipper on the house bill of lading would be at odds with the intent of section

343(a). It is, of course, a business decision as to whether a forwarder or consolidator would choose to charge for any additional bill(s) of lading issued.

However, at the present time, the AMS system generally lacks the capability to process data for multiple shippers/consignees from a single house bill of lading. The AMS systems were built with a one-to-one relationship—one shipper to one consignee. To alter this would require a complete redesign of the system for all modes of transportation. In addition, it would also force the entire bill of lading to be placed on hold rather than one specific shipment. This is not a programming process that CBP can undertake at this time and, more specifically, detailed communication with the trade community would be required.

Confidentiality

COMMENT:

Proposed § 103.31a should be revised to indicate that advance cargo information which contained classified or sensitive unclassified information would be released only in accordance with applicable regulations, statutes, and orders. Also, it was believed that the vessel cargo declaration information required to be reported in advance could be different from the manifest information envisioned in 19 U.S.C. 1431.

CBP RESPONSE:

Section 103.31a, as proposed pursuant to section 343(a)(3)(G), as amended (19 U.S.C. 2071 note, section (a)(3)(G)), exempts from disclosure advance cargo data for all inbound and outbound air, rail, or truck cargo unless the owner of the information expressly agrees in writing to its release. In addition, as far as vessel cargo data collected under 19 U.S.C. 1431 is concerned, section 1431 already adequately addresses the conditions under which such information may not be disclosed, including where the information is authorized to be kept secret in the interest of national defense, as provided in 5 U.S.C. 552(b)(1); or where disclosure of the information would pose a threat of personal injury or property damage (see 19 U.S.C. 1431(c)(2)(A) & (B)).

COMMENT:

One commenter discussed the matter of public disclosure of outbound cargo information which would be required to be submitted to CBP electronically. It was stated that since cargo information on outbound ocean shipments would rely upon Automated Export System (AES) submissions and not upon vessel cargo manifests, such information should not be subject to the public disclosure provisions of 19 U.S.C. 1431. Another commenter, however, fully supported the re-

lease of cargo data from outward vessel cargo manifests pursuant to the disclosure provisions of section 1431.

CBP RESPONSE:

The underlying cargo manifest statute in question, 19 U.S.C. 1431, applies to both inbound and outbound cargoes. Although manifests are actually comprised of numerous documents, including the Shipper's Export Declaration (SED), the SED document itself is exempt from public disclosure pursuant to 13 U.S.C. 301(g) unless the Secretary of Commerce determines that such exemption would be contrary to the national interest.

Also appearing in existing Customs Regulations (19 CFR 103.31) is a provision making available for copying and publication certain information and data appearing on outward manifests. The scope of that information is described and limited in § 103.31. As in the case of inward vessel cargo manifest information, § 103.31 also provides that certain parties may file certifications with CBP to request confidentiality for outward vessel cargo manifest information (19 CFR 103.31(d)(2)).

Automated Manifest System (AMS)

COMMENT:

The CBP did not provide an updated response to the question of what carriers should do when the Automated Manifest System (AMS) was not functioning.

CBP RESPONSE:

The CBP currently has procedures in place for the processing of cargo when automated systems have experienced a level of failure. The CBP offices routinely accept voluntary submissions of paper documents during this time from trade members looking for immediate release. The CBP's automated systems are designed to queue transmissions sent from the trade during downtime, and the system automatically begins to issue status and release messages when service is restored.

For the purposes of the 24-Hour rule, the trade has been instructed to present paper manifests to CBP in either the appropriate Container Security Initiative (CSI) port of departure, or at the Domestic port of arrival in order to allow for advance targeting. The CBP anticipates instructing the trade the same for the purposes of section 343(a) of the Trade Act of 2002. It will admittedly be difficult and not all submissions will be made promptly. The CBP will then use informed, considered judgement in the issuance of penalties, the mitigation of penalties and other possible action against particular shipments.

If downtime is identified as severe and anticipated to last a significant period, the trade is notified and instructed to present papers entries, in-bond transportation documents and other release paperwork to the CBP offices. Carriers are instructed to present paper manifests for their arriving conveyances. As CBP manually processes the release and other paperwork, determining risk and satisfaction of all requirements to the best of the inspector's ability, copies of those documents are presented to the carriers to gain release of the cargo, or to demonstrate authorization for it to move in-bond or within the port.

When the automated system resumes service, CBP policy is to enter the information about paper processing into the system to generate corresponding electronic release messages and to also ensure that historical records are updated, and the clocks for duties, taxes and fees are correctly started.

Over the last years, the Automated Commercial System (ACS) has been very reliable in its processing and suffered very little unscheduled downtime. The CBP has made downtime requirements available on its Web site for the enforcement of the 24-Hour rule and will also do the same for the purposes of section 343(a) of the Trade Act of 2002.

COMMENT:

For ABI (Automated Broker Interface) filers (importer or brokers) that transmitted advance air or truck cargo data, it was asked whether their ABI Filer Codes would qualify as their unique identification code, or whether CBP would require that they obtain another code, such as an IATA (International Air Transport Association) code or a SCAC code (Standard Carrier Alpha Code).

CBP RESPONSE:

The ABI filer that transmits advance cargo data would be identified by its 3-digit ABI Filer Code. However, in the air environment, since the Air Automated Manifest System (Air AMS) requires a 7-character code to identify parties transmitting house air waybill level information, ABI filers electing to transmit such advance cargo data will be assigned codes in the format "BCBPXXX", where, in place of the "XXX", the ABI filer would insert its own unique 3-digit ABI filer code.

COMMENT:

Under the 24-hour rule for incoming vessel cargo, Non Vessel Operating Common Carriers (NVOCCs) had to apply for approval to become a Vessel AMS filer. The question was raised, in the context of other modes of inbound transportation (air and truck), as to whether an ABI filer of information would have to go through the same ap-

proval process, including some form of application and qualification testing, before being allowed to file advance cargo data with CBP for incoming shipments.

CBP RESPONSE:

ABI transmission capabilities are available to all entry filers who handle truck entries and that have been authorized to participate in ABI under the procedures prescribed in part 143, subpart A, Customs Regulations (19 CFR part 143, subpart A). In this context, it is the carrier's responsibility to ensure that the ABI transmitter of cargo data (broker or importer) receives the appropriate corresponding transportation information via fax or other means.

However, each new participant in the Air Automated Manifest System (Air AMS) will be required to undergo certification testing prior to full participation. Certification/authorization to participate in ABI will not, by itself, be sufficient to satisfy this requirement. The CBP will provide updated lists of approved Air AMS participants.

COMMENT:

Under the 24-hour rule, where an NVOCC filed the advance vessel cargo data, the NVOCC then had to perform other duties otherwise undertaken by the incoming ocean carrier for the arriving cargo, such as handling the arrival of the cargo, obtaining permits for its transfer, and coordinating any in-bond movements. However, as to incoming air cargo, provided that accurate links existed between the house and master bills of lading, the issue arose as to whether the incoming air carrier would be responsible for all of the documentary transactions related to the arrival and movement of the air freight once it had landed at the port of arrival.

CBP RESPONSE:

With consolidated shipments, given that an air carrier would transmit information for the incoming cargo at the master air waybill level, the carrier would be responsible for handling those transactions related to the arrival and movement of such cargo following its landing at the port of arrival. Coincident with this, any other eligible party transmitting (house bill) information for the incoming cargo would need to associate the house bill number with the master air waybill pertaining to such cargo (see § 122.48a(d)(2)(i) in this final rule).

Furthermore, CBP is currently working on additional programming changes to the Vessel Automated Manifest System (Vessel AMS) which would allow the incoming ocean carrier, after the cargo is landed at the port of arrival, to handle the movement of the cargo, and its clearance, etc., on the master bill of lading.

COMMENT:

It was remarked that all CBP automated systems in place had to be able to accommodate the required manifest reporting sufficiently for legitimate trade to continue to flow smoothly.

CBP RESPONSE:

The requirement that cargo information be electronically presented in advance allows CBP to effectively target any cargo that may need to be held for further examination prior to the arrival of the vessel or other conveyance, which thereby enables legitimate cargo to move smoothly through the chain of commerce.

C-TPAT Exemption

COMMENT:

It was proposed that “low-risk” companies and those who were engaged in supply-chain security programs, such as the Customs-Trade Partnership Against Terrorism (C-TPAT), should be given a preference that would let such parties file their cargo declarations after, rather than prior to, the arrival of the cargo, or be subject to various relaxed restrictions in cargo information reporting. It was also suggested that CBP allow C-TPAT participants to use “Buyers Consolidation” (where multiple shippers/consignees were listed on a single bill of lading, instead of each shipper/consignee having to be included on a separate bill of lading). Otherwise, CBP was asked to explain what benefits accrued to C-TPAT members.

CBP RESPONSE:

The CBP will not allow exemption from, or alteration of, the requirement that C-TPAT partners submit cargo information in advance of arrival under these regulations, which includes the requirement that each shipper/consignee relationship be documented by a separate house bill of lading; and, moreover, CBP believes that compliance with these regulations complements supply chain security and efficiency procedures being implemented by C-TPAT partners.

Furthermore, it is again emphasized that C-TPAT membership will continue to be viewed in a positive light for targeting purposes. It is more likely that shipments made by C-TPAT members will be readily and expeditiously cleared, and not be delayed for greater CBP scrutiny. Other related perquisites of C-TPAT partnership may include essential security benefits for suppliers, employees, and customers, such as a reduction in the number and extent of border inspections, an opportunity for self-policing rather than Customs verifications, and eligibility for account-based processes.

Account-based processing is only offered to importers at this time. Account-based processing provides advantages to importers such as

web-based views into their importing history with CBP, the important elements of their bond sufficiency records, and the future ability to make periodic payments of their duty statements. Each transaction is still reviewed as part of the manifest processing; while there may be a reduced number of trade compliance examinations, no account is exempt from enforcement or security screening.

COMMENT:

It was asked whether CBP would take into consideration low-risk status and participation in programs, such as C-TPAT, when minor reporting discrepancies occurred.

CBP RESPONSE:

While participants in programs such as C-TPAT will not be exempt from electronically filing their cargo information in advance, as noted above, such participation will also be taken into account in connection with the occurrence of minor discrepancies in the advance reporting of cargo data.

Exemption; U.S. Department of Defense (DoD)

COMMENT:

Concern was expressed about the movement of military cargo on U.S. Department of Defense (DoD)-chartered aircraft, vessels, or trucks where DoD had exclusive use and control of the conveyance. The revised advance reporting time standards could adversely affect transit time for DoD cargo in the commercial transportation system. Exemptions were requested from advance cargo information reporting for DoD-chartered vessels, aircraft, and trucks.

CBP RESPONSE:

In the proposed rule, CBP agreed that an exemption from the requirement of entry would be extended to certain DoD-chartered vessels or aircraft (see 68 FR at 43577 and 43579, respectively). To accomplish this, §§ 4.5 and 122.41, Customs Regulations (19 CFR 4.5 and 122.41), are amended in this final rule document to exempt from entry requirements (but not from clearance requirements) any vessel or aircraft that is chartered by and exclusively carrying cargo the property of the U.S. Department of Defense (DoD), where the DoD-chartered vessel or aircraft is manned entirely by the civilian crew of the vessel or air carrier under contract to DoD. Any vessel or aircraft exempt from entry would, of course, also be exempt from advance cargo information filing under this final rule.

However, concerning trucks chartered by DoD, CBP has at least provisionally concluded that, balancing the potential risks posed against the costs at issue, an exemption from advance filing is not

needed in this case. The advance filing time frame is sufficiently abbreviated that it should not have a negative effect on the transit time for military cargo moving in the commercial transportation chain (e.g., a mere 30 minutes advance notice in the case of Free And Secure Trade (FAST) trade participants) (see the discussion for incoming truck cargo, *infra*).

Other Government Agencies; Single Portal for Collecting Data

COMMENT:

It was advocated that CBP and the U.S. Food and Drug Administration (FDA) should harmonize the data elements and time frames for advance information that both agencies would now require. A single integrated computer system should be developed for the submission of advance information.

CBP RESPONSE:

The CBP is working diligently with the FDA towards integrated filing and risk management mechanisms. In fact, an agreement was reached in May 2003 between CBP and FDA to modify CBP's Automated Commercial System (ACS) to enable importers, in most cases, to use this system to satisfy the advance informational requirements of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188) (the Bioterrorism Act) and implementing regulations. In the **Federal Register** of October 10, 2003 (68 FR 58974), FDA, in conjunction with CBP, issued an interim final rule requiring prior notice of food imported into the United States, beginning on December 12, 2003. The interim final rule requires that the prior notice be submitted to FDA electronically via either the CBP's Automated Broker Interface (ABI)/ACS Interface or the FDA's Prior Notice System Interface. The interim final rule on prior notice of imported food shipments is available at <http://www.cfsan.fda.gov/~lrd/fr03o10b.html>. The CBP is also making modifications to ACS to allow ACS to be used to satisfy the prior notice requirements of the Bioterrorism Act.

The CBP's Automated Commercial Environment (ACE) is intended to operate as a single window for the submission of import information to the Government, once it is developed and implemented as part of the International Trade Data System (ITDS). Nevertheless, in light of the urgent need, in particular, to implement both section 343(a), as amended, and the Bioterrorism Act, the Government cannot delay such implementation until a fully-interfaced, multi-agency electronic data interchange system is in place, either within ACS or ACE.

The Automated Commercial Environment (ACE)

By way of additional perspective on the Automated Commercial Environment (ACE), CBP Modernization began in 2001, with the ACE focusing on import and export cargo operations. The ACE, as just noted, along with other entities will ultimately form one system providing a "single screen" for the international business community to interact with CBP and other government agencies on import/export requirements. The ACE will power an expedited release process for carriers and shippers that have prefiled, been pre-approved, and have been subject to enforcement prescreening and targeting. An integrated risk management and targeting system will implement all types of enforcement and selectivity screening for commercial shipments. The ACE will provide both CBP and the business community with the tools and technology to ensure secure supply-chain management. The program will include tools that will provide for: advanced manifesting system for all modes of transportation; tracking of intermodal shipment movements and cargo moving in-bond; enhanced conveyance and transit cargo tracking for shipments from origin to destination. Finally, when exports are processed in ACE, CBP will have a complete end-to-end record of cross-border processing and international supply chain information.

To date, ACE has provided the infrastructure to support the establishment of 41 Importer Accounts. These accounts have access to a quick view of their importing and compliance history as well the functionality to print numerous reports. This functionality also provides for interaction between the Accounts and CBP in the form of an Action Plan and a Significant Activity Log. Both the Trade Community and CBP now have access to an electronic automated Harmonized Tariff Schedule. Near term functionality for ACE will include the establishment of 1100 Accounts to include brokers, importers and truck carriers. The establishment of these accounts will allow the account holders to pay duties and fees on a Monthly Periodic Statement (April 2004) and provide for the capability of truck carriers to file an advanced electronic Truck Manifest (October 2004), which will support the legislative requirements of the Trade Act of 2002.

Time Period for Implementing Advance Cargo Data Reporting

COMMENT:

Consideration should be given to making the advance reporting provisions operational on a region-by-region "roll out." There should also be a liberal "grace period" permitted prior to enforcement of the new regulations so that both Government and the trade would have sufficient time to adjust to the new security requirements without disorganization or disruption.

CBP RESPONSE:

It is stressed that the differing effective dates of these regulations may be further delayed for the several modes, both inbound and outbound, as already provided variously in §§ 122.48a(e) (for inbound air cargo), 123.91(e) (for inbound rail cargo), 123.92(e) (for inbound truck cargo), and 192.14(e) (for outbound cargo, all modes). Only as to incoming vessel cargo is there a firm effective date of [insert date 90 days after date of publication of this document in the **FEDERAL REGISTER**], by which time all participating advance cargo data filers must be operational on the Vessel Automated Manifest System (Vessel AMS).

However, no matter when the various regulations in this final rule go into effect, CBP will adopt a phased-in enforcement process for these Trade Act Regulations similar to that which was utilized when the 24-Hour Rule was implemented. Depending on the circumstances, CBP may take an “informed compliance” approach during a short period following the effective date of the rule. In appropriate circumstances, this approach would consist of performing audits of the carriers’ and NVOCCs’ (Non Vessel Operating Common Carriers’) submissions and advising their owners or operators of problem areas that could have been subject to enforcement action.

Following an initial 2-month period after issuance of the 24-Hour rule, CBP created an enforcement approach that focused first on egregious violations. The CBP experienced an enormous decrease in the instances of such problem submissions immediately before, and after, expiration of the initial period when the “informed compliance” approach was implemented.

Therefore, in implementing these Trade Act Regulations, CBP has demonstrated experience in implementing a phased-in enforcement strategy and expects to develop similar plans with respect to these new advance cargo reporting requirements.

Furthermore, as with the 24-hour rule, CBP intends to continue to work with the trade to achieve compliance with the requirements of these regulations. However, CBP does not believe that a region-by-region implementation of the regulations would be either advantageous or advisable under the circumstances.

COMMENT:

Two commenters wanted a uniform advance notification enforcement date for all modes to include both outbound and inbound shipments.

CBP RESPONSE:

The implementation dates for all modes will vary, due to the readiness and availability of the automated systems that support each mode and the degree to which the necessary technology is available

to particular modes of transportation. This fully comports with the mandate of section 343(a)(3)(D) and (E), as amended.

Bond Issues

COMMENT:

A question was presented as to whether electronic filers of advance cargo data through the Automated Manifest System (AMS) would need to possess an international carrier bond.

CBP RESPONSE:

Other than Automated Broker Interface (ABI) filers in the air environment (consisting of importers and brokers) (see § 122.48a(c)(2) in this final rule), electronic filers through AMS (whether Vessel, Air or Rail AMS) must possess an international carrier bond under 19 CFR 113.64. By contrast, an ABI filer of advance cargo data, that is an importer, would need to possess an amended basic importation and entry bond, as described in § 113.62(j)(2) in this final rule; and an ABI broker who files advance cargo data would be obligated under 19 U.S.C. 1641 and 19 CFR part 111 to do so in the manner and in the time period prescribed in § 122.48a in this final rule.

COMMENT:

A Customs bond could be written as a single transaction bond or as a continuous bond. It was recommended that CBP provide in the regulations that any bond needed for reporting cargo information prior to arrival be a continuous bond.

CBP RESPONSE:

The CBP does not agree with the commenter. The commenter suggests that the rule be amended to state that all bonds required in support of presentation of advanced manifest information must be continuous bonds. Continuous bonds are bonds taken out by principals that are in effect for a period of time (usually 1 year, with automatic renewal unless terminated) and insure all relevant transactions occurring in that period of time. In contrast, single transaction bonds are bonds that are taken out one at a time and are presented to insure only a single transaction or arrival. The rule only requires that a bond be posted. It does not matter whether that bond is continuous or single transaction and there is no need to provide for a bond type restriction.

Liability Concerns

COMMENT:

Where the party presenting information to CBP had acquired this information from another, and the information was determined to be

false, clarification was requested as to how this would play a role in the penalty/liquidated damage process.

CBP RESPONSE:

Mindful of the requirements of section 343(a)(3)(B), as amended (19 U.S.C. 2071 note, section (a)(3)(B)), CBP will take the facts and circumstances of any such situation into account in determining whether a penalty/liquidated damages claim should be initiated and whether and/or to what extent such a claim should be mitigated. The CBP intends to issue mitigation guidelines in this matter.

**Submission of Cargo Data in Advance of
Arrival or Departure**

COMMENT:

Having to present cargo information in advance for both exports and imports would add severely to port congestion in the U.S., and thus raise the costs and burdens of both types of trade.

CBP RESPONSE:

The CBP disagrees. The receipt of advance electronic information will reduce port congestion because CBP can make enforcement decisions before conveyances arrive in the United States. This has been true in the vessel environment for some time, and has been improved upon under the 24-hour rule because CBP can perform examinations overseas via the Container Security Initiative (CSI). Furthermore, CBP will use in implementing this final rule a phased-in compliance program, similar to that described above for the 24-Hour Rule, in order to make sure that technical violations do not unnecessarily disrupt the flow of goods across the U.S. border. Therefore, there is no compelling reason to conclude that congestion at U.S. ports will result.

COMMENT:

Further explanation was sought as to the basis for the differences among the time-frame reporting requirements for inbound and outbound shipments in all modes of transportation.

CBP RESPONSE:

Generally speaking, and as further discussed for each individual mode, *infra*, in determining the timing for transmittal of advance cargo data, CBP, as directed by the statute, took into account the differences existing among the different modes of transportation, both inbound and outbound, including differences in commercial practices, operational characteristics, and the technological capacity to collect and transmit information electronically; and, as the law also

directed for each mode, CBP undertook to balance the likely impact on the flow of commerce with the impact on cargo safety and security.

Miscellaneous Issues

COMMENT:

Concern was expressed about information security requirements associated with advance notifications for shipments of radioactive material.

CBP RESPONSE:

Advance cargo information is transmitted to and received by CBP on a secure and encrypted data line. As for cargo arriving by vessel, manifest information for such cargo is not available for public disclosure until after the vessel has arrived; and, as previously indicated, in accordance with 19 U.S.C. 1431(c)(2)(A) & (B), such information may be exempted from disclosure in the interest of national defense pursuant to 5 U.S.C. 552(b)(1), or where the disclosure would pose a threat of personal injury or property damage.

COMMENT:

In the future, CBP should allow the electronic submission of comments.

CBP RESPONSE:

Requiring written comments in response to a notice of proposed rulemaking is a matter of agency policy that is beyond the scope of this particular rulemaking. However, it is observed that comments via e-mail were invited and accepted regarding the development of the proposed rulemaking in this case (68 FR at 43575).

COMMENT:

A format for Frequently Asked Questions (FAQs) should be established for each mode of transportation on the CBP Web site, which should be regularly updated with new or revised questions.

CBP RESPONSE:

CBP intends to post FAQs for each mode of transportation on the CBP Web site (www.cbp.gov), which will be updated as necessary.

COMMENT:

One commenter offered to provide, at no cost to the Government, cargo inspections at the point of origin and then to transmit the results of the inspections by way of a CBP-approved electronic data interchange system. The commenter requested only that CBP accept

such inspected shipments as “low risk” and thus eligible for expedited clearance upon arrival.

CBP RESPONSE:

In effect, CBP believes that the same results would be achievable by joining the C-TPAT program (The Customs-Trade Partnership Against Terrorism). As already explained, participation in C-TPAT is considered as a positive factor in targeting shipments to determine whether cargo needs to be held at the port of arrival for examination or receipt of further information.

COMMENT:

Additional instruction was sought as to what terms would satisfy the requirement for a precise description for incoming cargo (§ 4.7a(c)(4)(vii); and proposed §§ 122.48a(d)(1)(ix) and (d)(2)(iii), 123.91(d)(5), and 123.92(d)(9)). In particular, for automotive producers, it was stated that obtaining a complete and correct list of the Harmonized Tariff Schedule (HTS) numbers for all exports of automotive parts and components could be a daunting task. One shipment could contain many types of original equipment manufacturer (OEM) or replacement parts; it was instead urged that CBP accept a generic cargo description such as “New Autoparts” regardless of the mode of transportation involved.

CBP RESPONSE:

CBP will issue an Acceptable and Non-Acceptable cargo description list as was done with the 24-Hour Rule for incoming vessel cargo. This list will be the same for all modes of transportation.

Generally speaking, CBP has defined a precise cargo description as a description precise enough for CBP to be able to identify the shapes, physical characteristics, and likely packaging of the manifested cargo so that CBP can discern any anomalies in the cargo when a container is run through imaging equipment. Also, the description must be precise enough to identify any goods which may emit radiation.

The requirement that a carrier/filer use cargo descriptions that would not be considered vague should not be overly burdensome. The CBP has undertaken continuous efforts prior to and since the promulgation of the 24-hour Advance Manifest Rule in the sea environment to educate all filers on cargo descriptions that would be considered vague as well as on issues raised by trade representatives. The cargo descriptions that are considered vague have been posted on the CBP Web site (Frequently Asked Questions) since March 2003. The descriptions were not designed to force carriers/filers to achieve entry level descriptions. In most cases, the descriptions require only one or two further qualification descriptors.

COMMENT:

Participation in such an electronic data interchange as the Automated Manifest System (AMS) should be covered by regulations pursuant to the Administrative Procedure Act that provide uniform requirements for enrollment and acceptance into these electronic filing programs, and that govern the suspension, revocation or modification of participation in these programs.

CBP RESPONSE:

Participation in the electronic systems described in this rulemaking was formerly voluntary as part of the National Customs Automation Program (NCAP) described in 19 U.S.C. 1411(a). As part of the Trade Act of 2002, Congress amended section 1411 to permit CBP to mandate use of the electronic systems of NCAP. To effectuate the requirement in section 343 of the Trade Act of 2002 for the electronic transmission of section 343 cargo information in compliance with Congress's timetable, CBP is mandating use of several of these existing NCAP electronic systems.

The criteria for establishing connection with these systems were set forth in the notices of the tests of these systems (e.g., for the Vessel Automated Manifest System (Vessel AMS) program, see 61 FR 47782 (September 10, 1996), and 67 FR 77318 (December 17, 2002)); the eligibility criteria for these programs also appear on the CBP Web site: www.cbp.gov/xp/cgov/import/operations_support/automated_systems/ams/.

Because electronic filing is now mandatory, CBP will not prohibit or restrict use of the required systems by filers as it might under a voluntary test program. The CBP does reserve the right to take necessary technical steps to deny connections in the event of electronic attacks (e.g., denial of service attacks), but otherwise access will be available. Therefore, no procedures regarding suspension or revocation of access to these systems are required. Instead, CBP will ensure compliance with mandatory electronic filing requirements through monitoring by account managers, penalty assessments or claims for liquidated damages, as appropriate to the circumstances.

Vessel Cargo Destined to the United States**Submission Time Frames****COMMENT:**

Seven commenters advocated that the pre-arrival and post-loading data submissions acceptable for the other modes should also be acceptable for maritime cargo. There should be no significant differences in risk between air and maritime cargoes. The 24-hour pre-

loading requirement could disrupt “Just In Time” (JIT) delivery systems.

CBP RESPONSE:

As explained in the 24-hour rule (67 FR at 66319) and as reiterated in the proposed rule in this case (68 FR at 43577), the 24-hour pre-lading requirement for vessel cargo, especially containerized vessel cargo, is tied inextricably to the Container Security Initiative (CSI), a core element of which is to pre-screen vessel cargo containers at the foreign port of departure before they are loaded onto the vessel for shipment to the United States. To enable such pre-screening to be done fully and successfully, it is essential that the related cargo data be transmitted to CBP at least 24 hours prior to lading the cargo aboard the vessel.

In relation to JIT deliveries, CBP requires the electronic transmission of cargo declaration information 24 hours in advance; CBP is not requiring that the cargo be ready for inspection or that the cargo be at the dock. However, CBP recognizes the 24-hour pre-lading reporting may occasion some changes in the practice of sometimes adding last minute loads to vessels, but only if such loads were not manifested 24 hours prior to their lading.

Exemption from Advance Filing

Bulk/Break Bulk Cargo

COMMENT:

It was requested that consideration be given to exempting bulk cargoes from the requirement of electronically having to submit cargo declarations.

CBP RESPONSE:

CBP has given bulk, and some break-bulk shipments, exemptions from the requirement to file 24-hours prior to loading, but these entities will still be required to file their cargo declarations electronically.

COMMENT:

Section 4.7(b)(2), Customs Regulations (19 CFR 4.7(b)(2)), implied, erroneously, that only vessels exclusively carrying bulk or break bulk cargo could be exempted from having to report such cargo 24 hours prior to loading the cargo aboard the vessel in the foreign port.

CBP RESPONSE:

The CBP agrees. Section 4.7(b)(2) will be revised to make it clear, in agreement with § 4.7(b)(4), that for vessels that carry both non-

exempt cargo and exempt bulk/break bulk cargo, only the non-exempt cargo must be reported on the electronic cargo declaration 24 hours prior to loading such cargo in a foreign port.

Data Elements

Precise Cargo Description; 6-Digit HTS Number

COMMENT:

Section 4.7a(c)(4)(vii) stated that either a precise cargo description or the 6-digit Harmonized Tariff Schedule (HTS) number for the cargo had to be provided. However, the Vessel AMS system in fact required a narrative cargo description and (if desired) an HTSUS 6-digit number for the cargo, or the transmitted bill of lading would be rejected.

CBP RESPONSE:

Currently, AMS does require text in the description field of the electronic transmission, or AMS will reject the transmission, even though a 6-digit HTSUS number is also provided in the appropriate field of the transmission. The CBP intends shortly to effect programming changes to allow for either a precise cargo description or the 6-digit HTSUS number; but until such time as these programming changes are adopted, AMS participants which provide the HTSUS number will also have to enter a cargo description in the description field of the electronic transmission. However, as an alternative to providing a precise cargo description in the description field of the transmission, the applicable 6-digit HTSUS number may instead be included in the description field to satisfy the current programming requirement that some text appear in this field.

COMMENT:

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

CBP RESPONSE:

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

HTSUS number is needed and is used for merchandise entry purposes.

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

Definition of Shipper; Consignee

COMMENT:

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

CBP RESPONSE:

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

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

COMMENT:

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

CBP RESPONSE:

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

Date and Time of Departure of Vessel from Foreign Port**COMMENT:**

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

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

CBP RESPONSE:

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

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

Vessel AMS Issues

Importer Participation in Vessel AMS

COMMENT:

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

CBP RESPONSE:

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

COMMENT:

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

CBP RESPONSE:

Again, given the prevailing operation of the Vessel AMS, CBP finds that allowing freight forwarders who are not NVOCCs, and other parties identified as "consolidators," even though they may be NVOCCs (see 68 FR at 43577) to participate in the Vessel AMS electronic data interchange system would at this time be neither advisable nor practicable.

COMMENT:

It was stated that the Shipper field in Vessel AMS could not accommodate more than 3 or 4 lines of information. This could prove inadequate in the case of consolidated shipments where there could be multiple shippers.

CBP RESPONSE:

This inability of the Shipper field in Vessel AMS to capture multiple shipper data is academic inasmuch as CBP requires that for each shipper/consignee relationship a separate bill of lading be issued. This mandate for a separate house bill of lading for each shipper/consignee relationship constitutes a critical component for automated targeting purposes in identifying high-risk shipments.

COMMENT:

With respect to proposed § 4.7(b)(5), which provided that carriers, and participating NVOCCs, would need to become automated at all ports of entry where their cargo would initially arrive, it was asked whether it would be the Vessel AMS computer mainframe's problem to forward the carrier's transmission to the appropriate Customs port of entry.

CBP RESPONSE:

Ocean carriers and NVOCCs currently operational on Vessel AMS, although not at all ports of entry, will now be required to become operational at all such ports. Any carrier or NVOCC that hereafter becomes automated on Vessel AMS will thereby be automated at all ports. Since the automation of electronic filers through Vessel AMS will per se encompass all ports of entry, proposed § 4.7(b)(5) is revised in this final rule by removing the phrase, "where their cargo will initially arrive". However, carriers must indicate in their respective electronic transmissions each port of arrival where their incoming cargo will be discharged.

COMMENT:

Non Vessel Operating Common Carriers (NVOCCs) should be required to electronically present advance cargo information directly to CBP.

CBP RESPONSE:

The CBP disagrees. As discussed in the proposed rule (68 FR at 43576–43577), certain segments of the trade in fact urged that advance cargo information filing by NVOCCs be eliminated due to operational problems with Vessel AMS, that resulted when NVOCCs, as opposed to the incoming carriers, filed cargo data directly with CBP. Nevertheless, in consideration of the competitive relationships that exist in the international freight forwarding field, CBP continues to believe that NVOCCs who wish to do so may become automated on Vessel AMS, but that they should not be compelled to do so.

COMMENT:

It was observed that a large number of NVOCCs operational on Vessel AMS seemed to opt out of the system at various ports, for apparently no authorized reason. Vessel carriers were said to be unable to audit or police this.

CBP RESPONSE:

Those NVOCCs who choose to become automated on Vessel AMS must be automated in all ports. While NVOCCs do have the ability

to decertify in AMS, they would then be required to submit detailed information to carriers for transmission to CBP for all ports of discharge. If a question should arise as to whether or not an NVOCC is automated, the vessel carrier may contact its CBP client representative for verification.

COMMENT:

It was asked whether there was a maximum reporting window for transmitting cargo data in advance through Vessel AMS.

CBP RESPONSE:

Vessel AMS has the capacity to retain electronic transmission information up to a maximum of nine months prior to the cargo's Estimated Date of Arrival (EDA).

Confidentiality

COMMENT:

It was unclear whether the shipper specific information would be publicly disclosed, and whether such information from both master and house bills of lading would be involved. It was remarked that disclosing this information would defeat the purpose of direct filing by NVOCCs.

CBP RESPONSE:

Information collected pursuant to 19 U.S.C. 1431, including information from both master and house bills, is available for public disclosure in accordance with section 1431(c). However, under the authority of section 1431(c)(1)(A), information relating to the identity of a foreign shipper to an importer or consignee in the United States will not be disclosed if a claim for confidential treatment for such information is made by using the procedure prescribed in 19 CFR 103.31(d)(1).

Implementation Period for Rule

COMMENT:

It was thought that 90 days was too short a period from the date of publication of the final rule within which a non-automated carrier would need to develop software and programming in Vessel AMS. A period of 120 days was requested.

CBP RESPONSE:

The CBP believes that 90 days is an adequate and reasonable time frame within which to permit a non-automated vessel carrier to become automated on Vessel AMS. The CBP will continue to work with

the trade to achieve compliance with these advance cargo reporting provisions.

In selecting 90 days following publication as an implementation period for mandatory vessel AMS participation, CBP sought to strike a proper balance between the needs of the affected public in adjusting to the new requirements, and meeting the needs of the United States in implementing anti-terrorism measures without undue delay. Ninety days strikes that balance.

Procedure for Amending Cargo Declarations

COMMENT:

The proposed rule did not mention the procedures for amending electronic cargo declarations following their transmission. This would also apply for goods that were sold while in transit.

CBP RESPONSE:

Complete and accurate information would need to be presented to CBP for cargo to be laden aboard the vessel no later than 24 hours prior to lading the cargo aboard the vessel at the foreign port. As for any changes in the cargo information already transmitted, the procedures for amending the cargo declaration including discrepancy reporting regarding vessels as well as all other modes will be the subject of a separate rulemaking. Prior to the promulgation of new rules concerning discrepancy reporting, the procedures for phased-in compliance as explained above will be employed to address changes that must be made to the transmitted cargo declaration. It should be recognized that each time a bill of lading is amended, it may be subject to increased targeting and at risk for examination.

Enforcement

COMMENT:

Procedures should be outlined for cargo that arrived without prenotification or with incomplete information.

CBP RESPONSE:

In all modes of transportation discussed in this rulemaking, the carrier must notify CBP immediately upon arrival or as soon as it realizes that it did not submit the proper information. The carrier should then present or transmit the cargo declaration information. Upon arrival in the U.S. port, the cargo declaration will be placed on hold until CBP has had the opportunity to review the documentation, and conduct any necessary examinations. Appropriate penalties may also be issued. If CBP determines that this has become a common occurrence for a carrier, this could eventually lead to denial of a

permit to unlade. Additionally, CBP will notify the United States Coast Guard of a vessel with unmanifested cargo that is scheduled to arrive. If the arriving cargo is food, CBP and FDA are working closely together to ensure they coordinate policies and procedures for dealing with movement of the cargo.

Miscellaneous Matters

COMMENT:

The view was expressed that the ocean carrier would be reluctant to accept an NVOCC's shipment due to liability concerns, and/or would react, to protect itself from CBP enforcement, by imposing extraordinary and erroneous evidentiary or indemnity obligations on the NVOCC.

CBP RESPONSE:

The CBP is currently programming Vessel AMS to accept additional bill of lading types that will allow NVOCCs to submit commodity information to CBP that will protect proprietary information from the carrier, and that will enable the vessel carrier to submit master bills of lading to CBP pertaining to the transportation information for the cargo.

COMMENT:

In proposed § 4.7(b)(1), it was stated that the original and one copy of the manifest must be ready for production on demand. It was asserted that the only original manifest carried on board the vessel upon arrival would be the dangerous goods manifest.

CBP RESPONSE:

Under § 4.7(b)(1), there is no requirement that the original vessel cargo declaration be carried aboard the vessel in those cases where the cargo declaration has already been filed in advance electronically. The CBP decided not to enforce the paper cargo declaration (Customs Form (CF) 1302) rule for formal entrance if a carrier or NVOCC has successfully automated. However, where the cargo declaration has been filed in advance electronically, and a paper copy is not aboard the vessel, the carrier will be afforded a reasonable time within which to generate a paper cargo declaration, should a paper copy be requested by CBP. The CBP will periodically assess this policy to ensure that it is not having an adverse effect on operations.

COMMENT:

The proposed rules, especially those related to ocean imports, did not address the status of shippers' associations as shippers and

transportation intermediaries and apparently did not give them the right to file the required manifest information directly to CBP.

CBP RESPONSE:

The CBP has determined that shippers associations are not licensed or registered with the Federal Maritime Commission (FMC). Moreover, such associations cannot be construed to be carriers of cargo in the same sense as ocean carriers or NVOCCS. Therefore, shippers associations will not be permitted to participate in Vessel AMS.

Air Cargo Destined to the United States

**Time Frame Requirements for Transmitting
Advance Cargo Data**

COMMENT:

Several commenters requested that the time frames in proposed § 122.48a(b) in which the electronic cargo information was transmitted be reduced and that exceptions for certain points of origin be included.

CBP RESPONSE:

The CBP recognizes the business practices of the air cargo industry and the necessity of adequate time to properly analyze the electronic cargo information and to deploy inspectional resources when required. These issues were carefully considered when establishing the time frames specified in these regulations.

Specifically, CBP weighed the question of an appropriate time frame for air from many angles. To better gauge industry requirements, CBP conducted public meetings (one for each modality), and set up an email address to facilitate the submission of comments by carriers, importers, exporters, freight forwarders, customs brokers, other U.S. Government agencies, foreign governments, as well as local, national and international trade organizations, and private citizens, etc. It should be noted that this elective comment period was in addition to the formal comment period required for the Notice of Proposed Rule Making. The CBP also met intensively with the Treasury Advisory Committee on the Commercial Operations of the U.S. Customs Service (COAC), which resulted in additional unified recommendations for each modality. The CBP assessed internal operational considerations such as the speed at which the various electronic data interchanges are able to process information, the time required for CBP personnel to review the output and determine

the appropriate action, and the time needed to deploy personnel to respond.

COMMENT:

Further explanation was requested on whether the time frames for flights from nearby foreign areas in proposed § 122.48a(b)(1) included such flights to the territories of the United States, such as Guam and Puerto Rico.

CBP RESPONSE:

The time frame for nearby flights would include such flights to Puerto Rico because it is part of the Customs territory of the United States. However, flights to Guam are not included in the advance cargo reporting requirements, as Guam is not part of the Customs territory. The CBP finds that a distinction in the time frames for advance filing based upon geographical considerations, as opposed to the duration of the flight, is more administratively feasible.

Air Freight Forwarder Issues

COMMENT:

It was asked whether CBP would permit foreign indirect air carriers (non-U.S.-based freight forwarders that issue their house bills of lading for air freight shipments) to qualify as one of the authorized filers of information through the Air Automated Manifest System (Air AMS).

CBP RESPONSE:

Other than the incoming air carrier, parties eligible to transmit inbound electronic air cargo information are enumerated in § 122.48a(c)(1) in this final rule. Any foreign indirect air carrier that is not one of the parties specified in § 122.48a(c)(1) would have to fully disclose and present the required data for the inbound air cargo to the incoming air carrier or other eligible electronic filer, as applicable, which would then present such data to CBP.

COMMENT:

It was advocated that CBP require freight forwarders, Customs brokers and consolidators to participate in Air AMS.

CBP RESPONSE:

The CBP disagrees. Such parties may elect to provide the data directly to CBP if they are one of the parties specified in § 122.48a(c)(1), or they may provide the data to the incoming air carrier which will transmit such data directly to CBP.

COMMENT:

Two commenters wanted to know whether it was CBP's intention that freight forwarders filing advance cargo data obtain two bonds—an international carrier bond and a custodial bond.

CBP RESPONSE:

A freight forwarder filing advance air cargo data would be required to have an international carrier's bond under § 122.48a(c)(2). In addition, if the freight forwarder or any other eligible party were responsible for supplying in-bond information and for transporting cargo in-bond under the provisions of part 18 of the Customs Regulations (19 CFR part 18), such party would also need a Customs custodial bond.

The international carrier bond is required of carriers arriving from foreign locations. That bond exists to guarantee performance with regard to (among other things) conveyance arrival, entry and clearance, cargo manifesting and disposition, and passenger and crew control. The conditions of the international carrier bond appear at 19 CFR 113.64. A custodial bond is required of any party that transports merchandise domestically, either between ports of entry or within a single port of entry, before that merchandise has been entered for consumption with duties paid thereon and its admissibility into the commerce determined. The custodial bond conditions appear at 19 CFR 113.63. The custodian of the merchandise guarantees compliance with all regulations governing the receipt, carriage, safekeeping and disposition of merchandise transported or held.

Diversion/Fuel Stop Issues**COMMENT:**

It was asked whether the rule allowed for aircraft to stop for fueling at a U.S. location prior to arriving at its final destination. Four commenters requested that fuel stops be exempt from reporting requirements from the U.S. port of arrival to the port of destination.

CBP RESPONSE:

Section 122.48a does not prohibit an aircraft from including a fuel stop in its itinerary; however, that stop may be the port of arrival in the United States for purposes of § 122.48a(b). Fuel stops will not be excluded from the advance reporting requirement because it is vital to security to target at the first port of arrival and, if necessary, to examine cargo at that location.

COMMENT:

If an aircraft were diverted for reasons such as weather or equipment problems, it was requested that this not be considered part of

the manifest reporting requirement if passengers and cargo were not to be discharged there.

CBP RESPONSE:

The CBP understands that aircraft may be diverted due to weather and/or equipment problems. When this situation occurs, the airline must notify CBP at the designated first port of arrival (the diverted port) as soon as it realizes it is not going to initially reach the original port of arrival. The carrier would then need to re-transmit the electronic cargo information with corrections to reflect the new (diverted) arrival port.

Air AMS Testing/Problems

COMMENT:

Outstanding operational programming issues should be completed prior to the implementation of the final rule.

CBP RESPONSE:

The CBP is diligently working on an outstanding list of operational issues and will continue to correct these issues. Under § 122.48a(e)(2), the implementation date for advance air cargo reporting may be delayed if necessary modifications to the CBP-approved electronic data interchange system are not yet in place.

COMMENT:

Qualified air freight forwarders electing to participate in advance electronic cargo reporting should be tested on the approved data interchange system prior to the implementation of the final rule.

CBP RESPONSE:

Appropriate testing will be given to all parties who develop Air AMS communications with CBP. Those parties who elect to use a service provider will be tested via the service provider.

COMMENT:

Programming should be provided between the Automated Broker Interface (ABI) and the Air AMS system so that data information could be shared (alternate filers could be brokers and forwarders).

CBP RESPONSE:

Cargo selectivity information provided through ABI is distinct from the electronic cargo information required through Air AMS under § 122.48a. The data elements to satisfy compliance with this regulation must be provided through Air AMS; Air AMS is accessible to ABI filers.

COMMENT:

The Air AMS system should be changed to preclude an inward air carrier from refusing to authorize (nominate) another eligible party as an agent who had elected to transmit consolidated cargo data directly to CBP; and the system should be programmed to notify such other party of its authorization (nomination) by the inward carrier.

CBP RESPONSE:

The Air AMS system will independently accept information from each of the parties that supply data to satisfy the advance cargo reporting requirements of § 122.48a. In other words, the inward carrier will no longer need to authorize or nominate another eligible party in order to enable that party to supply house air waybill information to CBP. The identification of another eligible filer in the agent ("AGT") line will be merely for the purpose of notifying CBP that this party will transmit the house air waybill information, which may be effected either prior to or after the carrier's transmission of the master air waybill record to CBP.

COMMENT:

The Air AMS system should be changed to allow for the transmission of a notification that air cargo data had been received or that the air cargo manifest had been accepted with the date and time specified. This feature was said to be currently available in Vessel AMS.

CBP RESPONSE:

The Air AMS transmits a Freight Error Report message if an air waybill record does not pass certain data acceptance edits. In addition, the Air AMS also provides a Freight Status Query feature that allows an Air AMS participant to query the status of an air waybill record. This feature is available to the Air AMS participant that transmitted the original message and to Air AMS participants that have been properly nominated by the carrier that transmits the master air waybill data.

COMMENT:

One commenter was of the opinion that airlines did not want to be obligated to input house air waybill information on behalf of an air freight forwarder.

CBP RESPONSE:

Under § 122.48a, unless another qualified party elects to participate in the Air AMS system, the relevant house air waybill information must be furnished to the incoming air carrier for presentation to CBP.

COMMENT:

It was asked how a carrier would provide any required cargo data if the records were in the possession of a third party that was not one of the parties identified in proposed § 122.48a(c)(1).

CBP RESPONSE:

Under § 122.48a(c)(4), any third party entity in possession of required data for inbound air cargo must fully disclose and present such data to the carrier for presentation to CBP.

In-Bond Issues

COMMENT:

Participants in Air AMS should be permitted to create subsequent in-bond transactions to close out air manifests at both the master air waybill and house air waybill levels.

CBP RESPONSE:

This is included in the regulation (see § 122.48a(a)(1) in this final rule). In-bond information may of course be included at both the master and house air waybill levels (see § 122.48a(d)(1)(xvi) and (d)(2)(viii) in this final rule).

COMMENT:

It was thought that Air AMS could not handle in-bonds for one consolidated express shipment.

CBP RESPONSE:

The Air AMS system is capable of processing in-bond information for all house air waybills under a consolidated master air waybill.

COMMENT:

The Air AMS programming should be altered to allow for more than one in-bond warehouse per location.

CBP RESPONSE:

Cargo covered by each master air waybill may be transferred to any warehouse location with a unique FIRMS (Facilities Information and Resources Management System) code within the limits of a port of entry.

COMMENT:

The scope and timing of the carrier's transmission of any in-bond information should be clarified. Specifically, it was asked whether it would be necessary to allow transmission of this information after

arrival of the cargo in the United States, and whether such information would be used for the movement of the subject cargo from the first port of arrival to the master bill destination location.

CBP RESPONSE:

The data elements specified in § 122.48a(d)(1), including any in-bond information in § 122.48a(d)(1)(xvi), if applicable, will be analyzed by CBP for the purposes of identifying high-risk cargo. Such data elements must be supplied within the respective advance time frames prescribed in § 122.48a(b).

COMMENT:

In-bond information (from a party other than the incoming carrier) might not be known by origin or prior to its arrival in the United States. It was asked whether information related to the subsequent in-bond movement of the cargo could thereafter be transmitted to CBP prior to the in-bond movement being authorized.

CBP RESPONSE:

The CBP recognizes that the in-bond destination for cargo covered by house air waybills may not be known prior to the arrival of the aircraft in the United States. If such information is provided outside of the required time frame prescribed in § 122.48a(b), it will be treated as a change to the original information.

COMMENT:

It was asked whether CAFES (Customs Automated Forms Entry System) was compatible with Air AMS for use on in-bonds.

CBP RESPONSE:

CAFES is not yet compatible with Air AMS for merchandise arriving via air.

Truck/Air Issues

COMMENT:

The use of Air AMS should be allowed for goods transiting the border by truck in lieu of a truck manifest. It was advocated that Customs brokers at the border should be required to transmit data through Air AMS for cargo that originated as an air shipment and arrived in a contiguous foreign country, notwithstanding that the cargo would be crossing the border into the United States by truck.

CBP RESPONSE:

The Air AMS system is the electronic cargo reporting data interchange for merchandise arriving via an aircraft. Merchandise arriv-

ing via another mode of transportation, including by truck, must be reported in the manner specified for such mode. Thus, if the merchandise crosses the U.S. border on a truck, such merchandise is not considered to be an air shipment, notwithstanding that such cargo may have arrived in the contiguous foreign country by air. As such, in the event that merchandise, which was previously reported to arrive via an aircraft, should change its mode of transportation prior to arrival in the United States, the previously transmitted information must be cancelled and then reported in the manner appropriate to the actual mode of transportation employed in bringing the merchandise into the United States.

Shipments by U.S. Postal Service; Letters and Documents Otherwise Shipped

COMMENT:

A number of commenters believed that the advance cargo reporting rules should be applied to shipments through the United States Postal Service (USPS).

CBP RESPONSE:

Paragraph K of section 343(a)(3) of the Trade Act of 2002 (19 U.S.C. 2071 note, section (a)(3)(K)), compels consultation with the Postmaster General in considering what type of electronic cargo information requirements should be imposed upon carriers of mail shipments through the USPS. The CBP still has this issue under consideration. Should a determination be made to extend the advance electronic cargo information mandate to USPS shipments, such postal shipments would be the subject of a separate rulemaking procedure. Current procedures regarding the processing of shipments for the USPS will remain in effect.

COMMENT:

Shipments of letters and documents, including the material described in General Note 19(c), Harmonized Tariff Schedule of the United States (HTSUS), that were transported by air otherwise than through the USPS, should also be exempted from full advance cargo reporting requirements.

CBP RESPONSE:

The CBP has decided to make the requirements for advance cargo information for letters and documents the subject of a separate publication in the **Federal Register**. Proposed § 122.48a(d)(3) concerning advance cargo information requirements for letters and documents is thus removed from this final rule.

Liability Issues

COMMENT:

Should the shipper provide inaccurate information in the description, shipper or consignee fields, it was urged that the incoming carrier or other electronic filer presenting such information to CBP not be held liable.

CBP RESPONSE:

Whether or not liability would be imposed on a carrier in such circumstances would be governed by section 343(a)(3)(B), as amended, and § 122.48a(c)(5) in this final rule. Section 122.48a(c)(5) provides that CBP will take into consideration how, in accord with ordinary commercial practices, the presenting party acquired the information submitted and whether and how that party is able to verify such information. Where the information is not reasonably verifiable, the party will be permitted to present such information based upon a reasonable belief as to its accuracy.

COMMENT:

Three commenters wanted to know whether the carrier would be liable for the submission of house air waybill information where another party that elected to furnish this information to CBP did not do so.

CBP RESPONSE:

The carrier will indicate in the master air waybill record if another party will be transmitting the house air waybill data. If such other party fails to comply with the advance cargo reporting provisions, this party, and not the incoming carrier, will be held liable.

COMMENT:

One commenter inquired as to who would be responsible for submitting advance cargo data in the case of a chartered aircraft.

CBP RESPONSE:

In the case of a time or voyage charter, the aircraft owner/operator is the party required to transmit the information. In the case of a bareboat charter, where the charterer in effect becomes the owner of the aircraft (the owner *pro hac vice*), the bareboat charterer would be responsible for reporting the cargo information to CBP.

COMMENT:

A question was presented as to what kind of penalty would be imposed on airlines that failed to meet the advance time frame submission.

CBP RESPONSE:

An incoming air carrier failing to meet the advance reporting time frame may be liable under 19 U.S.C. 1584 as well as under other pertinent penalty provisions (see § 122.161, Customs Regulations; 19 CFR 122.161). Should another party electing to file advance cargo information fail to do so, such party may be liable for liquidated damages pursuant to its Customs bond.

COMMENT:

It was asked who would be responsible for transmitting cargo data to CBP where a number of freight forwarders co-loaded cargo.

CBP RESPONSE:

Either the incoming carrier or one of the parties qualified to do so under § 122.48a(c)(1) will be responsible for supplying the information for all house air waybills under a single consolidated master air waybill.

Data Elements

COMMENT:

A couple of commenters took exception to the requirement that the flight number for the incoming aircraft be reported 4 hours prior to arrival. The flight number could change. Also, it was unclear how the indirect air carrier would know the exact flight number.

CBP RESPONSE:

Only the incoming carrier is responsible for the transmission of the flight number. The carrier should be aware of its flight number at the time of its required transmission.

COMMENT:

It was stated that the proposed data elements designated as conditional ("C") were not currently captured and would require significant modifications to the freight reservations, reporting and tracking systems and that this would be at significant cost to the carrier.

CBP RESPONSE:

These data elements are essential to effective cargo targeting. It is also observed that these data elements have previously been received from other air carriers through Air AMS.

COMMENT:

Three commenters inquired as to whether the carrier would still have to provide house air waybill numbers, pieces, weight and description on its paper air cargo manifest.

CBP RESPONSE:

Under proposed § 122.48(a), except as otherwise provided, a paper air cargo manifest need not be filed for any aircraft required to enter under § 122.41. In addition, proposed § 122.48(a) is further changed in this final rule to eliminate the requirement that a cargo manifest be retained aboard any aircraft required to enter under § 122.41; however, a copy of the air cargo manifest (Customs Form (CF) 7509) must otherwise be made available to CBP upon demand.

COMMENT:

It was asked how a company would obtain a unique identifier (which would be transmitted by the carrier to indicate its separate transmission of a portion of the required data elements).

CBP RESPONSE:

A Container Freight Station (CFS) and an Express Consignment Carrier Facility (ECCF) would be identified by its FIRMS (Facilities Information and Resources Management System) code. An air carrier would be identified by its IATA (International Air Transport Association) code. All other parties would be assigned a unique identifier by the Client Representative Branch of CBP's Office of Information and Technology (OIT) upon commencement of certification testing in Air AMS.

COMMENT:

More information was requested as to the description that would be required on the master air waybill in the case of shipments of dangerous goods. It was noted that IATA requirements did not permit a characterization of "consolidation" to be indicated as a description on the master bill.

CBP RESPONSE:

For the purposes of satisfying § 122.48a only, a cargo description of "consolidation" is sufficient at the master air waybill level. However, carriers may elect to provide additional information in the description field at the master bill level if they choose to do so.

COMMENT:

Two commenters believed that current Air AMS programming did not allow for alpha-numeric characters of house air waybill numbers to be transmitted as printed on the paper house air waybill. They inquired as to how this would be handled.

CBP RESPONSE:

Each party providing electronic cargo information must support alphanumeric characters for house air waybill records when alpha characters appear on the printed house air waybill. The CBP recognizes that some current Air AMS participants will need to undergo programming changes in order to support this feature.

COMMENT:

One commenter noted that, quite often, the Importer of Record and the “deliver to” party (the ultimate consignee) were not the same party. The commenter wanted to know whether there would be a problem if the consignee were located somewhere other than the arrival and/or destination port.

CBP RESPONSE:

The consignee need not be located at the arrival or destination port. Paragraphs (d)(1)(xi) and (d)(2)(vii) of proposed § 122.48a are revised in this final rule to so indicate.

COMMENT:

One commenter urged that CBP allow disclaimers such as “said to contain” or “shipper’s load and count”.

CBP RESPONSE:

The characterization, “Said to contain”, is not an acceptable cargo description. The approved use of “shipper’s load and count” is outlined in § 4.7a(c)(3)(ii), Customs Regulations (19 CFR 4.7a(c)(3)(ii)).

COMMENT:

Three commenters did not agree with the requirement that the smallest external packaging unit be stated; a simple pallet count should be allowed.

CBP RESPONSE:

The CBP disagrees. Such reporting is essential to ensure that no additional packages have been introduced into palletized cargo.

COMMENT:

It was requested that the Automated Broker Interface (ABI) be made mandatory for all forwarders and brokers to transmit house data to CBP for air shipments.

CBP RESPONSE:

The ABI is not the system by which electronic cargo information is to be collected under the provisions of § 122.48a.

Definitions

COMMENT:

Under proposed § 122.48a(b)(1), one commenter wanted to know what was meant by the time of departure for the United States; and in proposed § 122.48a(b)(2), it was asked whether the time of arrival in the United States would be the scheduled or the actual time of arrival.

CBP RESPONSE:

As expressly stated in § 122.48a(b)(1), the electronic cargo information must be received no later than the time of departure of the aircraft from foreign, which is the time that the wheels are up on the aircraft and it is en route directly to the United States (the trigger time is the time of departure of the aircraft for the United States). Proposed § 122.48a(b)(1) is thus further clarified in this final rule. And in § 122.48a(b)(2), the electronic cargo information must be received 4 hours prior to the actual arrival of the aircraft in the United States.

COMMENT:

One commenter stated that gray areas still persisted as to the cargo covered by the regulation, and asked, in this respect, whether company material or aircraft parts for use by the airline would need to be reported.

CBP RESPONSE:

As specified in the background discussion of the proposed rule (see 68 FR at 43580), merchandise brought in by an air carrier for its own use would be subject to the same advance cargo information filing requirements that would apply to other incoming cargo.

COMMENT:

With reference to proposed § 122.48a(d)(1)(xii), the identity of the party who issued the “consolidation identifier” was requested.

CBP RESPONSE:

The consolidation identifier is transmitted by the incoming air carrier to designate an air waybill record as a “master” air waybill.

COMMENT:

In proposed § 122.48a(d)(1)(xvii), one commenter wanted to know what a “local transfer facility” was.

CBP RESPONSE:

A local transfer facility is merely a Container Freight Station as identified by its FIRMS code or the warehouse of another air carrier

as identified by its carrier code. Proposed § 122.48a(d)(1)(xvii) is revised in this final rule to include this additional explanatory material.

Air AMS Issues

COMMENT:

It was asserted that mandatory participation in the Air Automated Manifest System (Air AMS) could not be required due to the fact that it was a voluntary program.

CBP RESPONSE:

Section 343(a)(1) of the Trade Act of 2002, as amended (19 U.S.C. 2071 note, section (a)(1)), gives CBP the authority to require the advance reporting of cargo information through an electronic data interchange system; and Air AMS is such a system. Moreover, Air AMS was developed as a component of the National Customs Automation Program (NCAP) (19 U.S.C. 1411(a)); and, in section 338 of the Trade Act of 2002, Congress amended 19 U.S.C. 1411(b) to permit CBP to require the electronic submission of information that CBP is obliged to collect.

COMMENT:

One commenter asked when the Air AMS specifications and testing protocol would be made available to the trade.

CBP RESPONSE:

The CBP will post the Air AMS specifications and testing protocols on its Web site as soon as possible. Such specifications and testing protocols will set forth the programming and operational details of the system.

COMMENT:

Since a filer could be a party with a Container Freight Station (CFS) location or a Facilities and Information Resources Management System (FIRMS) code, two commenters inquired as to whether this implied that the advance cargo transmission would have to be made from a particular U.S. location.

CBP RESPONSE:

The electronic cargo information may be sent from any location, provided that the electronic filer is one of the parties specified in § 122.48a(c)(1).

COMMENT:

It was declared that carriers currently participating in Air AMS did not have uniform system requirements or uniform procedures at

all ports of entry. The CBP should compel uniformity in system requirements and procedures at all ports.

CBP RESPONSE:

The promulgation and implementation of these regulations and the enforcement of their provisions will increase uniformity of carrier participation in Air AMS. For instance, currently, there are several methods to process cargo information and they vary at each location. This is due to the lack of authority for CBP to require automation of cargo information. This regulation will provide that authority and therefore increase uniformity. The CBP believes that all cargo declarations will be processed the same at each location. However, variations may exist in the execution of the entry not in the manifest. Each port is a little different and therefore some variations will exist but not to the extent that is occurring on a daily basis.

**Implementation of Advance Air Cargo
Data Filing Requirements**

COMMENT:

Seven commenters wanted more time to obtain access to relevant Air AMS software and communications equipment in order to make their computer interface with the system operational. The CBP was requested to accommodate the interface schedules of the carriers in this regard. Three other commenters wanted a general delayed effective date of 180 days from the date the final rule was published. One commenter recommended that the rule be delayed until all ports were operational on the system and all necessary training had been completed. Another commenter believed that CBP was not properly staffed or trained in Air AMS to support its nationwide implementation. A further commenter suggested that CBP implement a phased-in approach, by carrier, origin and destination, and that a "web portal" be installed for use by carriers and other authorized filers unable to interface with the Air AMS system.

CBP RESPONSE:

Section 343(a), as amended, was enacted on August 6, 2002, and clearly required that cargo data would need to be filed electronically. To this end, in the public meeting that was held for incoming air cargo on January 14, 2003, CBP stated that the accepted electronic interface would be the Air AMS system. Therefore, air carriers have had over one year to conduct proper research as to what type of software and computer interface options are available and what each has to offer. As such, CBP will only delay the general effective date of § 122.48a [insert date 90 days from date of publication of the final

rule in the **FEDERAL REGISTER**] for the specific reasons described in § 122.48a(e)(2).

Additionally, CBP has already identified all airports that require training in Air AMS and whether those air carriers that call on those airports are automated. By making use of this list and working with the air carriers concerned, CBP will coordinate with carriers that are ready to go online in airports that are not yet automated in order to ensure that the inspectors are properly trained, and that the air carrier has proper points of contact at that airport. However, CBP has determined that a web portal feature is not feasible at this time.

Furthermore, it is vital that the training for inspectors coincide as closely as possible with air carriers becoming automated in a port. If CBP trains the inspectors and there are no automated air carriers for several months, the training is not useful because the inspectors will not be utilizing their new skills. Therefore, the training must occur within a few weeks of an air carrier notifying CBP that it is going to become automated in a specific port.

Toward this end, CBP is striving to improve the Air AMS training that is available to the field inspectors. Currently, there are four Air AMS training classes that are held at the Federal Law Enforcement Training Center (FLETC) each year. In addition, CBP is developing a computer-based training course that will be required for each inspector at all airport locations.

System Irregularities; Paper Manifest Requirement

COMMENT:

One commenter requested specific details regarding the technical support for any problems that might be experienced during data transmissions.

CBP RESPONSE:

Requests for resolution of ordinary cargo transmission problems should be coordinated with CBP personnel at each port. In addition, each Air AMS participant has been/will be assigned a CBP client representative who is available to assist with more technical guidance.

COMMENT:

Three commenters no longer wanted to keep a paper air cargo manifest on board the aircraft since CBP was mandating electronic cargo information. In addition, the requirement for keeping a paper General Declaration on board should be deleted since all the information was sent in advance of arrival through the Advance Passenger Information System (APIS).

CBP RESPONSE:

As already noted, a paper air cargo manifest (Customs Form (CF) 7509) will no longer be required to be kept aboard the aircraft, but must otherwise be available for production upon demand. Proposed § 122.48(a) is changed in this final rule to reflect this. However, the General Declaration (CF 7507) will still be required as it contains data elements not otherwise collected through APIS or Air AMS.

COMMENT:

Five commenters asked how an air carrier would comply with the advance cargo notification requirements without keeping a record of every single house air waybill in addition to the archived copy of each master air waybill.

CBP RESPONSE:

Section 122.48a does not require the incoming air carrier to transmit or maintain records for house air waybill data when such data is transmitted by another electronic filer.

COMMENT:

Seven commenters recommended that a CBP office be established at all airports to respond to various irregularities.

CBP RESPONSE:

Each airport concerned will have a designated point of contact to address and resolve matters involving Air AMS.

In-Transit Issues**COMMENT:**

Four commenters suggested that in-transit cargo that remained on board the aircraft should be excluded from the proposed rule.

CBP RESPONSE:

The CBP disagrees. Such cargo could pose a cargo safety or security risk to the same extent as other cargo that arrives in the United States.

COMMENT:

It was believed that the proposed regulations did not clearly address whether air cargo that merely transited, and would not be discharged in, the United States was subject to compliance with the advance reporting time frames.

CBP RESPONSE:

In accordance with § 122.48a(a)(1), cargo that transits the United States, whether or not it is unladen from the aircraft, is subject to the advance reporting requirements of the regulation. Technical requirements to report such information electronically will be specified in the Air AMS technical manual.

COMMENT:

One commenter was concerned about who would be required to report required cargo data for in-transit cargo.

CBP RESPONSE:

Such information must be provided either by the incoming air carrier or one of the other specified parties in § 122.48a(c)(1).

Hand-Carried Baggage

COMMENT:

Five commenters advocated that hand-carried merchandise should be subject to the advance cargo reporting provisions.

CBP RESPONSE:

Hand-carried merchandise is covered by the requirements for passenger baggage and is not considered cargo subject to advance reporting under § 122.48a.

Landing Rights

COMMENT:

Five commenters suggested that CBP specify in proposed § 122.14(d) that denial of landing rights would occur only if a known security threat aboard a particular aircraft posed a higher threat to safety and security than an emergency diversion to alternative airports that could also refuse landing rights. Four other commenters believed that CBP should not deny landing rights or permission to unlade cargo based upon inaccurate information received from other parties.

CBP RESPONSE:

The provision to deny landing rights is generally intended for those air carriers that fail, repeatedly and egregiously, to furnish timely and accurate cargo information in advance. In such a situation, CBP would have the authority to deny landing rights for that air carrier in the future. Assuredly, this provision would not be executed without careful deliberation and dialogue with the air carrier as to its lack of compliance.

In addition, pursuant to section 343(a)(3)(B), as amended, and § 122.48a(c)(5), as already noted, if the carrier electronically transmitting cargo information has received any of this information from another party, CBP, in deciding issues of liability, will take into account how, in accordance with ordinary commercial practices, the carrier acquired the transmitted information and whether the carrier was reasonably able to verify the information. Depending upon these circumstances, CBP reserves the authority to deny landing rights or permission to unlade if an air carrier fails to fulfill its responsibilities under these regulations.

Corrections to Cargo Information

COMMENT:

Five commenters wanted clarification as to the procedure for making any changes to the cargo information already transmitted for a flight.

CBP RESPONSE:

Complete and accurate information would need to be presented to CBP for cargo laden aboard the aircraft no later than the applicable time specified in § 122.48a(b). As for any changes in the cargo information already transmitted for a flight, the procedures for amending the cargo declaration including discrepancy reporting will be the subject of a separate rulemaking.

COMMENT:

Two commenters inquired about who would be responsible in the case of a data discrepancy between a master air waybill and a house air waybill.

CBP RESPONSE:

The party that transmits the information would be responsible for its correction. Communication between the air carrier and any other electronic filer for the incoming cargo should be maintained in order to avoid such discrepancies.

COMMENT:

It was asked whether an electronic transmission to correct inaccurate data could be initiated from the port of destination when the initial electronic transmission occurred at the point of departure for the United States.

CBP RESPONSE:

Any party supplying information will be able to correct such information, regardless of the station from which its transmission electronically originated. Cargo Transfer

COMMENT:

A question arose as to whether the deconsolidator's Facilities and Information Resources Management System (FIRMS) code or the carrier's identifier would be needed for incoming cargo that would be handled through a local transfer facility; and whether such information could be transmitted after arrival of the cargo.

CBP RESPONSE:

A FIRMS code is the necessary data element for cargo that would be transferred to a deconsolidator or a Container Freight Station (CFS) within the limits of the port. Should the cargo be intended for transfer to another carrier's station within the port, the code of that carrier is required. Proposed § 122.48a(d)(1)(xvii), as already mentioned, is revised in this final rule to include this additional explanation. This information must be transmitted in advance of arrival together with the other required data in § 122.48a(d)(1) and (d)(2).

Split Shipments**COMMENT:**

Because shipments that were split by the incoming carrier would affect the transmission for that cargo by another electronic filer, the rules for the handling of split shipments in Air AMS should be further clarified.

CBP RESPONSE:

When the incoming air carrier elects to split a master air waybill into multiple arrivals, the carrier will be required to transmit to CBP a number of additional data elements for each house air waybill covered by the master air waybill record. Specifically, the carrier will be required to transmit the house air waybill number, certain transportation and arrival information, the manifested and boarded quantities, and the manifested and boarded weights. As such, the informational requirements for split shipments described in proposed § 122.48a(d)(1)(xiii) are revised and included in this final rule as a new § 122.48a(d)(3) (proposed § 122.48a(d)(3) dealing with the summary manifesting of letters and documents, as previously noted, is deleted from this final rule and will be the subject of a separate **Federal Register** publication). Also, further technical specifications regarding the issue of split shipments will be provided in the Air AMS technical guidelines.

Changes in Business Practices**COMMENT:**

One commenter stated that it was an undue hardship to force companies onto Air AMS if another system were going to supersede it

later on, and that companies would be forced to undergo the expense of conforming to new computer programming.

CBP RESPONSE:

The CBP will rely, at least initially, upon the Air AMS, with appropriate future modifications, as the principal vehicle to achieve the goal of advance cargo data filing under section 343(a), as amended, in order that these regulations may be implemented at the earliest practicable time, as an urgent and critical national security imperative. However, it is assured that any new system developed within the framework of the Automated Commercial Environment (ACE) will be compatible with these implementing regulations. For this reason, the regulations refer generically to a CBP-approved electronic data interchange system (rather than to Air AMS, specifically).

COMMENT:

Companies would need to shift current workload that was done at destination ports to the ports of departure, and those ports were not properly staffed to handle the workload.

CBP RESPONSE:

The CBP is fully aware that some changes in business practices may be necessary. For example, it has been a common practice for the industry to input cargo information while the aircraft is in-transit to its destination. This practice will need to change to require the information in a timely manner so as to meet the time frames identified by this final rule. The CBP has attempted to balance the concerns of the trade by affording a delayed effective date in the implementation of the advance air cargo reporting regulations as provided in § 122.48a(e), while, at the same time, recognizing the compelling national security need to move as deliberately as possible to protect cross-border commerce from the threat posed to cargo safety and security by international terrorism.

COMMENT:

It was observed that for shipments with multiple intermediate foreign stops before final departure for the United States, freight forwarders needed the ability to transmit data elements to CBP at the time of departure from the departure station/location.

CBP RESPONSE:

Those parties authorized to transmit house air waybill level information, as specified in § 122.48a(c)(1), will be able to do so prior to the transmission of the master air waybill information by the incoming air carrier.

General/Miscellaneous Issues

COMMENT:

When an incoming air carrier has transmitted data to CBP for incoming cargo, one commenter inquired whether that carrier's ground handling agent, or other party, holding the goods following their arrival would also need to be automated in order to have access to the electronic freight status notifications concerning the cargo.

CBP RESPONSE:

Participants in Air AMS, including the incoming air carrier, must be able to honor all electronic freight status notifications transmitted by CBP. Whether the carrier elects to employ a ground handling agent or not, the carrier is responsible for maintaining control of the cargo pending CBP disposition.

COMMENT:

A question was raised as to how the carrier was to be advised that the house air waybill information had been transmitted to CBP.

CBP RESPONSE:

The CBP does not anticipate transmitting a message to the carrier when the house air waybills are transmitted by another party. However, the failure to transmit house air waybill information for consolidated shipments, as prescribed in § 122.48a(d)(2), would preclude the release or transfer of any cargo covered by the consolidation. Thus, communication between the incoming carrier and any other electronic filer of house air waybill information, if applicable, would be essential.

In this latter connection, the Air Automated Manifest System (AAMS) has a feature known as the Freight Status Query (FSQ) message. The party that transmitted the message or another AAMS participant that has been authorized by the message originator may query the status of an air waybill record in AAMS. This feature may be invoked on a transactional basis to provide the AAMS participant with confirmation that an air waybill is on file along with details about the record.

However, to provide an automatic confirmation receipt message for every air waybill transmission would create substantial programming costs for CBP and AAMS participants. It would also substantially increase data storage and communications costs. The FSQ message provides the same information but need only be invoked on a case-by-case basis.

COMMENT:

An issue was raised as to whether a party that was both an Automated Broker Interface (ABI) filer as well as a Container Freight

Station/Deconsolidator and in possession of an international carrier bond could transmit cargo data at ports where the consolidation cargo remained under the custody of the air carrier.

CBP RESPONSE:

A party authorized to transmit electronic cargo information, as provided in § 122.48a(c)(1) and (d)(2), will be able to do, even if the cargo remains in the custody of the incoming carrier.

COMMENT:

One commenter wanted to know if there would be any amendment of requirements pertaining to international carrier bonds.

CBP RESPONSE:

The changes to the international carrier bond requirements are set forth in § 113.64(a) and (c) in this final rule.

COMMENT:

Additional explanation was sought concerning what procedures an air carrier would need to follow if cargo were targeted for inspection by CBP.

CBP RESPONSE:

If it is found that a physical inspection of the cargo is necessary, CBP will electronically notify the carrier or other cargo custodian and make arrangements for its examination. In so doing, CBP would work with the carrier to ascertain an appropriate location to examine the potentially high-risk cargo.

COMMENT:

Air cargo that would arrive in the United States on a permit to proceed from the port of arrival should be allowed to move to the port of unloading notwithstanding that a hold was placed on the air waybill covering the cargo due to insufficient data.

CBP RESPONSE:

If CBP determines that a physical inspection is necessary or if additional information is required, the cargo will be held at the port of first arrival pending resolution of the matter.

COMMENT:

Concern was expressed that CBP ABI/AMS client representatives would not be able to sufficiently handle the additional workload under the new regulations. It was suggested that a study be done to

measure the current level of service to the trade and that such a study should be shared with the trade.

CBP RESPONSE:

The CBP does not believe that a study of client representative workload is necessary to the implementation of this rule. In the unlikely event that such a contingency should arise, § 122.48a(e)(2), as previously observed, does provide that the effective date of the rule may be further delayed if more time is needed to complete the certification testing of new participants.

Rail Cargo Destined to the United States

Time Frame

COMMENT:

Four commenters mentioned that cargo manifest information transmitted to CBP through the Rail Automated Manifest System (Rail AMS) could be made available two hours prior to arrival. However, information on the train sheet, sometimes called a consist (consisting of data such as the train's identification, locomotives' and cars' numbers and initials and the train's schedule) was not part of the advance cargo manifest data. This information would only be available when the final trans-border train was assembled, and in many cases, would only be available for transmission one hour prior to arrival at the border. One other commenter also advocated that the time period be reduced to one hour prior to arrival consistent with incoming truck traffic.

CBP RESPONSE:

The CBP remains of the opinion that the 2-hour period for presenting rail cargo data prior to arrival effectively balances the impact on rail cargo safety and security with the likely impact on the flow of rail commerce into the United States. As such, this time frame represents the minimum period during which CBP is confident that essential targeting can still be accomplished, without a concomitant undue disruption to rail business practices.

In addition, without proper consist information (which identifies the incoming train, and gives its locomotives' and cars' numbers and initials and the train's schedule), CBP would not have the complete information essential for targeting on the incoming cargo in connection with the particular train on which the cargo would arrive. The availability of information on both the cargo and the arriving conveyance as provided in the rail consist is vital in order to enable CBP to do its targeting effectively in the time required.

Required Data; Carrier Responsibility**COMMENT:**

Four commenters wanted it made clear that a railroad was required to provide the scheduled date and time of arrival to the best of its knowledge, and that a railroad should not be penalized or held responsible should that date and time prove inaccurate within some reasonable time frame.

CBP RESPONSE:

The railroad carrier must provide the scheduled date and time of arrival to the best of its information, knowledge and belief at the time that this information is filed. However, carriers will be held responsible for failure to keep CBP informed of any changes in this information as it becomes available.

COMMENT:

Rail carriers should not be held responsible for the accuracy of information supplied by others. The CBP should change the language in proposed § 123.91(c)(2) to state that where the rail carrier electronically presenting the cargo information received any of this information from another party, the rail carrier would not be held responsible for the inaccuracy of any information supplied by that other party.

CBP RESPONSE:

The CBP disagrees. Section 123.91(c)(2) repeats, and CBP is bound by, the statutory standard against which the potential liability of a rail carrier would effectively be gauged in presenting inaccurate cargo data to CBP that had been acquired from another party.

COMMENT:

It was important that Rail AMS be able to manage multiple shipment data. The CBP would need to coordinate implementation of this aspect of the process with all elements of the supply chain and with U.S. trading partners.

Specifically, the requirement that the rail carrier supply information from the house bill of lading was problematic. In most cases, railroads would only have the capability of receiving one bill of lading and that bill would generally be a master bill of lading. Also, if the railroad had a container holding several consolidated shipments with individual house bills associated with each shipment, even if the railroad had the capability of receiving the individual house bills, information from such bills could not be transmitted to CBP in-

asmuch as Rail AMS could only handle the transmission of one bill of lading in association with the cargo manifest data for that one shipment.

CBP RESPONSE:

The CBP is currently reviewing Rail AMS programming requirements to release the edit that only allows one bill of lading per shipment, which will enable house bills of lading to be utilized in the rail environment. In addition to possible programming changes, CBP is reviewing the prospect of authorizing other parties to transmit information via Rail AMS. This would further facilitate the submission of the house bill of lading information that is required on all shipments.

Should CBP decide to allow another electronic filer to voluntarily present house bill information for a shipment through Rail AMS, a test program notice to this effect would first be published in the **Federal Register** pursuant to § 101.9(b) and (b)(1), Customs Regulations (19 CFR 101.9(b) and (b)(1)), inviting public comments on any aspect of the proposed test and informing interested members of the public of the basis for selecting participants, the eligibility criteria for participation in the test, and the effect of such participation on the responsibilities of incoming rail carriers for the transmission of required advance cargo data to CBP.

COMMENT:

Proposed § 123.91(d)(4) stated that carriers would have to supply the numbers and quantities of the cargo laden, as contained in the carrier's bill of lading, either master or house, as applicable, which meant the quantity of the lowest external packaging unit. This information was contained in the house bill, not the master bill. For a container shipment, the railroads would only know the quantity expressed on the master bill, which might not be at the level of the lowest external packaging unit.

Similarly, proposed § 123.91(d)(6) and (d)(7) would require that the railroad carrier provide the complete name and address for the shipper and consignee respectively. Again, however, the master bill of lading possessed by the rail carrier could contain only the name of a freight forwarder instead of the actual shipper and consignee; if so, the rail carrier would not know the identity of the actual shipper and consignee.

CBP RESPONSE:

House bill of lading information is required under this regulation; therefore, as already discussed, CBP is reviewing programming

changes to Rail AMS that would enable the system to accept such information. Hence, when Rail AMS is programmed to capture house bill of lading information, and when the rail industry has been given additional time to make essential adjustments to its own programming for the transmission of such house bill data through Rail AMS, all the referenced data elements would, at such time, need to be presented to CBP, which would include information for the shipper and consignee, including the full name and address of each, as well as the numbers and quantities (of the lowest external packaging unit) of the cargo laden aboard the train. To this end, CBP will take these programming matters into account in establishing the effective date(s) for implementing the incoming rail cargo data regulation (see § 123.91(e) in this final rule).

COMMENT:

One commenter suggested that it might be difficult or impossible for the rail carrier to obtain the necessary cargo information when the rail cargo had initially arrived in Canada or Mexico by vessel or air carrier from another foreign country. In such a case, unless the ocean or air carrier had first required the complete disclosure of all information at the port of loading in the other foreign country, and thereafter passed this information along to the rail carrier, there would be no way that the required information would be available to the railroad.

CBP RESPONSE:

For cargo that is transferred in Canada or Mexico to a rail carrier for shipment to the United States, whether such cargo originated in Canada or Mexico or was first brought there by a vessel or air carrier from another foreign country, the rail carrier, as explained above, will be required to provide the requisite data elements for such cargo to CBP.

Line Release

COMMENT:

The CBP should retain Line Release not only for the present as stated in the proposed rule, but for the long term, as it was declared to be critical for cross-border rail traffic.

CBP RESPONSE:

The CBP fully recognizes the importance of Line Release for Rail AMS. In fact, CBP has recently made Line Release available, for rail shipments only, to ports that ordinarily would not have access to it, as part of CBP's Rail AMS port automation efforts.

Automated Line Release in rail is what is known as the Border Release Advanced Screening and Selectivity program (BRASS) in the Truck environment. The difference is that the information is all electronic and supplied in advance of arrival.

Implementation Date(s) for Rule

COMMENT:

Further guidance was sought as to the implementation date(s) for the proposed regulation.

CBP RESPONSE:

Quite plainly, under § 123.91(e), rail carriers must commence the advance electronic transmission of required cargo information 90 days from the date that CBP publishes a notice in the **Federal Register** informing affected carriers that the data interchange system is in place and operational at the port of entry where the train would first arrive in the United States. As such, before the rule can become operational at any port, including any port(s) where Rail AMS is now operational, the initial publication of a **Federal Register** notice naming such port(s) would be a mandatory prerequisite. At present, there are 35 CBP ports that have rail crossings, 8 of which are not rail AMS. The CBP will require all ports that handle rail cargo to become automated.

Exemption for Cargo Transiting Contiguous Foreign Country

COMMENT:

The proposed rule (§ 123.91(b)) would expressly exempt from advance electronic information filing requirements domestic cargo transported by train from one port to another in the United States by way of a foreign country. However, the proposed rule did not deal with whether such an exception applied when the shipment partly involved transportation by sea or air.

CBP RESPONSE:

Only a land-based conveyance, such as rail or truck, would be involved with carrying goods on a continuous movement from one port to another in the United States by way of a contiguous foreign country, whether Canada or Mexico. This is the specific situation addressed in § 123.91(b); such a situation would simply not arise in the vessel or air mode. Proposed §§ 123.91(b) and 123.92(b)(1) (for trucks) are revised in this final rule to explicitly reference Canada and Mexico in this respect.

Truck Cargo Destined to the United States

Implementation Issues

COMMENT:

As was done in the 24-hour rule, one commenter wanted a grace period between the implementation date of the final rule and its enforcement date (no penalties assessed for non-fraudulent violations).

CBP RESPONSE:

Similar to that which was done in the context of the 24-hour rule (67 FR 66318), as previously detailed, *supra*, CBP will follow a phased-in enforcement/compliance program, after § 123.92 becomes effective at a specific port of arrival. As such, during the phased-in period, CBP would not customarily initiate enforcement actions such as assessing penalties for non-fraudulent violations of § 123.92. And, under § 123.92(e), the effective date for advance data filing for incoming truck cargo is itself initially delayed until 90 days from the date that CBP publishes a notice in the **Federal Register** informing affected carriers at the given port that the approved data interchange is operational there and that carriers must commence the filing of the required data.

COMMENT:

Two commenters sought to delay the implementation of proposed § 123.92 until carriers, brokers, and importers had direct communication links electronically with CBP.

CBP RESPONSE:

The CBP disagrees. The advance notification requirement is largely intended to collect advance cargo information via two outstanding methods—the Automated Broker Interface (ABI), or the fully electronic version of the Free And Secure Trade (FAST) System. Delaying the implementation of § 123.92 until all parties related to the reporting of the data for incoming cargo are fully electronically interfaced with CBP, such as through FAST, or the Automated Commercial Environment (ACE), once it is deployed, would be incompatible with the expeditious implementation of section 343(a), as amended, as a national security necessity.

COMMENT:

It was suggested that CBP implement separate rules for emergency importations.

CBP RESPONSE:

Emergency situations will be handled on a case-by-case basis, depending on the facts, in CBP's enforcement discretion.

COMMENT:

It was recommended that an education enforcement contingency plan be devised to avoid possible chaotic situations at the border under the new rules.

CBP RESPONSE:

Outreach and marketing efforts are currently being undertaken to reach out to both foreign and domestic trade participants to avoid such situations at the border.

Time Frame for Advance Filing

COMMENT:

One commenter sought further explanation as to the actual start time for advance notification requirements, *i.e.*, at the time of transmission, or at the time CBP received the transmission.

CBP RESPONSE:

As expressly set forth in § 123.92(a), CBP must receive the cargo data no later than 30 minutes or 1 hour prior to the carrier's arrival at a United States port of entry, or such lesser time as authorized, based upon the CBP-approved system employed in presenting the information. Also, this point was directly addressed in the background of the proposed rule (see 68 FR at 43586).

COMMENT:

Twelve commenters recommended an abbreviated advance notification time line of 30 minutes for standard shipments and 15 minutes for Free And Secure Trade (FAST) shipments, specifically for trucks loaded within a designated border zone, to support the "Just-in-Time" (JIT) shipping industry.

CBP RESPONSE:

This identical comment was broached in the proposed rule (68 FR at 43586; Summary of Principal Comments, item "1."). At that time, CBP concluded, and continues to firmly believe, that the 30-minute or 1-hour advance time frame, in relation to the particular automated system used, is the minimum period needed to perform a targeting analysis for cargo selectivity, and, if found warranted, to arrange for an inspection or examination of the cargo following its arrival. The effect on JIT inventory practices, given these relatively brief reporting periods, should be essentially nugatory.

Against this backdrop, it is submitted that BRASS (the Border Release Advanced Screening and Selectivity program) and CAFES (the Customs Automated Forms Entry System), where the filing period would be less, will only be employed exclusively as interim, transi-

tional systems in the truck environment prior to the development and deployment of fully electronic replacements for these systems in the new truck manifest module scheduled for delivery under the Automated Commercial Environment (ACE); the employment of BRASS and CAFES under the circumstances is thus due in large measure to the conspicuous lack of electronic information systems prevalent in the trucking industry, especially along the Southern Border.

COMMENT:

Six commenters asked that CBP implement the 15-minute advance electronic notification period currently used under the FAST voluntary test program.

CBP RESPONSE:

The FAST program is designed to enhance security and safety in processing commercial importations along the Northern and Southern borders, while also enhancing the economic prosperity of the U.S., Canada, and Mexico by aligning, to the maximum extent possible, their customs commercial programs. While the program will still, of course, function in this capacity, nevertheless, with reference to its relationship with section 343(a), as amended, FAST will also be used for purposes of ensuring cargo safety and security and preventing smuggling. As such, and for the reasons set forth above, CBP finds it advisable to extend the overall time frame for FAST transactions to a full 30 minutes prior to arrival as an additional security measure under the program.

Thus, shipments eligible for FAST must be reported at least 30 minutes before the arrival of the conveyance at the first port of entry. FAST shipments may be reported through one of two release mechanisms: through the all-electronic transmission of conveyance, driver and shipment information, formerly known as the National Customs Automation Program (NCAP) prototype; or through the use of the Pre-Arrival Processing System (PAPS) version of cargo selectivity. All other truck shipments still not allowed release via BRASS, must utilize PAPS and submit the data one hour before arrival of the truck. For an additional extensive review of the FAST, PAPS, BRASS, and CAFES systems, see the proposed rule at 68 FR 43586–43587.

COMMENT:

Seven commenters requested that CBP initiate an electronic confirmation/receipt system, that would notify the broker/carrier that information was received, thus starting the 30-minute/1-hour clock.

CBP RESPONSE:

The CBP already has a system in place that notifies the ABI transmitter that the data was received. This information is only available to the ABI transmitter. At this time, any notification to the carrier of successful data transmission must come via the ABI filer. Additionally, it should be pointed out that this program has already been successfully used without the need for direct electronic confirmation from CBP.

Data Systems to be Used; In-Bond Reporting

Free And Secure Trade System (FAST)

COMMENT:

Four commenters wanted to know when FAST, which was only available at a limited number of Northern Border ports, would be extended to other ports, including those along the Southern Border. Four other commenters wanted the FAST program defined in the regulations as a method of acceptable cargo release.

CBP RESPONSE:

A general notice published in the **Federal Register** (68 FR 55405) on September 25, 2003, announced the expansion of, and the eligibility requirements for, FAST along the Southern Border. The Southern and Northern border implementation schedule for FAST is also available on the CBP Web site (www.cbp.gov). This general notice also clearly defines FAST and its requirements.

COMMENT:

Four commenters advocated that less-than-truckload (LTL) carriers be allowed to participate in FAST.

CBP RESPONSE:

The current eligibility criteria for participation in the FAST program is set forth in the general notice that was published in the **Federal Register** (68 FR 55405) on September 25, 2003 (see 68 FR at 55406).

Pre-Arrival Processing System (PAPS)

COMMENT:

It was suggested that CBP utilize the pre-file system, as was being done along the Southern Border.

CBP RESPONSE:

The CBP contemplates mandating the implementation of the Pre-Arrival Processing System (PAPS) for all land border sites. The

PAPS system, which uses the Automated Broker Interface (ABI), provides CBP with advance arrival information and includes carrier and importer information that is not included in the Southern Border Pre-file system. The PAPS system will basically also mesh with the advance truck manifest module when it is developed in ACE, while the Pre-file system would not.

COMMENT:

The CBP should not deny the entry of PAPS shipments for failure to meet the required advance notification time. This could occur where Commercial Vehicle Processing Centers (CVPC) were not present.

CBP RESPONSE:

In instances where CVPCs are not present, it is still the responsibility of the carrier or the importer/broker, as applicable, to ensure that the ABI transmitter receives the appropriate entry information via fax or by other means.

Should cargo information not be received within the allotted time frame, CBP may pursue any of the following options: (1) Denying a permit to unlade; (2) Delaying the release of the cargo until security screening is complete; and/or (3) Assessing a penalty/liquidated damages.

COMMENT:

Three commenters sought the continued use of bar code labels until transponders were available.

CBP RESPONSE:

The CBP will continue to support the use of bar codes to identify PAPS shipments, as an acceptable method for processing the entry and release of cargo.

COMMENT:

Four commenters questioned what software would be called for and what cost and training investment would be needed. Four other commenters wanted the proposed rule to deal with alternative methods of advance electronic presentation of cargo for those parties without access to an approved data interchange.

CBP RESPONSE:

All current ABI transmitters in the truck mode have access to the ABI transmission module, which requires no new additional modifications or software changes. New individual filers may have to make some changes to their existing software, either through in-house programming or via their software vendors. However, the ABI capabilities to be utilized have been available within ABI for many years. It

is the carrier's, shipper's or other trade partner's responsibility to ensure that the ABI transmitter receives the appropriate entry information via fax or by other means.

A party seeking to file cargo information with CBP electronically, who does not have an approved data interchange, may employ either the services of an automated Customs broker, or a service provider or an ABI service bureau for this purpose (see § 143.1(a) and (c), Customs Regulations; 19 CFR 143.1(a) and (c)).

Border Release Advanced Screening And Selectivity (BRASS)

COMMENT:

Two commenters desired that CBP expand system capabilities to include advance manifest procedures for BRASS and in-bond shipments and include instructions for a Monthly Manifest.

CBP RESPONSE:

The BRASS system, which is largely paper-based, will be employed, on an interim basis, for reporting data for incoming cargo. However, additional requirements may be implemented for BRASS to ensure that BRASS transactions achieve the basic objectives of cargo safety and security pursuant to section 343(a), as amended.

As additional interim measures, CBP will continue to employ CAFES or ABI in-bond reporting systems where available. The CBP also intends to continue support for what is known as Monthly Manifest (which applies to automotive products), until the periodic summary reporting that Monthly Manifest supports is available electronically. The Monthly Manifest program, and instructions for this program, however, fall outside the scope of this document.

COMMENT:

Five commenters sought additional explanation concerning the use of BRASS as a cargo reporting system under proposed § 123.92.

CBP RESPONSE:

As a strictly interim, transitional procedure, CBP intends to allow the continuation of BRASS for trucks, but anticipates instituting some additional measures that would otherwise modify BRASS to enhance the security of BRASS transactions. To this end, CBP will take those measures deemed necessary to safeguard the integrity of the BRASS program, which could include program requirements such as FAST Driver registration and participation in the Customs-Trade Partnership Against Terrorism (C-TPAT). However, with the incorporation of a fully electronic version of BRASS planned in the new truck manifest module in ACE, CBP does not propose making

any changes to the method in which the current paper-based BRASS operates.

COMMENT:

One commenter advocated that CBP restrict the use of BRASS to C-TPAT approved importers.

CBP RESPONSE:

The CBP will consider adding this type of security enhancement to the BRASS system. However, for the present, CBP will use C-TPAT membership in targeting incoming cargo for examination, including cargo that is subject to reporting through the BRASS system.

In-Bond Systems; Bar Codes

COMMENT:

Five commenters desired further guidance under the proposed rule concerning in-bond entries for immediate transportation to another port of entry, and the use of the 2-D bar code label under in-bond provisions.

CBP RESPONSE:

As explained in the proposed rule (68 FR at 43587), CBP will continue to employ CAFES or ABI in-bond reporting systems where available. The CAFES system handles in-bond shipments utilizing 2-D bar codes that are printed on the Customs Form (CF) 7512 in-bond entry document. Because the use of bar codes is required for CAFES, BRASS, PAPS, and other functions, CBP will continue to support the use of such bar codes in accordance with these systems.

Required Data Elements

COMMENT:

Two commenters pointed out that proposed § 123.92(c)(2) allowed for dual party presentation of the required data, but did not indicate which data elements were required from the carrier, importer or broker.

CBP RESPONSE:

Where there is dual-party presentation of the data elements listed for incoming cargo in § 123.92(d), the parties to the transaction should decide which data elements each will submit. It is, of course, presumed that if an importer or its broker elected to file advance cargo information with CBP, such data would typically encompass any required commodity and other related information that it possessed with respect to the cargo, as such information would likely be

better known to the importer or its broker; and, for the same reason, the carrier would present the required data pertaining to the carriage of the cargo (see 68 FR at 43587). However, CBP will not parse the data elements in § 123.92(d), and rigidly mandate their respective assignment between the carrier and importer or broker.

COMMENT:

In proposed § 123.92(d)(2), one commenter desired the elimination of the Standard Carrier Alpha (SCAC) code, because carriers along the U.S.-Mexican border did not have SCAC codes.

CBP RESPONSE:

The CBP disagrees. The ability to identify the carrier is critical to target and assess the risk posed by shipments crossing the border. In this regard, the SCAC code is a unique four-letter code used to identify transportation companies; this unique carrier identifier supports the electronic data interchange for all motor carriers. A carrier may obtain a SCAC code by contacting the National Motor Freight Traffic Association, Inc., 2200 Mill Rd., Alexandria, VA 22314-4654.

COMMENT:

One commenter mentioned that the proposed rule did not deal with a possible variation between the scheduled date of arrival and the actual date of arrival, and whether a difference in these times would result in a breach of the importer's entry bond.

CBP RESPONSE:

In § 123.92(d)(6), the specific information required is the scheduled date and time of the carrier's arrival at the first port of entry in the United States. However, should there be a delay in the carrier's arrival following its data transmission, this may raise targeting concerns and prompt further inquiry/inspection. In any event, notwithstanding the scheduled arrival of the truck, the presentation of the required cargo data is related to the carrier's actual time of arrival in § 123.92(a).

COMMENT:

Four commenters wanted the data elements for inbound truck cargo aligned with those data elements that would be required under the Automated Commercial Environment (ACE) once it is developed.

CBP RESPONSE:

As the ACE is under development and its precise features have not as yet been determined, this comment falls outside the scope of this document.

Exemptions

COMMENT:

The proposed rule should exempt informal entries from advance data reporting.

CBP RESPONSE:

Section 123.92(b)(2) does exempt informal entries from the advance cargo information notification provisions.

COMMENT:

All radioactive materials entering the United States should be subject to prior notification, even if the shipment only transited a contiguous foreign country while en route from one port to another in the United States.

CBP RESPONSE:

Upon arrival in the United States, all shipments, including those merely in-transit through a contiguous foreign country, will be scanned for radiation in primary truck lanes, and in-transit manifests, if applicable, must be tendered at that time.

Examination/Inspection; Penalties/Liquidated Damages; Refusal of Admission

COMMENT:

One commenter suggested processing trucks away from the border, prior to reaching the bridge, especially for Detroit and Buffalo.

CBP RESPONSE:

The concept of examining and processing trucks prior to their entry into the United States is currently being explored with Canada. It is a complex and sensitive issue involving matters of national sovereignty and the authority to enforce laws outside the United States.

COMMENT:

One commenter inquired as to whether it would be acceptable for a carrier to arrive physically and wait in a holding area while the driver/carrier coordinated with the broker to ensure that proper advance information had been provided.

CBP RESPONSE:

Because secondary examination areas are limited in space, CBP will not allow the shipment to be staged at a designated waiting area in the port of arrival either while the entry documentation is being processed or while the carrier consults with a broker to determine if the information has been presented in the manner prescribed.

COMMENT:

Thirteen commenters expressed alarm over the prospect that the admission of cargo to the United States could be refused if the advance notice was not received.

CBP RESPONSE:

Once implemented at a port, the advance cargo reporting provisions would be obligatory for all required cargo. For any inward carrier for which advance electronic commodity and transportation information was not presented to CBP, as otherwise required in the regulations, the transporting carrier, depending on the specific circumstances involved, could be refused permission to unlade until all security screening and necessary examination was initiated and concluded, in addition to being subject to applicable statutory penalties. In the alternative, the carrier could be refused admission to the United States depending, once again, upon the particular circumstances involved.

Type of Carrier; Carriage of Instruments of International Traffic

COMMENT:

Two commenters sought the creation of procedures for the movement of instruments of international traffic, including the movement of empty containers aboard trucks.

CBP RESPONSE:

With the exception of FAST, CBP will not require any advance notification if the shipment consists solely of empty articles (pallets, tanks, cores, containers, and the like) that have been designated as instruments of international traffic (IITs). However, if the IITs are commingled with other commercial cargo, CBP will, of course, require the requisite arrival notification for such commercial cargo via the authorized CBP-approved electronic data interchange system; and any empty IITs carried aboard the conveyance must be identified as such and listed on the carrier's paper manifest.

COMMENT:

Three commenters questioned whether there was a distinction between an inward truck carrier as opposed to a drayage carrier. Also, they wanted to know whether there would be any differences in treatment between carriers on the Northern and Southern Borders.

CBP RESPONSE:

The CBP defines a drayage carrier as one that only moves cargo locally (such as a cartman who only moves cargo within the limits of

a port), as opposed to an incoming truck carrier which is understood to be engaged in the international movement of cargo coming from Canada or Mexico. Also, as previously assured, until the development of the truck manifest module in ACE, CBP will employ existing data systems on both the Northern and Southern Borders to receive and evaluate cargo information for incoming truck shipments.

Cargo Departing from the United States; All Modes

Time Frames For Transmitting Required Data for Outbound Cargo

COMMENT:

One commenter wanted to know whether there could be a pre-departure report for cargo that did not have an export license.

CBP RESPONSE:

There may be pre-departure reporting for shipments without an export license. General export reporting requirements may be found in the Bureau of Census Regulations (15 CFR 30.1–30.2).

COMMENT:

The proposed twenty-four hour advance notification for outgoing vessel cargo in proposed § 192.14(b)(1)(i) would considerably add to transit time, with adverse impact especially upon perishable goods.

CBP RESPONSE:

Since the responsibility rests with the USPPI, and not the ocean carrier, to provide the advance data to CBP, there should be no undue burden placed upon the carrier. The Option 4 post-departure filing program will remain and will be available to exporters of perishables that meet requirements for volume, low-risk commodity, and compliance with export regulations.

COMMENT:

The phrase, “no later than 24 hours prior to the departure of the vessel”, in proposed § 192.14(b)(1)(i), should be further explained.

CBP RESPONSE:

For greater clarity, this phrase in § 192.14(b)(1)(i) is changed to read: “no later than 24 hours prior to departure from the U.S. port where the vessel cargo is to be laden”.

COMMENT:

In proposed § 192.14(b)(1)(ii), one commenter suggested a longer time frame for submitting air cargo data, while two commenters wanted the proposed 2-hour advance time frame reduced.

CBP RESPONSE:

The CBP finds that the 2-hour advance time frame in § 192.14(b)(1)(ii) is necessary for CBP targeting purposes, and should not unduly disrupt the flow of outbound air commerce. The CBP will continue to work with the express consignment industry to explore interim use of the External Transaction Number (XTN) by those companies that are able to provide CBP access to existing automated export manifest systems with targeting capabilities.

However, for further clarification, § 192.14(b)(1)(ii) is amended in this final rule to state that for air cargo, including cargo being transported by Air Express Couriers, the USPPPI or its authorized agent must transmit and verify system acceptance of export air cargo information no later than 2 hours prior to the scheduled departure time of the aircraft from the last U.S. port.

COMMENT:

Two commenters recommended that information be submitted prior to the export shipment being delivered to the outgoing carrier, but no less than 2 hours prior to departure of the flight for foreign. The concern was expressed that an air carrier would be penalized for shipments which were tendered for movement before the electronic information filing through the Automated Export System (AES) had been completed.

CBP RESPONSE:

The USPPPI or its authorized agent must have the Internal Transaction Number (ITN) available to provide to the carrier when the cargo is tendered for export. The ITN verifies that the cargo data filing has already been completed. Carriers are only responsible for collecting the proof of electronic filing (ITN) for annotation on the carrier's outward manifest, waybill, or other export documentation covering the cargo to be shipped.

COMMENT:

Three commenters proposed that data be submitted for outbound Shippers Export Declaration (SED) shipments at the time of departure for air cargo and upon arrival at the border for truck cargo.

CBP RESPONSE:

This would not be permissible. The CBP simply cannot perform its necessary targeting and selectivity responsibilities if the information is received at the time of departure or arrival at the border.

COMMENT:

It was stated that the 4-hour notification for rail as initially proposed by CBP would directly impact operations and result in delayed

shipments. On this ground, it was recommended that the time frame for reporting outbound rail cargo be consistent with the 2-hour pre-arrival time frame for incoming rail cargo.

Also, it was stated that U.S. Principal Parties in Interest (USPPIs) who would be obligated to transmit the required cargo information at least 4 hours prior to the engine being attached to the train generally had little knowledge of rail operations. Therefore, it was urged that a mechanism should be put in place whereby a problem container could be held at a Canadian port until reporting issues were resolved.

CBP RESPONSE:

The CBP will adopt the recommendation for outbound rail that was put forth by COAC (the Treasury Advisory Committee on the Commercial Operations of the U.S. Customs Service). Thus, export cargo information must be transmitted no later than two hours prior to the arrival of the train at the border, thereby creating symmetry with the advance time frame for inbound rail cargo coming from Canada or Mexico.

The CBP observes that this two-hour time frame is established as a minimum guideline. All parties involved in export transactions are encouraged to file export cargo information as far in advance as is practicable to reduce the need for CBP to delay the export of cargo because of the need for screening, examinations, and the resolution of incomplete or incorrect records. It should be recognized that CBP will continue to exercise its authority to remove a container from an outbound train at the time of border crossing. Further, in the event that a shipment crosses into Canada without proper reporting and is determined to be high-risk after CBP has utilized all targeting tools and information at its disposal, CBP will work with the carrier to have the container redelivered to the port of export.

Exemptions from Pre-Departure Reporting

COMMENT:

One commenter sought information about the export exemption list; and whether there was any reason to standardize the format of the citation which the USPPI furnished to the outbound carrier. Exemptions for low value shipments and shipments to Canada should remain the same.

CBP RESPONSE:

The Bureau of Census already publishes export reporting exemptions in its regulations (see 15 CFR 30.50–30.58). Exemptions for low value shipments and shipments to Canada do remain the same. Also, the citation format is already standardized and available to the trade in Census Foreign Trade Statistics Regulations (FTSR) Letter

168, Amendment 2, a copy of which may be obtained from the Bureau of Census. Additionally, it is understood that information required to be submitted under Bureau of Census regulations for exports made through the U.S. Postal Service (USPS) will not be subject to being reported within the advance filing time frames of § 192.14(b) in this final rule.

COMMENT:

Two commenters inquired about the reporting status of shipments to U.S. territories and Puerto Rico.

CBP RESPONSE:

The reporting requirements for shipments to U.S. territories and to Puerto Rico also remain unchanged. Such requirements are outlined in the Bureau of Census Regulations (see 15 CFR 30.1).

Internal Transaction Number (ITN)/External Transaction Number (XTN)

COMMENT:

One commenter—The U.S. Department of Defense—wanted to be excepted from the requirement to obtain an Internal Transaction Number (ITN) for export shipments, preferring instead to continue using the External Transaction Number for this purpose. This was said to be necessary to achieve an interface between DoD shipper systems and the AES.

CBP RESPONSE:

The CBP will review the ITN requirement for non-licensed DoD shipments. However, it is emphasized that for those DoD shipments which are subject to the Department of State's International Traffic in Arms Regulations (ITAR), the requirement of an ITN, to be reported within the advance time frames stipulated by State, will be mandatory. Proposed § 192.14(b)(2) is amended in this final rule to add a specific cross reference to State's ITAR Regulations (22 CFR parts 120–130) that contain the advance notification provisions for exports of items on the U.S. Munitions List.

COMMENT:

Specifications of the format and electronic transmission requirements for the ITN should be provided, especially for airlines.

CBP RESPONSE:

Many carriers already annotate the XTN/ITN, Option 4 statement, or other exemption on the manifest. Carriers should refer to FTSR Letter 168, Amendment 2, for the proper formats. This FTSR Letter may be obtained from the Bureau of Census.

COMMENT:

Since carriers could not accept cargo from the shipper/exporter until an electronic filing number or exemption code had been annotated on the export documentation at the time of freight acceptance, it would then follow that freight acceptance times would have to be restricted to 2 hours out from the flight.

CBP RESPONSE:

Carriers should currently not be accepting cargo without a paper SED, XTN/ITN, Option 4 or reporting exemption statement (15 CFR 30.50–30.58). Hence, the carrier's responsibility under these regulations should not perceptibly change from the proper procedure it should be following at present. It is actually the USPPI or its agent who will have to plan ahead and accomplish transmission and acceptance of the data earlier, so that the ITN will be available when the cargo is tendered to the exporting carrier.

COMMENT:

The ITN requirement should be revised to allow export shipments to proceed once the USPPI/Agent has received the ITN/AES confirmation message; and the same policy should apply for export shipments that qualified for exemptions to the pre-departure electronic filing requirements.

CBP RESPONSE:

If the USPPI/Agent is already waiting for the ITN message to be returned, the step of noting it on the export documents would be a fairly minor exercise. Also, export exemptions follow a standard format and are listed in 15 CFR 30.50–30.58 and FTSR Letter 168, Amendment 2, *supra*. The ITN is provided via a return message from AES. Carriers are required to obtain, and, therefore, USPPIs or their agents must provide to the carrier, an AES proof of filing citation, low-risk exporter citation (currently the Option 4 citation), or an exemption statement under current Census Bureau regulations. This procedure will remain the same under section 343(a) of the Trade Act of 2002, as amended.

COMMENT:

It was not at all clear how a driver, who was out picking up freight on various shippers' loading docks, would have access to the ITN.

CBP RESPONSE:

The USPPI/Agent should have the ITN already annotated on the export documentation that would be presented to the driver. All the driver would have to do is simply verify that the shipping documents include an ITN, Option 4, or other exemption statement.

COMMENT:

Two commenters were of the opinion that the performance of AES in the past in timely returning ITN confirmation numbers had led to the trade's preference for the XTN numbers.

CBP RESPONSE:

The AES development team is required to set performance standards for system performance. One of the 2003 performance measures requires system "through-put" (the time it takes for data to reach the AES, be processed and put back out for return to the filer) to be routinely less than 1 minute.

COMMENT:

One commenter asked whether there would be any merit in adding the time that the ITN was obtained by the USPPI, so that the carrier would know when the 24 hours had expired (in the case of outbound vessel cargo).

CBP RESPONSE:

The current ITN format is sufficient. It is the responsibility of the USPPI or its agent to make sure the advance filing window is met.

COMMENT:

The AESDirect system could only return the ITN via email, which would not be timely enough for express business. Three commenters believed that since the AES redesign was not scheduled for completion until mid-2004, and AESDirect sent the ITN via email, the ITN should not be required. One commenter requested that the XTN be used instead.

CBP RESPONSE:

The CBP wants to especially emphasize that the annotation of the ITN number on any export documentation will not be mandated or enforced until the implementation of the redesign of the AES Commodity Module, which, as noted, is not anticipated to be completed until mid-2004. The redesign of the AES Commodity Module will make the ITN stable when records are updated.

The CBP, after consulting with the Bureau of Census, has informally estimated that its AESDirect system returns the ITN via email within 5–15 minutes. While this response period may have some impact on business practices, it should prove to be a return time that is, on balance, reasonably prompt and commercially acceptable. The preference for the XTN number is understandable, but since the XTN is generated by the USPPI or its agent and may be annotated on the export documentation without the shipment data having been transmitted to AES, this number is, and has repeatedly

been, subject to abuse, which will make its continued use, as a general proposition, wholly unacceptable.

COMMENT:

Under the proposed regulations, the exporter could present either the ITN number, the Option 4 filing number, or an exemption statement. It was asked whether this would also comply with the statute concerning the documentation of outbound waterborne cargo (19 U.S.C. 1431a). The CBP should clarify that under Option 4 filing and for exporters that were otherwise exempt from pre-departure filing, there would also be no requirement to provide separate shipping documents to the vessel carrier under 19 U.S.C. 1431a.

CBP RESPONSE:

Issues relating to section 343(b) of the Trade Act of 2002, as amended (codified at 19 U.S.C.1431a), fall outside the scope of this rulemaking. As made clear in the proposed rule (68 FR at 43592), section 343(b), requiring proper documentation for all cargo to be exported by vessel, will be the subject of a separate publication in the **Federal Register**. To the extent legally and operationally permissible, however, the administrative implementation of the requirements of section 343(b) will be synchronized and dovetailed with these regulations under section 343(a).

COMMENT:

One commenter asked how the carrier would know whether the AES filer was the USPPI or its agent.

CBP RESPONSE:

All the carriers need to do is ensure that the proper AES proof of filing citation (including the ITN), the low-risk exporter citation, or an exemption statement is on the shipping documents that they receive with the cargo. The carrier is not required to check the validity of the ITN or the identity of the party presenting it.

Option 4 Filing (Post Departure)

COMMENT:

The CBP and Census should grandfather existing Option 4 holders into the “new” Option 4 to be jointly constructed by the two agencies.

CBP RESPONSE:

The CBP cannot guarantee that current Option 4 USPPIs will retain the privilege under program requirements that have yet to be finalized. The current Option 4 was conceived prior to September 11, 2001, and it is the goal of the Bureau of Census and CBP to ensure cargo safety and seaport security while at the same time fostering

the continued smooth flow of commerce. The new Option 4 will emphasize volume, repetitive low-risk commodities and compliance.

COMMENT:

The CBP should take into account those exporters who repeatedly shipped the same low-risk commodities to related parties.

CBP RESPONSE:

The CBP does take such exporters into consideration. Current Option 4 is intended for repetitive exports of low-risk commodities by compliant USPPIs. The CBP will explore with the Bureau of Census the possibility of using related parties as a requirement or factor to determine Option 4 eligibility.

COMMENT:

Two commenters sought assurance that any revisions to Option 4 filing would not reduce the ability for legitimate, low-risk exporters (such as exporters of agricultural commodities) to qualify for such filing if they were otherwise in compliance, even though they did not meet minimum export volume requirements. Another commenter wanted the program expanded to additional companies that faced new lead time requirements.

CBP RESPONSE:

The CBP and the Bureau of Census are in the early phase of redesigning the program. While export volume will be a significant factor, there may be an appeals procedure wherein a compliant low-volume exporter can demonstrate a legitimate need for Option 4 filing under the redesigned system.

COMMENT:

Two commenters strongly urged the continuation of Option 4 filing for C-TPAT (The Customs-Trade Partnership Against Terrorism) members with low-risk commodity exports. Also, it was thought that such exemptions (as Option 4) and programs for exports should match those provided for imports.

CBP RESPONSE:

Current Option 4 filing is available to compliant exporters of low-risk commodities, regardless of C-TPAT status. The CBP does not anticipate that this will change.

Automated Export System (AES)/Technical Issues

COMMENT:

Under the planned redesign of AES to be developed by mid-2004, air carriers would be able to send transportation data directly to

CBP. Two commenters sought guidance on how the CBP electronic data interchange would be interfaced with the airlines' systems.

CBP RESPONSE:

The system enhancement projected for completion in mid-2004 is the AES Commodity Redesign which will improve the ability of the AES to process automated Shipper's Export Declaration (SED) information. These enhancements will not enable AES to accept electronic manifest information directly from air, rail, or truck carriers, nor will the new regulations require the exporting carriers to submit such manifest data via the AES. The vessel manifest module in AES will remain optional.

COMMENT:

Three commenters questioned how CBP would notify the carrier of high-risk cargo that was targeted for inspection/examination. It was recommended that a predetermined time should be set following which a carrier could confidently assume that no further hold status would be issued for the cargo.

CBP RESPONSE:

The AES commodity module is not capable of sending electronic hold messages to carriers, so the current methods of communication by fax and/or phone will need to continue. The CBP cannot set a time frame after which a carrier could assume no further holds. Given the current design and functionality of the system, commodity records are transmitted to AES on a transaction-by-transaction basis rather than as part of a manifest, where the end of the transmission is marked. Thus, not knowing which AES commodity transaction is the last for a particular conveyance makes it impossible for CBP to provide an absolute, finite time after which no further holds will occur.

COMMENT:

The proposed outbound cargo reporting provisions should be changed so that motor carriers would not have to transmit specific data elements to AES.

CBP RESPONSE:

Carriers are not responsible for transmitting the information required by section 343(a) of the Trade Act of 2002, as amended. Section 192.14(c)(4), as proposed and as appearing in this final rule, details carrier responsibility which, as already explained, is largely limited to collecting AES proof of filing citations (ITN), Option 4 exemptions, and regular reporting exemptions (see 15 CFR 30.50–30.58). Likewise, the transmission of all automated SED commodity data (which already includes data relating to the transportation of

the cargo) by the USPPI/Agent is covered in § 192.14(c)(1) and (c)(2) in this final rule.

COMMENT:

Two commenters were of the view that the data elements for the estimated date of exportation and the port of exportation (proposed § 192.14(c)(2)(v) and (c)(2)(vi)) would cause potential difficulty for the motor industry which did not operate on strict routes and schedules.

CBP RESPONSE:

The 6 transportation data elements in § 192.14(c)(2), including the estimated date of exportation and the port of exportation, are data elements that are at present mandatory for AES participants under current 15 CFR 30.63. The trade should already be reporting them. To be consistent with 15 CFR 30.63, the term, "mode of transportation", where appearing in proposed § 192.14(c)(2)(i), is changed in this final rule to "method of transportation".

COMMENT:

The USPPI should provide only the intended port of exportation because the actual port of exportation might not be known to the USPPI.

CBP RESPONSE:

The USPPI or its authorized agent must report the port of exportation as known when the USPPI or its agent tenders the cargo to the outbound carrier. Should the carrier export the cargo from a different port, and the carrier so informs the USPPI or agent, the port of exportation must be corrected by the filer in AES. Proposed § 192.14(c)(2)(vi) is revised in this final rule to clarify this issue.

COMMENT:

One commenter wanted a more specific estimate of the expected completion and implementation date for the AES commodity module and whether it was on target for completion.

CBP RESPONSE:

The target date for the redesign of the AES commodity module remains mid-2004.

COMMENT:

The automated systems in place should be able to accommodate the required manifest reporting sufficiently for legitimate trade to continue to flow smoothly. Also, there should be a generous and realistic grace period.

CBP RESPONSE:

The CBP supports the use of AES systems that are already heavily in use and widely available to USPPIs; and with Internet connections, new users can be brought into the system fairly easily and inexpensively. Moreover, outbound implementation of these regulations is contingent upon the completion of the AES Commodity Redesign and implementation by the Bureau of Census of mandatory AES for all export shipments which currently require a Shipper's Export Declaration (SED) (see § 192.14(e) in this final rule).

Comments on Economic Analysis**GENERAL****COMMENT:**

Several commenters stated that the proposed rule is a significant regulatory action. It was contended that CBP did not completely appreciate the magnitude of the impact of the proposed requirements. Importers, exporters, brokers, carriers, forwarders, consolidators and many others will be required to modify their business practices. Before implementation and enforcement begins, it is strongly believed that further economic impact analysis is warranted.

Several commenters stated that the preliminary economic analysis understated the true impact on the affected enterprises. In addition, some questioned that the preliminary analysis conclusion only addressed the impact on small entities, making it insufficient to make a proper determination of impact on the U.S. economy as a whole. Others expressed their belief that the real effect of the proposed rule would be far greater than the \$100 million threshold, making the proposal a significant regulatory action.

It was said to be hard to believe that the transportation and trade industry would not have a similar cost increase [to the \$4–\$6 USPS estimate]. This increased cost exceeded the \$100 million impact threshold. Already industry was seeing increases in transportation and operational costs associated with new security measures. The economic analysis presented seriously underestimated the true cost to industry.

It was believed that CBP failed to recognize the majority of other carriers [non-express], mostly non AMS, and other smaller carriers where the cost impact would be greater; these carriers would incur significant costs to redesign their systems. Moreover, the costs to consolidators, indirect air carriers, shippers and brokers were not factored in at all.

It was also asserted that the impact study had been too limited to support the conclusion that the cost was acceptable.

Finally, it was contended that the proposed rule stated that the effect of the rule on the economy would be slight to negligible. Yet, the

study did not define negligible. The proposed rules would increase the cost of transportation for all goods imported into the U.S. other than by USPS. A significant portion, and perhaps all of these increased costs would be reflected in the increased costs of imported goods.

CBP RESPONSE:

After further analysis of the proposed rule, CBP agrees that the rule is a significant regulatory action under Executive Order 12866, and that the cost of the rule will exceed \$100 million. Accordingly, CBP has conducted a regulatory impact analysis (RIA) of the rule, which is available at the following Web site, <http://www.cbp.gov>.

The CBP's economic analysis for the final rule has estimated the cost to all affected sectors unless it was determined that the costs would be insignificant or that the costs would be passed to a different sector (e.g., from brokers to importers).

AIR

COMMENT:

New automation systems and interfaces should be developed to gather the additional data elements required, at considerable costs. Additional labor costs will be incurred for systems administration, data entry, and subsequent carrier activities as a result of any targeted shipments.

It is estimated that the express industry will incur development and implementation costs in excess of \$25 million. Additional labor costs for delivery of the data and subsequent required actions for targeted shipments for the express industry will exceed \$15 million annually.

There are issues of additional handling for late shipments that must be held for the next day, lost revenues for transit shipments that will no longer be shipped on U.S. carriers, additional inventory to be carried by importers as defense against supply outages or factory shutdowns; labor reductions, and similar related actions.

CBP RESPONSE:

The CBP's economic analysis for the final rule has estimated the cost of service degradation caused by delays using a logistics cost calculator for a range of delay times. The analysis always includes estimates for additional programming. The CBP has no basis on which to estimate the percentage of cargo (by weight or value) currently being transshipped through the U.S. that might be diverted through non-U.S. airports. The CBP recognizes that targeted shipments may require additional steps for air carriers, but has no basis for estimating the number of shipments that will be targeted or the degree to which the targeting will result in additional costs. For inbound ship-

ments, the targeted shipment will be examined on arrival, which should impose a limited burden on the air carrier.

COMMENT:

Many carriers are evaluating options for AAMS. The costs indicated by CBP for transmission fees are low compared to average costs by AAMS vendors. In addition, the cost of purchasing software is above any amounts identified by CBP.

CBP RESPONSE:

The costs used in the final economic analysis are based on estimates provided by vendors. These costs vary by vendor and by the complexity of the software and its integration into the user's system. The analysis assumes that larger carriers will develop their own software integration packages and that existing users of AMS will modify their internal systems to provide the more detailed cargo information. Only carriers that enter fewer than 500 air bills per month incur minimum costs.

COMMENT:

Labor costs do not appear to include employee benefits, which would increase the labor rate by 30%.

CBP RESPONSE:

Labor rates used in the final economic analysis are loaded with fringe benefits and overhead.

COMMENT:

The "wheels up" requirement will result in a significant increase in staffing to meet deadlines. Air carriers will see a shift from air to truck. The rule will result in a revenue loss of premium services.

CBP RESPONSE:

The final economic analysis estimates the costs of delays for a range of times. These costs include personnel costs. Although it is possible that some short-haul shipments will shift to truck, most shipments from Canada and northern Mexico destined for locations beyond the immediate border will probably still be shipped by air because of the considerable time-savings. Shipments from other parts of Latin America north of the equator and the Caribbean are likely to continue being sent by air.

COMMENT:

Significant costs will be associated with changes in operating schedules. A high percentage of express volume is provided late in the day, close to cut-off time. New requirements which force an earlier cut-off time would be a binding constraint.

CBP RESPONSE:

The final economic analysis estimates costs for both delays and service degradation resulting from the new requirements.

COMMENT:

Further skewing the results is the fact that no costs are included for training personnel, restructuring operational systems to allow time to receive and submit information, or handling rejected shipments. The proposed scheme would directly negatively impact the key elements of the air cargo business—speed and reliability—and would severely jeopardize the needs of the global shipping community. These costs are not captured in the study.

CBP RESPONSE:

The final economic analysis estimates costs for both delays and service degradation. Rule familiarization costs were estimated based on U.S. wage rates for all modes, but represent a very small part of total costs.

COMMENT:

Business will be lost in the transit sector. Shipments transiting the U.S. would be diverted to competitors that do not transit the U.S. The costs of compliance will have an asymmetric impact, placing us at a competitive disadvantage.

CBP RESPONSE:

The CBP has no basis on which to estimate the percentage of cargo (by weight or value) currently being transshipped through the U.S. that might be diverted through non-U.S. airports.

COMMENT:

“Just in time” (JIT) shippers will also be affected by an earlier cut-off time. Earlier shipping or delayed arrival of shipments create higher costs for seller and buyer. Shippers close to the border may switch shipping modes; warehousing costs may increase; inventory and associated carrying costs will rise.

The statement in the proposed rule that JIT considerations are eliminated is simply not true. The CBP has failed to acknowledge the carrier requirements for handling and manifest preparation. Current post-departure manifesting allows manifesting on a different later schedule than sorting and loading. To complete a manifest at wheels up, the carrier will be forced to cut off receipt of shipments several hours earlier, especially for shorter flights, delaying shipments by a day or diverting them to another mode.

Removing even one or two hours available shipping time could remove 20–30% of volume for a specific market. Air carriers (express and conventional) carry time-sensitive parts and supplies every day. The CBP's claim of no impact to JIT fails to acknowledge operational realities of transportation handling requirements, at least for air shipments.

The proposal will require earlier deadlines for shippers. Shippers of perishable commodities such as flowers, produce, and fish will increase their losses from damaged and spoiled product. The cost-benefit analysis overlooks this fact.

CBP RESPONSE:

The CBP's economic analysis for the final rule has estimated the cost of delays and service degradation caused by delays using a logistics cost calculator for a range of delay times and cargo mix (perishables, non perishables).

COMMENT:

There is an additional cost for educating customers about the requirements of the rule.

CBP RESPONSE:

The cost of educating shippers is not possible to estimate. The majority of shipments by value or weight are likely from companies that ship on a regular basis. They will incur one-time costs to understand the new requirements. There will always be new shippers entering the system who will need to learn what is needed.

COMMENT:

The estimate of 2.41 million air waybills per month for express carriers is grossly understated. Some carriers use summary manifesting, under which multiple consignments of letters or documents are manifested as one record. One entry may cover hundreds of individual consignments. It is important that each waybill be counted, rather than entries, as the individual shipment record will require screening. The CPB is urged to review these numbers, and validate their accuracy. Understatement will severely affect the calculated capacity and system performance of the Automated Targeting System (ATS).

The number of express air bills counted may only be those requiring formal entry, which represent about 15 to 25 percent of the total shipment count. The real annual number of express bills is closer to 25 million rather than 3.27 million. The economic analysis for USPS resulted in a cost of \$4–\$6 per package.

The number of other air cargo waybills were likely master air bills; no accounting was made for house bills. One may reasonably increase master bills by a factor of 10 for a total air bill count, closer

to 8 million instead of 800,000. That leaves about 7 million new transactions to be entered into the automated system for regular air cargo shipments. For the express group, their volume of air bills may be a very narrow slice of what will now be required.

The question is presented as to how CBP reconciles its claim that there is virtually no cost to carriers when CBP estimates an annual cost to USPS of at least \$120 million. While automation does exist in the carrier community, the staggering increase in the number of transactions that will require reporting has a significant cost. Most of the forwarder and airline expense associated with air AMS will be new expense. Using the USPS estimate, the required reporting of potentially 32 million transactions in AMS meets the \$100 million threshold.

The assumption that USPS will not absorb these costs or pass them directly to users implies that USPS may have a competitively advantaged position.

CBP RESPONSE:

The final economic analysis includes cost estimates for entering new information into Air AMS using a range of scenarios to reflect variations in the number of additional bills that will be entered. These cost estimates may be overstated because they are based on U.S. and Canadian wages; many shipments will be arriving from countries where wages are much lower.

COMMENT:

The assumption that all large express carriers have AAMS capability at present and need only flip a switch to immediately begin transmitting the required data is patently incorrect and ignores a multitude of operational realities of physical shipment handling, sorting, loading, weight and balance calculations, and coordinating with manifesting. Manifest preparation entails multiple automated systems that are not currently interfaced with AAMS. The simple hard fact is that large express carriers are heavily impacted through significant operational changes, earlier cut-off times, and development of new software.

CBP RESPONSE:

The final economic analysis estimates costs for operational changes and earlier cut-off times. Because the two major express carriers do not use AMS for express consignments, but allow CBP to access their proprietary systems for data, CBP is uncertain that they will incur new costs for automated systems. Nonetheless, the final economic analysis includes costs for 4,000 hours of programming per AMS carrier to cover any new interfaces that are needed.

COMMENT:

Numerous carriers arriving in the U.S. have limited or no electronic messaging capabilities in their origin locations. It would be beneficial for CBP to reevaluate the economic impact created by implementing the proposed rule. If carriers cannot currently comply or will require significant investment in systems and manpower to comply in the time allotted, JIT shipping will be in jeopardy.

CBP RESPONSE:

The final economic analysis estimates costs for acquiring or developing the software needed to file electronically.

COMMENT:

Not all affected parties were considered during the analysis. Foreign flag carriers and shippers were not part of the analysis. This rule has worldwide implications. A similar regulation has been proposed in Canada and is likely to appear in other countries. The rule will significantly impact the global trade community.

CBP RESPONSE:

Executive Order 12866 requires a focus on the U.S. economy, thus enumerating all possible impacts to global trade may be beyond the scope of the analysis. To the extent that foreign entities, however, participate in the U.S. economy and impacts to foreign entities affect the U.S. economy, the Executive Order does apply to foreign entities. To that end, the accompanying regulatory impact analysis to this final rule does estimate the impact on foreign entities, although in many cases it is difficult to separate the impact on foreign entities from the overall estimate. On the other hand, the Regulatory Flexibility Act does not apply to small foreign entities.

COMMENT:

Forwarder and air carriers are obliged to have a huge investment to develop or modify their Electronic Data Interchange (EDI) system; they will also have a large operating cost day to day. They are afraid they will not be able to bear this huge cost.

CBP RESPONSE:

The RIA estimates costs for implementing AMS. These costs are likely to vary considerably based on the level of imports being handled by a carrier or forwarder. The CBP notes that forwarders are not required to file information; they have the option to provide the information to the carrier.

COMMENT:

The requirement for hard copy filing in the event of EDI failure is time-consuming and very costly.

CBP RESPONSE:

The CBP assumes that carriers can easily e-mail or fax a hard copy to their agents at the destination airport should this be necessary.

TRUCK

COMMENT:

One commenter stated that the economic analysis is inadequate and unscientific. They assert that the proposed rule is a significant regulatory action. They assert that the combined annual impact of the air and truck rules on their company would be \$695,000.

CBP RESPONSE:

These comments are very general. Without knowing how the impact on their company was estimated, CBP cannot comment on the estimate. The CBP agrees that the rule is a significant action.

COMMENT:

Several commenters stated that the "economic assumptions" used by CBP did not include additional labor and equipment needed to do the "same quantity of work in a shorter time."

CBP RESPONSE:

These comments are not specific enough to permit direct response. The commenters do not offer any support for the assertion that time available to do required work has been reduced.

COMMENT:

Some commenters refer to inaccuracies in the economic analysis, but do not specify them. They recommend that CBP conduct a comprehensive economic analysis.

CBP RESPONSE:

The CBP has completed an economic analysis of the rule.

COMMENT:

One commenter asserts that the rule will have a significant impact because many small truckers do not have the technology to use PAPS. The commenter also states that fewer than ten percent of Mexican trucking firms have automated systems in place.

CBP RESPONSE:

The CBP agrees that the rule will have a significant economic impact. In order to use Selectivity PAPS, a trucking firm will have to obtain a SCAC number and bar-code strips. These costs are included in the RIA prepared by CBP. While many Mexican carriers may not have automated systems, U.S. customs brokers now make electronic pre-filings based on information supplied by Mexican brokers. This is true for all shipments except those coming through under BRASS. The RIA includes the cost to U.S. brokers for preparing the pre-entry filing for shipments now using BRASS.

COMMENT:

The CBP is planning, in due course, full implementation of ACE. Therefore, the costs of adapting to ACE should be treated as costs of the rule.

CBP RESPONSE:

The CBP's plans for implementation of ACE are not driven by the Trade Act and would be implemented whether or not the rule is implemented. Therefore, the costs of adaptation to ACE may not be attributed properly to the rule. Costs of adapting to Selectivity PAPS are included in the RIA.

VESSEL**COMMENT:**

It is incumbent on CBP to provide a more meaningful and realistic analysis of the impact of the rules on small businesses before it promulgates a final rule and commences mandatory implementation and enforcement.

CBP RESPONSE:

The Regulatory Flexibility Act, which establishes the "significant impact to a substantial number of small entities" test, applies to small U.S. businesses. The CBP's Regulatory Impact Analysis (RIA) for the final rule has estimated the impact of the rule on small businesses.

COMMENT:

There is no analysis of the effects that the proposed rule will have on NVOCCs, air forwarders, and surface forwarders. In most, if not all instances, NVOCCs and other forwarders will be required to make substantial investments in software, employ additional personnel and enter into contractual arrangements with data service centers.

The regulatory flexibility analysis (RFA) should be broadened to consider both the dollar costs on forwarders and any operational consequences of the proposed rules.

CBP RESPONSE:

The CBP estimates that 650 Non-Vessel Operating Common Carriers (NVOCC) are already automated. The CBP believes that the proposed requirements will not have a significant impact on a substantial number of NVOCCs. Those that choose not to automate, can instead use the services of an authorized service provider, a qualified port authority, or provide the shipment information to the carrier. Therefore, in the final economic analysis, CBP has not estimated the costs of the proposed rule on NVOCCs.

COMMENT:

Although a large percentage of manifests presently submitted to Customs are submitted electronically, this does not mean that a large percentage of the organizations presently submitting manifests are presently doing so via AMS or are capable of doing so.

One company stated that it submits approximately 100 single page manifests for vessels that import over 5 million tons of bulk commodities in a year. Due to this insignificant number of manifests, which cover a large amount of cargo, the company stated that it is not equipped to submit cargo manifests electronically and to do so would represent a substantial financial penalty.

At the present time pre-arrival manifests are submitted by fax at basically no cost even though they are sent to several branches of the Federal government. An investigation into obtaining a "provider" via whom manifests could be submitted electronically had indicated a set up cost of \$1,000 and a monthly minimum for one SCAC code of \$200.

Therefore, strong disagreement was noted with the initial analysis that the proposed rule would not have a significant economic impact upon a substantial number of small entities.

CBP RESPONSE:

Virtually all shipping companies that are owned by U.S. citizens or are U.S. flagged are currently filing manifests electronically. The CBP has been able to identify only 24 shipping companies that carry cargo into U.S. ports from the Caribbean that do not use AMS. The CBP does not believe that any of these companies are U.S. owned nor are any of the ships U.S. flag. Consequently, the proposed rule on vessels is not expected to have any economic impact on U.S. companies.

COMMENT:

It is estimated that 25 million bills of lading are issued annually for container cargo from Japan to the United States. Shipping companies are charged a \$25 fee for transforming and inputting a shipper's cargo data to the AMS. This means that the cost of trade between Japan and the United States will increase \$625 million per year through the introduction of the 24-hour rule. Contrary to the CBP's claim that much of the trade already uses electronic transmission systems and therefore would not incur significant compliance costs, this fact indicates that substantial costs would be imposed on the trade when the requirements of advance electronic cargo information are implemented.

CBP RESPONSE:

The CBP believes that virtually all shipping companies that are owned by U.S. citizens or are U.S. flagged are currently filing manifests electronically. Further, even if none of the non-U.S. trade participants were automated, the estimated annual cost of trade of \$625 million would represent less than one percent of a total value of U.S. imports from Japan (this calculation is based on the 2001 import values; Source: Bureau of Transportation Statistics).

Summary of Significant Changes

As referenced in the Discussion of Comments, *supra*, this final rule document makes three significant changes from the proposed rule. These changes consist of:

- (1) removing the provision concerning advance cargo data for air shipments listed as letters and documents and making it the subject of a separate **Federal Register** publication (proposed § 122.48a(d)(3) as such is removed from this final rule);
- (2) requiring certain additional data elements from the incoming air carrier in the case of split shipments (a new § 122.48a(d)(3) is thus added in this final rule); and
- (3) decreasing the rail outbound time frame from "4 hours prior to the attachment of the locomotive before going foreign" to "2 hours prior to arrival at the border" (§ 192.14(b)(1)(iv)).

Adoption of Proposal

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, CBP has concluded that the proposed regulations with the modifications discussed above should be adopted as a final rule.

Additional changes

For greater editorial accuracy, the reference in proposed § 113.64(a) and (c) to “§ 122.48a(c)(2)” is changed in this final rule to “§ 122.48a(c)(1)(ii)–(c)(1)(iv)”. Also, proposed § 122.48a(a)(2) is revised in this final rule to distinguish between Diplomatic Pouches and Diplomatic Cargo, the latter of which is subject to the full advance cargo data reporting requirements of § 122.48a. In addition, proposed § 123.8 is amended consistent with § 122.38(g) in this final rule. Lastly, proposed §§ 123.91(a) and 123.92(a) are changed to make clear that cargo data must be received within the relevant time frame before the subject cargo reaches the first port of arrival in the United States.

Transportation Security Administration— Cargo Security Programs

It is also stressed that these final regulations to implement section 343(a), as amended, may, in the foreseeable future, be subject to modification as necessary to accommodate a cargo security program that may be developed by the Transportation Security Administration (TSA) in accordance with the Aviation and Transportation Security Act (Public Law 107–71, 115 Stat. 597; November 19, 2001 (49 U.S.C. 114(d), (f)(10); 44901(a), (f)).

REGULATORY ANALYSES

EXECUTIVE ORDER 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), CBP must determine whether a regulatory action is “significant” and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal government or communities.
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The CBP has determined that the rule will have an annual effect on the economy of more than \$100 million and is, therefore, an eco-

nomically significant regulatory action. Accordingly, it has prepared a regulatory impact analysis for the rule, which is available on the CBP website, <http://www.cbp.gov>.

Costs

The analysis examined each of the modes and identified changes that are likely to impose new costs on U.S. carriers. Because virtually all vessels and railroads are already filing electronically, costs were estimated for these sectors to be insignificant. Exports to Canada by truck are generally exempted from regulation. For exports by air, shippers complete the shipper's export declaration prior to presenting the shipment to a carrier; therefore, the new time requirements for filing will be met.

Truck

The analysis estimated costs and cost savings for inbound trucks from Canada, and inbound and outbound trucks to Mexico. Although the rule will impose costs on trucks that are not currently filing electronically, the analysis estimates that these costs are offset by the savings that will result from faster movement across the border. Overall, the analysis estimates that the rule will impose new costs of \$91 million on trucking, which will be offset by savings of \$142 million.

Air

The analysis indicates that the rule will impose substantial costs on the 39 U.S. air carriers currently certificated for foreign operations as well as more than 100 foreign carriers that fly cargo into the U.S. These costs arise from three factors: the need to implement electronic filing systems and improve existing systems; delays and service degradation that will result from the requirement to file information at wheels up from airports north of the equator in the western hemisphere; and the requirement to file detailed information on all cargo including documents. Because passenger-carrying carriers cannot easily delay operations to complete cargo information, the analysis assumed that these carriers would limit cargo and reduce revenues rather than delay flights. Comments on the proposed rule cited other changes that could result from the rule and impose costs: diversion of air cargo to trucks, diversion of in-transit cargo to other carriers who do not fly through the U.S., and targeting of shipments, delaying unloading of the aircraft. Because CBP has no basis for estimating the degree to which diversion or targeting may occur, the analysis did not quantify costs for these impacts. The analysis examined four options for air:

- (1) The proposed rule, which required information on all cargo including documents;

(2) An option that required information on all cargo except documents that weigh less than one pound (16 ounces);

(3) An option that required information on all cargo except documents; and,

(4) An option originally recommended by the Treasury Advisory Committee on the Commercial Operations of the U.S. Customs Service (COAC), but modified by CBP, that would require no detailed information on documents and filing an hour before arrival for flights into the U.S. from airports north of the equator in the western hemisphere.

The options allow an examination of the impact of varying requirements on cargo and filing times. The CBP has elected option three above because the proposal to cover advance electronic cargo information on letters and documents will be the subject of a separate **Federal Register** publication. However, the RIA for this final rule document will cover the other publication as well. As noted, the RIA is available on the CBP Web site, <http://www.cbp.gov>.

Because of the considerable uncertainty that exists about the impacts on delays and service degradation as well as about the number of air bills that will need to be filed under the rule, the analysis examined each of these impacts across a range of scenarios from low impacts (e.g., 30 minute delays, 10 percent loss of revenues, twice as many air bills) to high impacts (2 hour delays, 40 percent loss of revenue, 8 times as many air bills). The analysis indicated that the total annualized cost to the air carriers could range from \$345 million for the low impact COAC option to \$4.7 billion for the high impact proposed rule option. Table 1 presents the costs for the four options, annualized over five years (7 percent discount rate).

**TABLE 1. ANNUALIZED TOTAL COST TO AIR CARRIERS
(MILLIONS)**

	Low	Medium	High
All Documents	\$2,914	\$3,652	\$4,736
Large Documents	\$930	\$2,177	\$3,770
No Documents	\$422	\$1,160	\$2,244
COAC Option	\$345	\$994	\$1,889

As can be seen from Table 1, the degree to which detailed information is required for documents drives the cost of the rule. Overall, the requirement for filing house bill rather than master bill information electronically imposes the greatest cost. The costs of delays and service degradation, although significant to a few carriers, are limited because only about 25 percent of inbound air cargo on U.S. carriers and 10 percent of inbound cargo on foreign carriers is Canada, the Caribbean, and Latin America north of the equator.

Benefits

Examination of the benefits was largely qualitative because the most significant benefits are essentially unquantifiable. The most important benefit of the rule will be the improvement in national security, an issue that is difficult to measure in monetary terms. However, there are some additional benefits expected that were quantified. Most of the incremental quantifiable benefits are expected from changes taking place at the northern border crossings for inbound truck traffic. The rule is expected to streamline the process for checking inbound trucks at Canadian border crossings, leading to benefits from time savings due to reduced congestion that are in addition to the time savings realized by trucks that change their border-crossing procedures under the rules. The analysis estimated the value of the time savings at \$18 million. Additionally, reduced congestion would lead to less truck idling (or moving at very slow speeds) and consequent reductions in air pollution and fuel costs. The fuel savings were estimated at \$4 million. Because of the lack of data on how congestion reductions for commercial traffic can affect non-commercial traffic at the border (e.g., cars), the analysis did not quantify this benefit. Finally, trucks leaving the country through the Mexican border are expected to provide some qualitative benefits through improvements in data collection.

Summary

Combining the costs, cost savings, and monetized benefits, the analysis estimates that the rules produce net savings to the trucking sector of \$78 million, and net costs to U.S. air carriers of \$345 million to \$4.7 billion.

REGULATORY FLEXIBILITY ACT

Under the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 et seq.), Federal agencies must evaluate the impact of rules on small entities and consider less burdensome alternatives. As discussed in the previous section, CBP has conducted a cost benefit analysis on this rule. As part of that analysis, CBP evaluated the impact on small entities. The CBP has determined that this rule could have a significant economic impact on a substantial number of small air carriers. Companies in the other modes are unlikely to incur substantial costs to comply and may benefit from the rule.

For air, the lowest cost option would impose costs in excess of one percent of operating revenues for 7 of the 19 small carriers. The high cost options would impose significant costs on 12 of the 19 small carriers; four of the carriers could have costs in excess of 10 percent of

their operating revenues. Seven of the 19 carriers operated at a loss in 2002. Despite the uncertainty that exists in estimating costs, it is, therefore, likely that the rule would create a significant economic impact on small air carriers. Because most of these costs are driven by the cost of electronic data entry, which is mandated by statute, mitigating the impacts is difficult. Many of the small entities may address this issue by having the shipper or consolidator submit the information to CBP.

A copy of the small business analysis for this rule, which is chapter 6 of the regulatory impact analysis, is available on the CBP web site, <http://www.cbp.gov>.

PAPERWORK REDUCTION ACT

The collection of information in this final rule document was submitted for review and has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB control number 1651-0001 (Transportation Manifest (Cargo Declaration)). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in this document is contained in §§ 4.7a(c)(4), 122.48a, 123.91, 123.92, and 192.14. Under these sections, the information would be required and used to determine the safety and security conditions under which cargo to be brought into or sent from the United States was maintained prior to its arrival or departure. The likely respondents and/or recordkeepers are air, truck, rail and vessel carriers, Non Vessel Operating Common Carriers (NVOCCs), freight forwarders, deconsolidators, express consignment facilities, importers, exporters, and Customs brokers. The estimated average annual burden associated with this information collection is 52.3 hours per respondent or recordkeeper.

Comments on the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, is revised as appropriate to reflect the approved information collections covered by this final rule.

EXECUTIVE ORDER 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

EXECUTIVE ORDER 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

UNFUNDED MANDATES REFORM ACT OF 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 et seq.) requires cost-benefit and other analyses before any rulemaking if the rule would include a “Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year”. The current inflation-adjusted statutory threshold is \$113 million.

This rule will not have a significant effect on state, local or tribal governments within the scope of the UMRA. However, CBP has determined that this final rule is significant under UMRA because it anticipates that the rule will result in an aggregate expenditure by the private sector of \$113,000,000 or more in any one year. Consequently, CBP has conducted the required economic impact analyses as noted in the above section, “EXECUTIVE ORDER 12866”. The other requirements under UMRA include assessing the rule’s effects on:

- Future costs
- Particular regions, communities, or industrial sectors
- National productivity
- Economic growth
- Full employment
- Job creation
- Exports

The regulatory impact analysis, discussed in the “EXECUTIVE ORDER 12866” section, covered many of these issues in greater detail. To summarize, the regulations will impose costs into the future; most costs are presented in the impact analysis on an annual basis. The regulations will impact many different regions, communities, and sectors; but with the exception of air carriers the impact will be disbursed and will not be concentrated geographically. In addition, these regulatory impacts, although large in absolute terms, generally do not rise to the level where they could cause any sort of macro effects on productivity, growth, employment, or jobs.

With regard to the impacts on trade, although most of the information required for advance manifest notification and SED (Shippers Export Declaration) notification is already supplied to CBP, this new notice requirement may cause a reduction of imports of certain prod-

ucts into the U.S. and exports out of the U.S. Some entities may choose to stop exporting products from the U.S. (or importing products to the U.S.) if the additional costs of complying increase the price of the products to the point where they cannot compete with lower-priced products produced within domestic markets. On the other hand, there are products for which substitutes are not available. In these cases, and in cases where demand for the product greatly exceeds domestic supply, importers may pay an increased price for the product. The CBP believes, however, that the “per shipment” cost of these requirements is quite small and therefore this rulemaking will not have a significant impact on the relative competitiveness of foreign versus domestically produced products either within or outside of the U.S.

When a rule would result in expenditures greater than \$113 million, UMRA requires outreach to the regulated community and discussion of proposals. The CBP conducted extensive discussions with the regulated community prior to the development of the rule. In January 2003 CBP held separate meetings with each of the transportation modes to solicit information and comments. The CBP also accepted comments from members of the regulated community as it developed its proposed rule and held numerous meetings with the COAC committees, which submitted recommendations. Finally, CBP received more than 100 comments on the proposed rule, which were considered in the development of the final rule.

For a more detailed analysis, please refer to the regulatory impact analysis prepared for this rule, which is available on the CBP website, <http://www.cbp.gov>.

CBP Issuance of Rule under DHS Authority; 19 CFR 0.2(a)

When the Trade Act of 2002 was enacted (Public Law 107-210; August 6, 2002), the Customs Service existed as part of the Department of the Treasury. Thereafter, the Homeland Security Act of 2002 was enacted (Public Law 107-296; November 25, 2002), which created the Department of Homeland Security (DHS). Section 403 of the Homeland Security Act (the Act) transferred to the newly created Department the functions, personnel, assets, and liabilities of the Customs Service, including the functions of the Secretary of the Treasury relating thereto. Customs, later renamed as CBP, thereby became a component of DHS. Furthermore, the Department of the Treasury recently issued an order (Treasury Order 100-16, dated May 15, 2003) delegating to DHS certain Customs revenue functions that were otherwise retained by the Treasury Department under sections 412 and 415 of the Act. In accordance with the Homeland Security Act and this transfer and delegation of functions, certain matters, such as this rule which is designed to ensure cargo safety

and security rather than revenue assessment, now fall solely within the jurisdiction of DHS. Therefore, this regulation is being issued by CBP under the authority of DHS in accordance with 19 CFR 0.2(a) (see CBP Dec. 03–24, 68 FR 51868, August 28, 2003).

Coordination of Final Rule with Congress

Pursuant to section 343(a)(3)(L) (19 U.S.C. 2071 note, section (a)(3)(L)), the required report regarding this final rule document has been timely made to the committees on finance and commerce, science, and transportation of the Senate and the committees on ways and means and transportation and infrastructure of the House of Representatives.

LIST OF SUBJECTS

19 CFR PART 4

Administrative practice and procedure, Arrival, Cargo vessels, Common carriers, Customs duties and inspection, Declarations, Entry, Exports, Foreign commerce and trade statistics, Freight, Imports, Inspection, Maritime carriers, Merchandise, Penalties, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR PART 103

Administrative practice and procedure, Computer technology, Confidential business information, Electronic filing, Freedom of information, Reporting and recordkeeping requirements.

19 CFR PART 113

Air carriers, Bonds, Common carriers, Customs duties and inspection, Exports, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements, Vessels.

19 CFR PART 122

Administrative practice and procedure, Advance notice of arrival, Advance notice requirements, Air cargo, Air cargo manifest, Air carriers, Aircraft, Air transportation, Commercial aircraft, Customs duties and inspection, Entry procedure, Foreign commerce and trade statistics, Freight, Imports, Penalties, Reporting and recordkeeping requirements, Security measures.

19 CFR PART 123

Administrative practice and procedure, Aircraft, Canada, Common carriers, Customs duties and inspection, Entry of merchandise, Freight, Imports, International traffic, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vehicles, Vessels.

19 CFR PART 178

Administrative practice and procedure, Collections of information, Exports, Imports, Paperwork requirements, Reporting and record-keeping requirements.

19 CFR PART 192

Administrative practice and procedure, Aircraft, Customs duties and inspection, Exports, Foreign trade statistics, Law enforcement, Motor vehicles, Reporting and recordkeeping procedures, Vehicles, Vessels.

AMENDMENTS TO THE REGULATIONS

Parts 4, 103, 113, 122, 123, 178, and 192, Customs Regulations (19 CFR parts 4, 103, 113, 122, 123, 178, and 192), are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 is revised, and the relevant specific authority citations continue, to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. App. 3, 91;

* * * * *

Section 4.5 also issued under 19 U.S.C. 1441;

Section 4.7 also issued under 19 U.S.C. 1581(a); 46 U.S.C. App. 883a, 883b;

* * * * *

Section 4.61 also issued under 46 U.S.C. App. 883;

* * * * *

2. Amend § 4.5(a) by:

a. Removing the references to the numerical terms “(1)” and “(2)” appearing in the first sentence; and

b. Adding two new sentences after the first sentence to read as follows:

§ 4.5 Government vessels.

(a) * * * In addition, any vessel chartered by, and transporting only cargo that is the property of, the U.S. Department of Defense (DoD) will be treated as a Government vessel for the purpose of being exempt from entry, where the DoD-chartered vessel is manned entirely by the civilian crew of the vessel carrier under contract to

DoD. Notwithstanding § 4.60(b)(3) of this part, such DoD-chartered vessel is not exempt from vessel clearance requirements. * * *

* * * * *

- 3. Amend § 4.7 by:
 - a. Revising the first sentence of paragraph (b)(1);
 - b. Revising paragraph (b)(2);
 - c. Removing the words, "if automated", where appearing in paragraph (b)(3)(i);
 - d. Adding a new paragraph (b)(3)(iii); and
 - e. Adding a new paragraph (b)(5).
- The revisions and additions read as follows:

§ 4.7 Inward foreign manifest; production on demand; contents and form; advance filing of cargo declaration.

* * * * *

(b)(1) With the exception of any Cargo Declaration that has been filed in advance as prescribed in paragraph (b)(2) of this section, the original and one copy of the manifest must be ready for production on demand. * * *

(2) Subject to the effective date provided in paragraph (b)(5) of this section, and with the exception of any bulk or authorized break bulk cargo as prescribed in paragraph (b)(4) of this section, Customs and Border Protection (CBP) must receive from the incoming carrier, for any vessel covered under paragraph (a) of this section, the CBP-approved electronic equivalent of the vessel's Cargo Declaration (Customs Form 1302), 24 hours before the cargo is laden aboard the vessel at the foreign port (see § 4.30(n)(1)). The current approved system for presenting electronic cargo declaration information to CBP is the Vessel Automated Manifest System (AMS).

(3)(i) * * *

(iii) Where the party electronically presenting to CBP the cargo information required in § 4.7a(c)(4) 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.

* * * * *

(5) Within 90 days of [insert date of publication in the **Federal Register**], all ocean carriers, and NVOCCs electing to participate, must be automated on the Vessel AMS system at all ports of entry in the United States.

* * * * *

- 4. Amend § 4.7a by:
 - a. Revising paragraphs (c)(4)(viii) and (c)(4)(ix);
 - b. Removing the word “and” after paragraph (c)(4)(xiii);
 - c. Removing the period after paragraph (c)(4)(xiv), and adding, in its place, a semicolon; and
 - d. Adding new paragraphs (c)(4)(xv) and (c)(4)(xvi).

Revised paragraphs (c)(4)(viii) and (c)(4)(ix) and new paragraphs (c)(4)(xv) and (c)(4)(xvi) read as follows:

§ 4.7a Inward manifest; information required; alternative forms.

* * * * *

(c) Cargo Declaration. * * *

(4) * * *

(viii) The shipper’s complete name and address, or identification number, from all bills of lading. (At the master bill level, for consolidated shipments, the identity of the Non Vessel Operating Common Carrier (NVOCC), freight forwarder, container station or other carrier is sufficient; for non-consolidated shipments, and 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, NVOCC, freight forwarder or consolidator is not acceptable; the identification number will be a unique number assigned by CBP upon the implementation of the Automated Commercial Environment);

(ix) The complete name and address of the consignee, or identification number, from all bills of lading. (For consolidated shipments, at the master bill level, the NVOCC, freight forwarder, container station or other carrier may be listed as the consignee. For non-consolidated shipments, and for each house bill in a consolidated shipment, 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). However, in the case of cargo shipped “to order of [a named party],” the carrier must report 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);

* * * * *

(xv) Date of departure from foreign, as reflected in the vessel log (this element relates to the departure of the vessel from the foreign port with respect to which the advance cargo declaration is filed (see § 4.7(b)(2)); the time frame for reporting this data element will be either: (A) no later than 24 hours after departure from the foreign port of lading, for those vessels that will arrive in the United States more than 24 hours after sailing from that foreign port; or (B) no later than the presentation of the permit to unlade (Customs Form (CF) 3171, or electronic equivalent), for those vessels that will arrive less than 24 hours after sailing from the foreign port of lading); and

(xvi) Time of departure from foreign, as reflected in the vessel log (see § 4.7a(c)(4)(xv) for the applicable foreign port and the time frame within which this data element must be reported to CBP).

* * * * *

5. Amend § 4.61 by adding a new paragraph (c)(24) to read as follows:

§ 4.61 Requirements for clearance.

* * * * *

(c) Verification of compliance.

* * * * *

(24) Electronic receipt of required vessel cargo information (see § 192.14(c) of this chapter).

* * * * *

PART 103—AVAILABILITY OF INFORMATION

1. The general authority citation for part 103 continues, and a specific authority citation is added for § 103.31a in appropriate numerical order, to read as follows:

AUTHORITY: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701;

* * * * *

Section 103.31a also issued under 19 U.S.C. 2071 note;

* * * * *

2. Amend subpart C of part 103 by adding a new § 103.31a to read as follows:

§ 103.31a Advance electronic information for air, truck, and rail cargo.

Advance cargo information that is electronically presented to Customs and Border Protection (CBP) for inbound or outbound air, rail, or truck cargo in accordance with § 122.48a, 123.91, 123.92, or

192.14 of this chapter, is per se exempt from disclosure under § 103.12(d), unless CBP receives a specific request for such records pursuant to § 103.5, and the owner of the information expressly agrees in writing to its release.

PART 113—CUSTOMS BONDS

1. The authority citation for part 113 continues to read as follows:

AUTHORITY: 19 U.S.C. 66, 1623, 1624.

2. Amend § 113.62 by:

- a. Revising the heading of paragraph (j), and redesignating its current text as paragraph (j)(1);
- b. Adding a new paragraph (j)(2); and
- c. Amending paragraph (l)(1) by adding the citation, “(j)(2),” after the citation, “(i),”.

The revision and addition to paragraph (j) read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(j) Agreement to comply with electronic entry and/or advance cargo information filing requirements. (1) * * *

(2) If the principal elects to provide advance inward air or truck cargo information to Customs and Border Protection (CBP) electronically, the principal agrees to provide such cargo information to CBP in the manner and in the time period required, respectively, under § 122.48a or 123.92 of this chapter. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each regulation violated.

* * * * *

3. Amend § 113.64 by revising the first sentence of paragraph (a); and by revising paragraph (c) to read as follows:

§ 113.64 International carrier bond conditions.

(a) Agreement to Pay Penalties, Duties, Taxes, and Other Charges. If any vessel, vehicle, or aircraft, or any master, owner, or person in charge of a vessel, vehicle or aircraft, slot charterer, or any non-vessel operating common carrier as defined in § 4.7(b)(3)(ii) of this chapter or other party as specified in § 122.48a(c)(1)(ii)–(c)(1)(iv) of this chapter, incurs a penalty, duty, tax or other charge provided by law or regulation, the obligors (principal and surety, jointly and severally) agree to pay the sum upon demand by Customs and Border Protection (CBP). * * *

* * * * *

(c) Non-vessel operating common carrier (NVOCC); other party. If a slot charterer, non-vessel operating common carrier (NVOCC) as defined in § 4.7(b)(3)(ii) of this chapter, or other party specified in § 122.48a(c)(1)(ii)–(c)(1)(iv) of this chapter, elects to provide advance cargo information to CBP electronically, the NVOCC or other party, as a principal under this bond, in addition to compliance with the other provisions of this bond, also agrees to provide such cargo information to CBP in the manner and in the time period required under those respective sections. If the NVOCC or other party, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each regulation violated.

* * * * *

PART 122—AIR COMMERCE REGULATIONS

1. The general authority citation for part 122 is revised to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

* * * * *

2. Amend § 122.12 by revising the heading of paragraph (c) and adding a sentence at the end of paragraph (c) to read as follows:

§ 122.12 Operation of international airports.

* * * * *

(c) FAA rules; denial of permission to land. * * * In addition, except in the case of an emergency or forced landing (see § 122.35), permission to land at an international airport may be denied if advance electronic information for incoming foreign cargo aboard the aircraft has not been received as provided in § 122.48a.

* * * * *

- 3. Amend § 122.14 by:
 - a. Redesignating paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6), respectively;
 - b. Adding a new paragraph (d)(4); and
 - c. Revising newly redesignated paragraph (d)(5).

The addition and revision read as follows:

§ 122.14 Landing rights airport.

* * * * *

- (d) Denial or withdrawal of landing rights. * * *
 - (4) Advance cargo information has not been received as provided in § 122.48a;

(5) Other reasonable grounds exist to believe that Federal rules and regulations pertaining to safety, including cargo safety and security, and Customs, or other inspectional activities have not been followed; or

* * * * *

4. Amend § 122.33 by:
a. Revising paragraph (a), introductory text; and
b. Revising paragraph (a)(1).

The revisions read as follows:

§ 122.33 Place of first landing.

(a) The first landing of an aircraft entering the United States from a foreign area will be:

(1) At a designated international airport (see § 122.13), provided that permission to land has not been denied pursuant to § 122.12(c);

* * * * *

5. Amend § 122.38 by:
a. Adding a sentence at the end of paragraph (c); and
b. Adding a new paragraph (g).

The additions read as follows:

§ 122.38 Permit and special license to unlade and lade.

* * * * *

(c) Term permit or special license. * * * In addition, a term permit or special license to unlade or lade already issued will not be applicable to any inbound or outbound flight, with respect to which Customs and Border Protection (CBP) has not received the advance electronic cargo information required, respectively, under § 122.48a or 192.14(b)(1)(ii) of this chapter (see paragraph (g) of this section).

* * * * *

(g) Advance receipt of electronic cargo information. The CBP will not issue a permit to unlade or lade cargo upon arrival or departure of an aircraft, and a term permit or special license already issued will not be applicable to any inbound or outbound flight, with respect to which CBP has not received the advance electronic cargo information required, respectively, under § 122.48a or 192.14 of this chapter. In cases in which CBP does not receive complete cargo information in the time and manner and in the electronic format required by § 122.48a or 192.14 of this chapter, as applicable, CBP may delay issuance of a permit or special license to unlade or lade cargo, and a term permit or special license to unlade or lade already issued may not apply, until all required information is received. The CBP may also decline to issue a permit or special license to unlade or lade, and a term permit or special license already issued may not apply, with

respect to the specific cargo for which advance information is not timely received electronically, as specified in § 122.48a or 192.14(b)(1)(ii) of this chapter.

6. Amend § 122.41 by:

- a. Revising its introductory text;
- b. Removing the word “and” following paragraph (a), and redesignating paragraph (b) as paragraph (c); and
- c. Adding a new paragraph (b).

The revision and addition read as follows:

§ 122.41 Aircraft required to enter.

All aircraft coming into the United States from a foreign area must make entry under this subpart except:

* * * * *

(b) Aircraft chartered by, and transporting only cargo that is the property of, the U.S. Department of Defense (DoD), where the DoD-chartered aircraft is manned entirely by the civilian crew of the air carrier under contract to DoD; and

* * * * *

7. Amend § 122.48 by revising paragraph (a) to read as follows:

§ 122.48 Air cargo manifest.

(a) When required. Except as provided in paragraphs (d) and (e) of this section, an air cargo manifest need not be filed or retained aboard the aircraft for any aircraft required to enter under § 122.41. However, an air cargo manifest for all cargo on board must otherwise be available for production upon demand. The general declaration must be filed as provided in § 122.43.

* * * * *

8. Amend subpart E of part 122 by adding a new § 122.48a to read as follows:

§ 122.48a Electronic information for air 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 inbound aircraft required to enter under § 122.41, that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the inbound air carrier and, if applicable, an approved party as specified in paragraph (c)(1) of this section, certain information concerning the incoming cargo, as enumerated, respectively, in paragraphs (d)(1) and (d)(2) of this section. The CBP must receive such information no later than the time frame prescribed in paragraph (b) of this section.

The advance electronic transmission of the required cargo information to CBP must be effected through a CBP-approved electronic data interchange system.

(1) Cargo remaining aboard aircraft; cargo to be entered under bond. Air cargo arriving from and departing for a foreign country on the same through flight and cargo that is unladen from the arriving aircraft and entered, in bond, for exportation, or for transportation and exportation (see subpart J of this part), are subject to the advance electronic information filing requirement under paragraph (a) of this section.

(2) Diplomatic pouches and Diplomatic Cargo. When goods comprising a diplomatic or consular bag (including cargo shipments, containers, and the like identified as Diplomatic Pouch) that belong to the United States or to a foreign government are shipped under an air waybill, such cargo is subject to the advance reporting requirements, but the description of the shipment as Diplomatic Pouch will be sufficient detail for description. Shipments identified as Diplomatic Cargo, such as office supplies or unaccompanied household goods, are subject to the advance reporting requirements of paragraph (a) of this section.

(b) Time frame for presenting data. (1) Nearby foreign areas. In the case of aircraft under paragraph (a) of this section that depart for the United States from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda, CBP must receive the required cargo information no later than the time of the departure of the aircraft for the United States (the trigger time is no later than the time that wheels are up on the aircraft, and the aircraft is en route directly to the United States).

(2) Other foreign areas. In the case of aircraft under paragraph (a) of this section that depart for the United States from any foreign area other than that specified in paragraph (b)(1) of this section, CBP must receive the required cargo information no later than 4 hours prior to the arrival of the aircraft in the United States.

(c) Party electing to file advance electronic cargo data. (1) Other filer. In addition to incoming air carriers for whom participation is mandatory, one of the following parties meeting the qualifications of paragraph (c)(2) of this section, may elect to transmit to CBP the electronic data for incoming cargo that is listed in paragraph (d)(2) of this section:

(i) An Automated Broker Interface (ABI) filer (importer or its Customs broker) as identified by its ABI filer code;

(ii) A Container Freight Station/deconsolidator as identified by its FIRMS (Facilities Information and Resources Management System) code;

(iii) An Express Consignment Carrier Facility as identified by its FIRMS code; or,

(iv) An air carrier as identified by its carrier IATA (International Air Transport Association) code, that arranged to have the incoming air carrier transport the cargo to the United States.

(2) Eligibility. To be qualified to file cargo information electronically, a party identified in paragraph (c)(1) of this section must establish the communication protocol required by CBP for properly presenting cargo information through the approved data interchange system. Also, other than a broker or an importer (see § 113.62(j)(2) of this chapter), the party must possess a Customs international carrier bond containing all the necessary provisions of § 113.64 of this chapter.

(3) Nonparticipation by other party. If another party as specified in paragraph (c)(1) of this section does not participate in advance electronic cargo information filing, the party that arranges for and/or delivers the cargo shipment to the incoming carrier must fully disclose and present to the carrier the cargo information listed in paragraph (d)(2) of this section; and the incoming carrier, on behalf of the party, must present this information electronically to CBP under paragraph (a) of this section.

(4) Required information in possession of third party. Any other entity in possession of required cargo data that is not the incoming air carrier or a party described in paragraph (c)(1) of this section must fully disclose and present the required data for the inbound air cargo to either the air carrier or other electronic filer, as applicable, which must present such data to CBP.

(5) 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 that party reasonably believes to be true.

(d) Non-consolidated/consolidated shipments. For non-consolidated shipments, the incoming air carrier must transmit to CBP all of the information for the air waybill record, as enumerated in paragraph (d)(1) of this section. For consolidated shipments: the incoming air carrier must transmit to CBP the information listed in paragraph (d)(1) of this section that is applicable to the master air waybill; and the air carrier must transmit cargo information for all associated house air waybills as enumerated in paragraph (d)(2) of this section, unless another party as described in paragraph (c)(1) of this section electronically transmits this information directly to CBP.

(1) Cargo information from air carrier. The incoming air carrier must present to CBP the following data elements for inbound air

cargo (an “M” next to any listed data element indicates that the data element is mandatory in all cases; a “C” next to the listed data element indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo):

(i) Air waybill number (M) (The air waybill number is the International Air Transport Association (IATA) standard 11-digit number);

(ii) Trip/flight number (M);

(iii) Carrier/ICAO (International Civil Aviation Organization) code (M) (The approved electronic data interchange system supports both 3- and 2-character ICAO codes, provided that the final digit of the 2-character code is not a numeric value);

(iv) Airport of arrival (M) (The 3-alpha character ICAO code corresponding to the first airport of arrival in the Customs territory of the United States (for example, Chicago O’Hare = ORD; Los Angeles International Airport = LAX));

(v) Airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(vi) Scheduled date of arrival (M);

(vii) Total quantity based on the smallest external packing unit (M) (for example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(viii) Total weight (M) (may be expressed in either pounds or kilograms);

(ix) Precise cargo description (M) (for consolidated shipments, the word “Consolidation” is a sufficient description for the master air waybill record; for non-consolidated shipments, a precise cargo description or the 6-digit Harmonized Tariff Schedule (HTS) number must be provided (generic descriptions, specifically those such as “FAK” (“freight of all kinds”), “general cargo”, and “STC” (“said to contain”) are not acceptable));

(x) Shipper name and address (M) (for consolidated shipments, the identity of the consolidator, express consignment or other carrier, is sufficient for the master air waybill record; for non-consolidated shipments, the name 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 a carrier, freight forwarder or consolidator is not acceptable);

(xi) Consignee name and address (M) (for consolidated shipments, the identity of the container station, express consignment or other carrier is sufficient for the master air waybill record; for non-

consolidated shipments, the name and address of the party to whom the cargo will be delivered is required, with the exception of "FROB" (Foreign Cargo Remaining On Board); this party need not be located at the arrival or destination port);

(xii) Consolidation identifier (C);

(xiii) Split shipment indicator (C) (see paragraph (d)(3) of this section for the specific data elements that must be presented to CBP in the case of a split shipment);

(xiv) Permit to proceed information (C) (this element includes the permit-to-proceed destination airport (the 3-alpha character ICAO code corresponding to the permit-to-proceed destination airport); and the scheduled date of arrival at the permit-to-proceed destination airport);

(xv) Identifier of other party which is to submit additional air waybill information (C);

(xvi) In-bond information (C) (this data element includes the destination airport; the international/domestic identifier (the in-bond type indicator); the in-bond control number, if there is one (C); and the onward carrier identifier, if applicable (C)); and

(xvii) Local transfer facility (C) (this facility is a Container Freight Station as identified by its FIRMS code, or the warehouse of another air carrier as identified by its carrier code).

(2) Cargo information from carrier or other filer. The incoming air carrier must present the following additional information to CBP for the incoming cargo, unless another party as specified in paragraph (c)(1) of this section elects to present this information directly to CBP. Information for all house air waybills under a single master air waybill consolidation must be presented electronically to CBP by the same party. (An "M" next to any listed data element indicates that the data element is mandatory in all cases; a "C" next to any listed data element indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo):

(i) The master air waybill number and the associated house air waybill number (M) (the house air waybill number may be up to 12 alphanumeric characters (each alphanumeric character that is indicated on the paper house air waybill document must be included in the electronic transmission; alpha characters may not be eliminated));

(ii) Foreign airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(iii) Cargo description (M) (a precise description of the cargo or the 6-digit Harmonized Tariff Schedule (HTS) number must be provided);

(iv) Total quantity based on the smallest external packing unit (M) (for example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(v) Total weight of cargo (M) (may be expressed in either pounds or kilograms);

(vi) Shipper name and address (M) (the name 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 a carrier, freight forwarder or consolidator is not acceptable);

(vii) Consignee name and address (M) (the name and address of the party to whom the cargo will be delivered in the United States, with the exception of "FROB" (Foreign Cargo Remaining On Board); this party need not be located at the arrival or destination port); and

(viii) In-bond information (C) (this data element includes the destination airport; the international/domestic identifier (the in-bond type indicator); the in-bond control number, if there is one (C); and the onward carrier identifier, if applicable (C)).

(3) Additional cargo information from air carrier; split shipment. When the incoming air carrier elects to transport cargo covered under a single consolidated air waybill on more than one aircraft as a split shipment (see § 141.57 of this chapter), the carrier must report the following additional information for each house air waybill covered under the consolidation (An "M" next to any listed data element indicates that the data element is mandatory in all cases; a "C" next to any listed data element indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo):

(i) The master and house air waybill number (M) (The master air waybill number is the IATA standard 11-digit number; the house air waybill number may be up to 12 alphanumeric characters (each alphanumeric number that is indicated on the paper house air waybill must be included in the electronic transmission; alpha characters may not be eliminated));

(ii) The trip/flight number (M);

(iii) The carrier/ICAO code (M) (The approved electronic data interchange system supports both 3- and 2-character ICAO codes, provided that the final digit of the 2-character code is not a numeric value);

(iv) The airport of arrival (M) (The 3-alpha character ICAO code corresponding to the first airport of arrival in the Customs territory of the United States (for example, Chicago O'Hare = ORD; Los Angeles International Airport = LAX));

(v) The airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(vi) Scheduled date of arrival (M);

(vii) The total quantity of the cargo covered by the house air waybill based on the smallest external packing unit (M) (For example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(viii) The total weight of the cargo covered by the house air waybill (M) (May be expressed in either pounds or kilograms);

(ix) Description (M) (This description should mirror the precise level of cargo description information that is furnished to the incoming carrier by the other electronic filer, if applicable (see paragraph (c)(1) of this section));

(x) Permit-to-proceed information (C) (This element includes the permit-to-proceed destination airport (the 3-alpha character ICAO code corresponding to the permit-to-proceed destination airport); and the scheduled date of arrival at the permit-to-proceed destination airport);

(xi) Boarded quantity (C) (The quantity of the cargo covered by the house air waybill (see paragraph (d)(3)(vii) of this section) that is included in the incoming portion of the split shipment); and

(xii) Boarded weight (C) (The weight of the cargo covered by the house air waybill (see paragraph (d)(3)(viii) of this section) that is included in the incoming portion of the split shipment).

(e) Compliance date of this section. (1) General. Subject to paragraph (e)(2) of this section, all affected air carriers, and other parties as specified in paragraph (c)(1) of this section that elect to participate in advance automated cargo information filing, must comply with the requirements of this section on and after [insert date 90 days from date of publication in the **Federal Register**].

(2) Delay in compliance date of section. The CBP may delay the general compliance date set forth in paragraph (e)(1) of this section in the event that any necessary modifications to the approved electronic data interchange system are not yet in place. Also, CBP may delay the general compliance date of this section at a given port until CBP has afforded any necessary training to CBP personnel at that port. In addition, CBP may delay implementation if further time is required to complete certification testing of new participants. Any such delay would be the subject of an announcement in the **Federal Register**.

9. Amend subpart G of part 122 by adding a new § 122.66 to read as follows:

§ 122.66 Clearance or permission to depart denied.

If advance electronic air cargo information is not received as provided in § 192.14 of this chapter, Customs and Border Protection may deny clearance or permission for the aircraft to depart from the United States.

**PART 123—CUSTOMS RELATIONS WITH
CANADA AND MEXICO**

1. The general authority citation for part 123 is revised, and the relevant specific sectional authority citation continue, to read as follows:

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

* * * * *

2. Amend § 123.8 by:

- a. Adding two sentences after the second sentence in paragraph (a); and
- b. Adding a sentence at the end of paragraph (d).

The additions read as follows:

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

(a) Permission to unlade or lade. * * * 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. * * *

* * * * *

(d) Term permit or special license. * * * 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.

3. Amend part 123 by adding a new subpart J to read as follows:

**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.

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

§ 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 enumerated 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 identification 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 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 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 et seq.

2. Section 178.2 is amended as follows:

a. In the listing for § 4.7a(c)(4), by removing the number “1515–0001” under the heading “OMB Control No.”, and adding, in its place, the number “1651–0001”; and

b. By adding new listings for §§ 122.48a, 123.91, 123.92 and 192.14 in appropriate numerical sequence according to the section number under the columns indicated.

The listings for §§ 4.7a(c)(4), 122.48a, 123.91, 123.92, and 192.14 read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB Control No.
	* * * * *	
§ 4.7a(c)(4)	Transportation manifest (cargo declaration)	1651-0001
	* * * * *	
§ 122.48a	Transportation manifest (cargo declaration)	1651-0001
	* * * * *	
§ 123.91	Transportation manifest (cargo declaration)	1651-0001
	* * * * *	
§ 123.92	Transportation manifest (cargo declaration)	1651-0001
	* * * * *	
§ 192.14	Transportation manifest (cargo declaration)	1651-0001

PART 192—EXPORT CONTROL

1. The authority citation for part 192 is revised to read as follows:

AUTHORITY: 19 U.S.C. 66, 1624, 1646c. Subpart A also issued under 19 U.S.C. 1627a, 1646a, 1646b; subpart B also issued under 13 U.S.C. 303; 19 U.S.C. 2071 note; 46 U.S.C. 91.

2. Amend subpart B of part 192 by adding a new § 192.14 to read as follows:

§ 192.14 Electronic information for outward cargo required in advance of departure.

(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 commercial cargo that is to be transported out of the United States by vessel, aircraft, rail, or truck, unless exempted under paragraph (d) of this section, the United States Principal Party in Interest (USPPI), or its authorized agent, must electronically transmit for receipt by Customs and Border Protection (CBP), no later than the time period specified in paragraph (b) of this section, certain cargo information, as enumerated in paragraph (c) of this section. Specifically, to effect the advance electronic transmission of the required cargo information to CBP, the USPPI or its

authorized agent must use a CBP-approved electronic data interchange system (currently, the Automated Export System (AES)).

(b) Presentation of data. (1) Time for presenting data. USPPIs or their authorized agents must electronically transmit and verify system acceptance of required cargo information for outbound cargo no later than the time period specified as follows (see paragraph (b)(3) of this section):

(i) For vessel cargo, the USPPI or its authorized agent must transmit and verify system acceptance of export vessel cargo information no later than 24 hours prior to departure from the U.S. port where the vessel cargo is to be laden;

(ii) For air cargo, including cargo being transported by Air Express Couriers, the USPPI or its authorized agent must transmit and verify system acceptance of export air cargo information no later than 2 hours prior to the scheduled departure time of the aircraft from the last U.S. port;

(iii) For truck cargo, including cargo departing by Express Consignment Courier, the USPPI or its authorized agent must transmit and verify system acceptance of export truck cargo information no later than 1 hour prior to the arrival of the truck at the border; and

(iv) For rail cargo, the USPPI or its authorized agent must transmit and verify system acceptance of export rail cargo information no later than two hours prior to the arrival of the train at the border.

(2) Applicability of time frames. The time periods in paragraph (b)(1) of this section for reporting required export cargo information to CBP for outward vessel, air, truck, or rail cargo only apply to shipments without an export license, that require full pre-departure reporting of shipment data, in order to comply with the advance cargo information filing requirements under section 343(a), as amended. Paragraph (e) of this section details dates for compliance with the time frames provided in paragraph (b)(1) of this section. Requirements placed on exports controlled by other Government agencies will remain in force unless changed by the agency having the regulatory authority to do so. The CBP will also continue to require 72-hour advance notice for used vehicle exports pursuant to § 192.2(c)(1) and (c)(2)(i) of this part. USPPIs or their authorized agents should refer to the relevant titles of the Code of Federal Regulations (CFR) for pre-filing requirements of other Government agencies. In particular, for the advance reporting requirements for exports of U.S. Munitions List items, see the U.S. Department of State's International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130).

(3) System verification of data acceptance. Once the USPPI or its authorized agent has transmitted the data required under paragraphs (c)(1) and (c)(2) of this section, and the CBP-approved elec-

tronic system has received and accepted this data, the system will generate and transmit to the USPPPI or its authorized agent (whichever is the filer in AES) a confirmation number (this number is known as the Internal Transaction Number (ITN)), which verifies that the data has been accepted as transmitted for the outgoing shipment.

(c) Information required. (1) Currently collected commodity data. The export cargo information to be collected from USPPPIs or their authorized agents for outbound cargo is already contained in the Bureau of Census electronic Shipper's Export Declaration (SED) that the USPPPI or its authorized agent currently presents to CBP through the approved electronic system. The AES Commodity Module already captures the requisite export data, so no new data elements for export cargo are required under this section. The export cargo data elements that are required to be reported electronically through the approved system are also found in § 30.63 of the Bureau of Census Regulations (15 CFR 30.63).

(2) Transportation data. Reporting of the following transportation information is currently mandatory for AES participants under 15 CFR 30.63 for the vessel, air, truck, and rail modes (see also paragraph (c)(3) of this section):

(i) Method of transportation (the method of transportation is defined as that by which the goods are exported or shipped (vessel, air, rail, or truck));

(ii) Carrier identification (for vessel, rail and truck shipments, the unique carrier identifier is the 4-character Standard Carrier Alpha Code (SCAC); for aircraft, the carrier identifier is the 2- or 3-character International Air Transport Association (IATA) code);

(iii) Conveyance name (the conveyance name is the name of the carrier; for sea carriers, this is the name of the vessel; for others, the carrier name);

(iv) Country of ultimate destination (this is the country as known to the USPPPI or its authorized agent at the time of exportation, where the cargo is to be consumed or further processed or manufactured; this country would be identified by the 2-character International Standards Organization (ISO) code for the country of ultimate destination);

(v) Estimated date of exportation (the USPPPI or its authorized agent must report the date the cargo is scheduled to leave the United States for all modes of transportation; if the actual date is not known, the USPPPI or its authorized agent must report the best estimate as to the time of departure); and

(vi) Port of exportation (the port where the outbound cargo departs from the United States is designated by its unique code, as set forth in Annex C, Harmonized Tariff Schedule of the United States (HTSUS); the USPPPI or its authorized agent must report the port of exportation as known when the USPPPI or its agent tenders

the cargo to the outbound carrier; should the carrier export the cargo from a different port and the carrier so informs the USPPI or agent, the port of exportation must be corrected by the filer in AES.).

(3) Proof of electronic filing; exemption from filing. The USPPI, or its authorized agent, must furnish to the outbound carrier a proof of electronic filing citation (the ITN), low-risk exporter citation (currently, the Option 4 filing citation), or exemption statement, for annotation on the carrier's outward manifest, waybill, or other export documentation covering the cargo to be shipped. The proof of electronic filing citation, low-risk exporter citation, or exemption statement, will conform to the approved data formats found in the Bureau of Census Foreign Trade Statistics Regulations (FTSR) (15 CFR part 30) and FTSR Letter 168, Amendment 2 (this Letter may be obtained from the Census Bureau).

(4) Carrier responsibility. (i) Loading of cargo. The carrier may not load cargo without first receiving from the USPPI or its authorized agent either the related electronic filing citation as prescribed under paragraph (c)(3) of this section, or an appropriate exemption statement for the cargo as specified in paragraph (d) of this section.

(ii) High-risk cargo. For cargo that CBP has identified as potentially high-risk, the carrier, after being duly notified by CBP, will be responsible for delivering the cargo for inspection/examination. If the cargo identified as high risk has already departed, CBP may demand that the export carrier redeliver the cargo in accordance with the terms of its international carrier bond (see § 113.64(g)(2) of this chapter).

(5) USPPI receipt of information believed to be accurate. Where the USPPI or its authorized agent electronically presenting the cargo information required in paragraphs (c)(1) and (c)(2) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the USPPI or its authorized agent acquired this information, and whether and how the USPPI or authorized agent is able to verify this information. Where the USPPI or authorized agent is not reasonably able to verify any information received, CBP will permit this party to electronically present the information on the basis of what it reasonably believes to be true.

(d) Exemptions from reporting; Census exemptions applicable. The USPPI or authorized agent must furnish to the outbound carrier an appropriate exemption statement (low-risk exporter or other exemption) for any export shipment laden that is not subject to pre-departure electronic information filing under this section. The exemption statement will conform to the proper format approved by the Bureau of Census. Any exemptions from reporting requirements for export cargo are enumerated in §§ 30.50 through 30.58 of the Bureau of Census Regulations (15 CFR 30.50 through 30.58). These exemptions are equally applicable under this section.

(e) **Date for compliance.** The requirements of this section, including the pre-departure time frames for reporting export cargo information for required shipments, and the requirement of the ITN, will be implemented concurrent with the completion of the redesign of the AES commodity module and the effective date of mandatory filing regulations that will be issued by the Department of Commerce pursuant to the Security Assistance Act (Public Law 107-228). This date will be announced in the **Federal Register**.

ROBERT C. BONNER,
Commissioner,
Customs and Border Protection.

Approved: November 17, 2003

TOM RIDGE,
Secretary,
Department of Homeland Security.

[Published in the Federal Register, December 5, 2003 (68 FR 68140)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, December 10, 2003,

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

General Notices

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER RELATING TO THE PLACE OF FILING A PROTEST

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed revocation of ruling relating to the place of filing a protest.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 USC § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP intends to revoke HRL 963372 (March 22, 2000), (Attachment A), which holds that a protest was not timely filed when the protest was filed within 90 days from liquidation at the port through which the goods were entered but not liquidated because the port of entry lacked authority to liquidate entries. Customs also proposes to revoke any treatment previously accorded by Customs to substantially identical transactions that is contrary to the position set forth in this notice. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before January 23, 2004.

ADDRESS: Written comments are to be addressed to the Bureau of Customs and Border Protection, Office of Regulations & Rulings, At-

tention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW, Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Renee D. Chovanec, Duty and Refund Determination Branch: (202) 572-8795.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI this notice advises interested parties that CBP intends to revoke HRL 963372 holding that a protest was not timely filed when the protest was filed within 90 days of liquidation of the protested entry at the port through which the goods were entered but not liquidated because the port of entry lacked authority to liquidate entries. Any person with interests in a protest concerning substantially identical circumstances should advise CBP during this notice period. A protestant's failure to advise CBP of pending protests involving substantially identical circumstances, may raise issues of reasonable care on the part of the protestant or its agents, with regard to protests, subsequent to the effective date of the final decision on this notice.

ISSUE INVOLVED: The circumstances in HRL 963372 were that an entry was made at a port but was not liquidated at that port. The protestant entered goods at the Customs port of entry in Battle Creek, Michigan. This entry was liquidated by the Port Director at the Customs service port in Detroit, Michigan. Subsequently, the Protester protested the classification of these goods by filing a protest at the Battle Creek port within 90 days of liquidation. The protest was then forwarded to Detroit where it did not arrive until more than 90 days from liquidation of the entry had elapsed. This protest was denied by the Port Director, Detroit, on the ground that it was not timely filed. The Port Director's denial was affirmed by HRL 963372.

The facts surrounding the protest at issue in HRL 963372 are distinguishable from the facts in the precedent cases described in HRL 963372. Most notable, there is a Customs-created connection between the ports of Battle Creek and Detroit. This connection is absent from the ports involved in those cases cited. Further, there is insufficient notice to the importing public that entries of merchandise entered at Battle Creek are liquidated at the discretion of the Detroit Port Director. Consequently, an importer making entry through the port of entry at Battle Creek, when protesting the liquidation of such an entry, could be unaware that the Port Director whose decision is being protested per 19 C.F.R. § 174.12(d) is that of the Detroit Port Director. Therefore, the protest filed within 90 days of liquidation at the Battle Creek port of entry where the protested entry was filed, though liquidated at the service port of Detroit was timely, and it is proposed that HRL 963372 be revoked.

DATED: December 2, 2003

MYLES HARMON,
Director;
Commercial Rulings Division.

Attachments

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICEHQ 963372
CLA-2 RR:CR:TE 963372 PR
March 22, 2000
CATEGORY: ClassificationROBERT C. MILLER
MANAGER, CONSULTING & TECHNICAL SERVICES
CORTEZ CUSTOMHOUSE BROKERAGE COMPANY
4950 West Dickman Road
*Battle Creek, MI 49015*RE: Protest 3801-97-105194; Request to set aside denial of Application for
Further Review of Protest and void denial of Protest

DEAR MR. MILLER:

This is in reply to your letter of May 14, 1999, on behalf of Bermo Enterprises. In that letter you requested that this Headquarters set aside the decision of the Port Director, Detroit, denying an Application for Further Review of Protest 3801-97-105194 and that the Port Director's denial of that protest be voided. For the reasons that follow, Customs holds that the Application for Further Review of Protest, and the protest itself, were properly denied.

FACTS:

Bermo imported men's jackets through the port of Battle Creek. The goods were classified as men's knit outer garments, in subheading 6101.20.0010, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The protest claims that the imported goods were woven men's cotton jackets that should have been classified in subheading 6201.92.2051, HTSUSA. There is no indication in the submission by Cortez as to whether the goods were entered by Bermo or its representative as knit apparel or whether Customs required such entry.

Because Customs officials at the Port of Battle Creek do not have the authority to either classify merchandise or liquidate entries, the entry was liquidated on September 26, 1997, by the Port Director, Detroit. According to the protestant, the protest, for which further review was requested, was "filed at the Port of Battle Creek, Michigan, on December 24, 1997." However, the protest was forwarded to Customs officials in Detroit where it did not arrive until December 30, 1997. The protest was denied by the Port Director, Detroit, because it was not timely filed.

ISSUE:

The primary issue presented is whether the protest was timely filed. If that finding is in the affirmative, the further question is whether the Application for Further Review of Protest should have been granted.

LAW AND ANALYSIS:

Part 174, Customs Regulations (19 CFR Part 174) contains the regulations which govern protests. Sections 174.12(d) and 174.12(e)(1) of those regulations provide as follows:

(d) *Place of filing.* Protests shall be filed with the port director whose decision is protested.

(e) *Time of filing.* Protests shall be filed, in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), within 90 days after either:

(1) The date of notice of liquidation or reliquidation in accordance with §§ 159.9 or 159.10 of this chapter.

As it was the Port Director, Detroit, which made the decision on the liquidation in question, pursuant to the clear wording of the above quoted regulations, it was incumbent on the importer to file its protest with that officer within 90 days of liquidation. In this regard, this office assumes, in the absence of evidence to the contrary, that the date of liquidation and the date of notice of liquidation are the same date. Since the protest did not reach the Port Director, Detroit, until December 30, 1997, well after the expiration of 90 days from the date of liquidation, the protest was not properly filed within the time specified in section 174.12(e)(1).

In *United China & Glass Co. v. United States*, 53 Cust. Ct. 68, C.D. 2475 (1964), entries were liquidated at the Port of New Orleans. The importer filed its protests within the 90-day protest period with Customs at the Port of San Francisco. The protests were forwarded to Customs officials in New Orleans, where the liquidations took place, but were not received there until after the expiration of the 90-day protest period. The court granted Customs motion to dismiss because the protests, for whatever reason, were not timely filed with the proper Customs officer. *Wolf D. Barth Co., Inc v United States*, 81 Cust. Ct. 127, C.D. 4778 (1978), involved a similar situation. The court in that case followed the decision in *United China & Glass*. See also *Po-Chen, Inc. v. United States*, 3 CIT 17 (1982), where the court stated:

By ignorance of the legal requirements or inadvertence, plaintiff addressed its communication to the wrong office [merely to U.S. Customs Service], at the wrong address [a different address than that of the *designated* official]. Quite understandably, plaintiff's letter was never received at the Los Angeles/Long Beach District, the proper place for the filing of a protest. Assuming *arguendo*, that the letter constituted a "protest", plaintiff failed to fulfill an essential filing requirement for jurisdiction to vest in the court.

HOLDING:

The protest in this case not timely filed at the proper Customs office. Accordingly, both the denial of the Application for Further Review of Protest and the denial of the protest were proper decisions by the Port Director, De-

troit. The request to set aside the denial of Application for Further Review of Protest and to void the denial of the protest are denied.

JOHN DURANT,
Director,
Commercial Rulings Division.

cc: Port Director, Detroit

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

[ATTACHMENT B]

PRO-2-01 RR:CR:DR
HQ 230095
CATEGORY: PROTEST

ROBERT C. MILLER
MANAGER, CONSULTING & TECHNICAL SERVICES
CORTEZ CUSTOMHOUSE BROKERAGE COMPANY
4950 West Dickman Road
Battle Creek, MI 49015

RE: Proposed revocation of HQ 963372, issued March 22, 2000

DEAR MR. MILLER:

This is in regard to HRL 963372, issued March 22, 2000, to you on behalf of your client Bermo Enterprises. Per the requirements of 19 U.S.C. § 1625(c), this is to inform you of Customs proposed revocation of HRL 963372 which held that protest number 3801-97-105194, filed by Bermo Enterprises, was "not timely filed at the proper Customs office."

FACTS:

In HRL 963372, the Protestant, Bermo Enterprises, ("Bermo"), entered goods at the Customs port of entry in Battle Creek, Michigan, port code 3805, on October 2, 1996. According to HRL 963372 "because Customs officials at the port of Battle Creek [did] not have the authority to either classify merchandise or liquidate entries, the entry was liquidated September 26, 1997, by the Port Director" at the Customs service port in Detroit, Michigan, port code 3801. Subsequently, Bermo protested the classification of these goods by filing a protest at the Battle Creek port on December 24, 1997.

According to HRL 963372, "the protest was forwarded to Customs officials in Detroit where it did not arrive until December 30, 1997." This protest was denied on April 16, 1999, by the Port Director, Detroit, because it was not timely filed. In response to Bermo's request to set aside the Port Director's denial, this office affirmed that Port Director's denial of the protest and denial of the Application for Further Review because the protest "was not timely filed at the proper Customs office." This conclusion was reached be-

cause “it was the Port Director, Detroit, [who] made the decision on the liquidation” at issue, and therefore the protest should have been filed within 90 days of liquidation at the Detroit port. (We note that on November 19, 2003, a supervisory Customs officer at the Detroit port informed a staff attorney from this office that it is the operational policy at Detroit to consider protests that have been timely filed at the Battle Creek location as timely filed regardless of when such protests arrive at the Detroit port from Battle Creek. The Customs officer agreed that the denial of the instant protest was an anomaly in this regard.)

According to the CBP office responsible for printing and mailing the “courtesy notices of liquidation,” which advise importers of the liquidation of their entries, such a notice pertaining to an entry filed at Battle Creek will reference only the Battle Creek port’s address and give no indication that the entry was liquidated at Detroit. Further, during an inquiry of the data related to the protested entry in Customs automated data collection system (“ACS”), we could find no reference to any port code other than 3805, i.e., we could find no indication that an entry entered at Battle Creek was liquidated at Detroit. Also, a representative of the Battle Creek port supplied a copy of a portion of the “bulletin notice of entries liquidated” for September 26, 1997. The Battle Creek representative stated that a hard copy of this bulletin notice is available in the public lobby of the Battle Creek port offices and is thus available for examination by importers and others. The page we received did not make reference to the specific protested entry but did include the “Region/District/Port code “33805” which we take to indicate Battle Creek’s port code of 3805, though, as has been stated, no entries are actually liquidated by the Battle Creek Port Director.

ISSUE:

Whether the protest was timely when filed within 90 days of liquidation at the port of entry through which the protested entry was entered but not liquidated?

LAW AND ANALYSIS:

Bermo’s protested entry was filed at Battle Creek and the protest was filed at Battle Creek. The Customs port at Battle Creek, Michigan, is designated as a “port of entry.” 19 C.F.R. § 101.1(4) defines “port of entry:”

The terms “port” and “port of entry” refer to any place designated by Executive Order of the President, by order of the Secretary of the Treasury, or by Act of Congress, at which a Customs officer is authorized to accept entries of merchandise to collect duties, and to enforce the various provisions of the Customs and navigation laws. The terms “port” and “port of entry” incorporate the geographical area under the jurisdiction of a port director. . . .

The port at Detroit, Michigan, where the entry was liquidated is designated as a “service port.”

The term “service port” refers to a Customs location having a full range of cargo processing functions, including inspections, entry, collections, and verification.

The Headquarters file 963372 contains a memo to the file from the staff attorney who authored the protest decision. That memo states that a representative from the port of Detroit advised that, at the time Bermo's protest was decided in this office, there was no import specialist assigned to the port of Battle Creek and that "while entries may be filed at that port, the determination of classification and liquidation are done by the Port Director in Detroit."

The relevant statute is 19 U.S.C. § 1514, which provides in pertinent part:

decisions of the Customs Service, including the legality of all orders and findings entering into the same, as to . . .
the classification and rate and amount of duties chargeable; shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section,

(19 U.S.C. § 1514(a)(2)). Further, § 1514(c)(3) provides:

A protest of a decision, order, or finding described in subsection (a) shall be filed with the Customs Service within ninety days after but not before notice of liquidation or reliquidation, . . .

(19 U.S.C. § 1514(c)(3)). Finally, § 1514(c)(1) states:

A protest of a decision made under subsection (a) shall be filed in writing, or transmitted electronically pursuant to an electronic data interchange system, in accordance with regulations prescribed by the Secretary.

(19 U.S.C. § 1514(c)(1)).

Among the regulations implementing § 1514 is 19 C.F.R. § 174.12(e)(1), which provides, in pertinent part, that protests shall be filed within 90 days after the date of notice of liquidation. Also, 19 C.F.R. § 174.12(d) provides that "protests shall be filed with the port director whose decision is protested." Prior to September 30, 1995, § 174.12(d) of the Customs Regulations provided:

Protests shall be filed with the district director whose decision is protested except that, when the entry underlying the decision protested is filed at a port other than the district headquarters, the protest may be filed with the port director at that port.

On September 27, 1995, the Customs Service published T.D. 95-78 (60 Fed. Reg. 50020) which promulgated the interim rule making technical corrections to the Customs Regulations regarding Customs' re-organization including the change to § 174.12(d). The purpose of this interim rule was described in T.D. 95-78:

This document amends the Customs Regulations to reflect Customs new organizational structure. The changes are nonsubstantive or merely procedural in nature.

(60 Fed. Reg. 50020.) The basis for these technical changes was also explained:

Customs is now eliminating districts and regions from its field organization to place more emphasis on field operations, especially at the cus-

toms ports of entry, and restructuring to provide better support services for those ports of entry. The current regulations contain a significant number of references (over 2,000) to organizational entities which will no longer exist or which will have a different functional context at 11:59 p.m., EST on September 30, 1995. Accordingly, regulatory references to “district directors”, “regional commissioners”, etc., are replaced with “port directors”, “Assistant Commissioner”, etc., to reflect the new field and Headquarters structure of Customs and where decisional authority will now lie.

(60 Fed. Reg. 50020.)

The statement that the changes to the regulations were nonsubstantive in nature does not indicate that the elimination from § 174.12(d) of the words, “except that, when the entry underlying the decision protested is filed at a port other than the district headquarters, the protest may be filed with the port director at that port” and the adoption of the new text in § 174.12(d) (1996), requiring that protests “shall be filed with the port director whose decision is protested,” was intended to change the protest procedure and to require importers to file protests only at a service ports even if the protested entry was made at a port of entry other than the relevant service port.

As support for the conclusion that Bermo’s protest was not timely filed, HRL 963372 relied on United China & Glass Co. v. United States, 53 Cust. Ct. 68 (Cust. Ct. 1964). That case applied section 514, Tariff Act of 1930, which, as described by the United China Court, then provided:

that all decisions of a collector shall be final and conclusive on all persons 60 days after liquidation, unless prior to the expiration of the 60-day period the importer, consignee, or his agent shall have filed a protest in writing with the collector setting forth the protest claim.

In United China several protests were filed timely [then the requirement was within 60 days after liquidation] at the port of San Francisco. More than 60 days after liquidation the protests were forwarded by the San Francisco port to the New Orleans port because the entries had been filed and liquidated at New Orleans. The Customs Court held that the protests were not timely filed at New Orleans and stated:

The filing of protests, by whim or negligence, with some one or another of the many collectors in the United States, seems to us not to have been intended by Congress in enacting sections 514 and 515.

(Id. at 70.) The Bermo protest is distinguishable from the protests in United China in that it was filed at the port where the protested entries were filed. In United China the protests were filed in San Francisco, a port which bore no relation to the port of New Orleans at which the protested entries had been entered and liquidated.

HRL 963372 also noted that the decision in Wolf D. Barth Co., Inc. v. United States, (81 Cust. Ct. 127 (Cust. Ct. 1978)) followed the holding in United China & Glass Co. v. United States. In Wolf D. Barth the court described the applicable statute:

19 U.S.C. 1514(b)(1)(2) requires in pertinent part that a protest be filed with the appropriate Customs officer designated in regulations prescribed by the Secretary of the Treasury within 90 days after liquidation. It is undisputed that according to section 174.12(d) of the Customs

Regulations, the appropriate Customs officer for the filing of the protest in this case was the district director at Philadelphia, Pa. where the involved entry was made.

(81 Cust. Ct. 127, 128–9.) In Wolf D. Barth the protested entry was entered and liquidated at the port Philadelphia. However, plaintiff's attorneys filed a protest against the liquidation of that entry at the office of the New York regional commissioner which "returned a copy of the protest to the plaintiff showing that it was denied . . . and noting that the protest was erroneously accepted at New York." (Id. at 128.) "Subsequently, the involved protest was received by the district director at the port of Philadelphia" after the 90-day protest period had expired. (Id.) The court held that the protest was untimely because:

[i]t is undisputed that according to section 174.12(d) of the Customs Regulations, the appropriate Customs officer for the filing of the protest in this case was the district director at Philadelphia, Pa. where the involved entry was made.

(81 Cust. Ct. 127, 129.) Like the facts in United China, the protests in Wolf D. Barth were filed at an office, the office of the New York regional commissioner, which had no conceivable connection with the port at which the protested entries were entered and liquidated. Further, the courts in both United China and Wolf D. Barth noted that the proper port at which to file the protests in issue was the port where the entry was filed.

Finally, HRL 963372 included a quote from the Court of International Trade in Po-Chien, Inc. v. United States, 3 C.I.T. 17 (Ct. Intl. Trade 1982):

By ignorance of the legal requirements or inadvertence, plaintiff addressed its communication to the wrong office, at the wrong address. Quite understandably, plaintiff's letter was never received at the Los Angeles/Long Beach District, the proper [ILLEGIBLE WORDS]. Assuming, arguendo, that the letter constituted a "protest", plaintiff failed to fulfill an essential filing requirement for jurisdiction to vest in the court.

(Id. at 18.) In that case the applicable statute was 19 U.S.C. § 1514(c)(1) (1979) which provided:

A protest of a decision under subsection (a) of this section shall be filed in writing with the appropriate customs officer designated in regulations prescribed by the Secretary,

The Customs Regulation applicable, 19 C.F.R. § 174.12(d), was the version described above as prior to Customs' reorganization.

In Po-Chien the plaintiff argued that a letter "mailed within ninety days of liquidation to 'U.S. Customs Service' at an address different from that of the designated official, suffices as a protest." (Id. at 18.) That letter "was never received by the appropriate customs officials." Id. We find the facts in Po-Chien distinguishable from those in HRL 963372 as well. In Po-Chien the purported protest was mailed to the wrong address and never received by the proper officials. The Bermo protest however was received timely at the port through which the goods had been entered and subsequently actually received at the port where the decision to liquidated had been made.

In Bond, Schoeneck & King v. United States, (51 T.D. 766 (Cust. Ct. 1927)) the protests at issue were received by the port of Syracuse, which then was a

“subport” of Rochester, within [the then required] 60 days after liquidation. The protests were forwarded by the Syracuse port to the port of Rochester but were not received at Rochester within 60 days of liquidation of the protested entries. The court held that the protests were timely and concluded:

to hold otherwise would be to make this liberal procedure into a catch procedure, and make the timeliness of a protest depend on the diligence with which a protest was forwarded

(*Id.* at 769.) The facts in *Bond, Schoeneck & King v. United States* are similar to those in HRL 963372 and the Customs Court’s rationale is instructive in that the protest procedure is a “liberal procedure.”

First, it appears there is a Customs-created connection between the ports of Battle Creek and Detroit. Unlike the two ports in *United China & Glass Co. v. United States*, San Francisco and New Orleans, and the two ports in *Wolf D. Barth*, Philadelphia and New York, in Bermo’s protest the ports of Battle Creek and Detroit work together: because there are no Customs officers at Battle Creek authorized to liquidate entries, entries filed at Battle Creek must be sent on to the Detroit port for liquidation. Therefore, the facts at issue in HRL 963372 most closely resemble those in *Bond, Schoeneck & King v. United States*, wherein protests timely filed at Syracuse, a subport of Rochester, were held to be timely filed—even when not forwarded to Rochester with the statutory time limit. The relationship between the ports of Battle Creek and Detroit more closely resembles the relationship between the Syracuse and Rochester ports than those ports described as completely unrelated in *United China* and *Wolf D. Barth*.

Second, in both *Wolf D. Barth* and *Po-Chien*, the courts found that under 19 C.F.R. 174.12(d) the port where the protested goods were entered was the proper port for filing the protest. In *Wolf D. Barth* the court held:

It is undisputed that according to section 174.12(d) of the Customs Regulations, the appropriate Customs officer for the filing of the protest in this case was the district director at Philadelphia, Pa. where the involved entry was made.

(81 Cust. Ct. 127, 129.) The *Po-Chien* court stated:

the requisite administrative protest was not filed with the district director at Los Angeles, the port of entry, . . .

(3 C.I.T. 17.) Third, the Bermo protest was not mailed to an incorrect address—an indication of carelessness and disregard for the procedure—but filed at the port where the protested entry was filed and subsequently actually received by the proper Customs officers, as was not the case in *Po-Chien*.

Finally, only when read closely, side-by-side and compared, do the definitions of “port of entry” and “service port” contained in the Customs regulations, give any indication that a “port of entry” like Battle Creek, is authorized to perform only limited services as compared with a “service port” like Detroit. The definition of “port of entry” states that it is “authorized to accept entries of merchandise to collect duties, and to enforce the various provisions of the Customs and navigation laws.” These words may give the impression that a port of entry is authorized to conduct any or all of the processes associated with the entry of goods, including liquidation and protest of entries. Nor does the definition of a “service port” include any words indicating that the liquidation function is performed only there. And, it is

only upon comparing the definition of a “service port” which is defined as offering “a full range of cargo processing functions . . .” with the definition of a “port of entry” does one get the impression that a port of entry offers something less than “a full range of cargo processing functions.”

It is also pertinent that we were unable to find any evidence of notice to the importing public that entries of merchandise entered at Battle Creek are liquidated at the discretion of the Detroit Port Director. Neither the courtesy notice of liquidation, the ACS records, nor the printed bulletin notice advised importers that entries filed at Battle Creek were not liquidated there. Consequently, there is no evidence to show that an importer making entry through the port of entry at Battle Creek, would know or could be expected to know that the decision on liquidation of the entry would be that of the Port Director at Detroit rather than the Battle Creek Port Director.

HOLDING:

Based on the above analysis, the protest was timely filed when it was filed at the port through which the protested entry was entered, though not liquidated, within 90 days of liquidation. Therefore it is proposed that HRL 963372 be revoked.

MYLES HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

**REVOCAION OF DECISION CONCERNING EFFECTIVE DUTY
RATE FOR IMPORTED MERCHANDISE SUBJECT TO A
TARIFF-RATE QUOTA**

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of revocation of a decision relating to the effective duty rate applicable to imported merchandise subject to a tariff-rate quota.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking a decision concerning the effective rate of duty applicable to merchandise that is subject to a tariff-rate quota. Notice of this proposed action was published in the **Customs Bulletin** on October 16, 2003. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 22, 2004.

FOR FURTHER INFORMATION CONTACT: Russell Berger, Entry Procedures and Carriers Branch, (202) 572-8718.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on Customs (now Customs and Border Protection (CBP)) to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws.

In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify, and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the **Customs Bulletin** on October 16, 2003, proposing to revoke a protest review decision, HQ 958810, dated December 4, 1996, relating to the effective duty rate to be applied to imported merchandise under a tariff-rate quota. No comments were received in response to the notice of proposed revocation. As stated therein, the notice also covered any other ruling also meriting revocation to the same extent which could exist but which was not explicitly identified.

Toward this latter end, CBP made prudent efforts to search existing databases for other rulings in addition to the decision identified. However, no further rulings were found. Any party who had received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue the subject of the notice of proposed revocation should have so advised CBP during the comment period. An importer's failure to advise CBP of a specific decision not identified in that notice may raise issues of reasonable care on the part of the importer or its agents for importa-

tions of merchandise subsequent to the effective date of the final decision on this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 958810, and any other ruling not specifically identified, in order to reflect the higher rate of duty properly applicable to the subject merchandise consistent with the analysis contained in Headquarters ruling (HQ) 115991 (Attachment).

In accordance with 19 U.S.C. 1625(c), HQ 115991 will become effective 60 days after its publication in the **Customs Bulletin**.

DATED: December 4, 2003

LARRY L. BURTON,
Director,
International Trade Compliance Division.

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

[ATTACHMENT]

December 4, 2003
QUO-1-RR:IT:EC 115991 rb
Category: Quota

PORT DIRECTOR
CUSTOMS AND BORDER PROTECTION
P.O. Box 3130
Laredo, Texas 78044

ATTENTION: PROTEST SECTION

RE: Merchandise subject to tariff-rate quota; Entry incorrectly designated as non quota; Quota filled when entry corrected; Over-quota duty rate applied to corrected entry; Reconsideration/Revocation of HQ 958810

DEAR SIR OR MADAM:

On December 4, 1996, we issued a decision, HQ 958810, in connection with an application for further review of a protest (no. 2304-95-100179). Based upon an examination of that protest review decision, we have concluded that the decision issued in that case was incorrect and should be revoked. The revocation ruling to this effect is set forth below.

FACTS:

Certain merchandise, as entered, was classified under a subheading of the Harmonized Tariff Schedule of the United States (HTSUS), that was subject to a tariff-rate quota. The entry summary for the merchandise was submitted electronically through the Automated Broker Interface (ABI). At the time the entry summary was filed, the lower (in-quota) rate of duty under the tariff-rate quota was in effect. However, instead of showing the entry to be type 02 (a quota entry), the broker incorrectly indicated the entry type on

the entry summary for the merchandise as type 01 (a non-quota entry). This resulted in the merchandise not being reported for quota.

When Customs (now Customs and Border Protection (CBP)), on its own initiative, later discovered the error in the filed entry, it was too late to reject the entry under CBP's reject policy, so CBP took action at that time to correct the entry to reflect that it was a quota entry. When the error in the entry was discovered and corrected, the quantity of merchandise subject to the in-quota tariff rate had already been reached and the higher (over-quota) rate was then in effect. As a result, CBP applied the over-quota rate of duty to the merchandise under the corrected entry.

ISSUE:

Whether the imported merchandise was lawfully subject to the over-quota tariff rate of duty.

LAW AND ANALYSIS:

Tariff-rate quotas, in pertinent part, permit a specified quantity of merchandise to be entered for consumption at a reduced (in-quota) rate of duty during a designated period (§ 132.1(b), Customs Regulations; 19 CFR 132.1(b)). Once the quota is filled, merchandise that is imported in excess of the quantity admissible at the in-quota rate is permitted entry at the over-quota rate (§ 132.5(b), Customs Regulations; 19 CFR 132.5(b)).

The effective rates of duty for merchandise imported into the United States are governed by 19 U.S.C. 1315. Specifically, section 1315 provides, with exceptions not here relevant, that the effective rate or rates of duty on any article entered for consumption would be the rate or rates in effect when the documents comprising the entry for consumption (the entry summary) and any estimated duties then required to be paid have been deposited with the Customs Service (now CBP) by written, electronic or such other means, as prescribed by regulation.

In this respect, under § 132.11(b), Customs Regulations (19 CFR 132.11(b)), merchandise covered by an entry summary for consumption is regarded as entered for purposes of quota priority and shall acquire quota status (1) if the entry summary is in proper form, and duties have been attached to the entry summary; or (2), should the entry be filed electronically, if the entry summary for consumption is in proper form, and the entry/entry summary information along with a valid scheduled statement date have been successfully received electronically via the Automated Broker Interface (ABI) (see also 19 CFR 132.1(d), 132.11(a), 132.11a, 141.64, and 141.68(d)). In this context, "quota priority" is the precedence granted to one entry or withdrawal for consumption of quota-class merchandise over other entries or withdrawals of merchandise subject to the same quota; and "quota status" in this context refers to the standing that entitles quota-class merchandise to a reduced rate of duty under a tariff-rate quota (19 CFR 132.1(f) and (g)).

In the instant case, the entry summary was not presented to CBP "in proper form," as required by the Customs Regulations, *supra*, because the broker erroneously indicated the entry as being a non-quota (a type 01) entry, which resulted in the merchandise not being reported at that time for quota. Correctly indicating that the entry was a quota (a type 02) entry was thus a critical component of the entry summary under the circumstances that was reasonably needed for duly ascertaining that the entered merchandise should be reported for quota and receive quota status (see *DMV USA, Inc. v. United States*, Slip Op. 01-99 (CIT August 10, 2001), Vol. 35 Cust. B.

& Dec., No. 35 (August 29, 2001), 46, at 54–55, *aff'd.*, 37 Fed. Appx. 526, 2002 U.S. App. LEXIS 13115 (Fed. Cir. June 5, 2002) (entry summary not in proper form where critical component omitted which was reasonably regarded as necessary to determine entitlement of merchandise to quota treatment)).

Hence, because the entry summary in this case was not presented in proper form when initially submitted to CBP, the subject merchandise was not flagged for quota, and, as a result, did not gain the benefit of quota-class priority and status at that time. Consequently, the merchandise was not entitled to the lower or in-quota rate of duty which was then in effect.

When CBP later discovered the error in the entry summary, the in-quota quantity allowable under the tariff-rate quota had already been reached; as such, CBP was constrained to apply the over-quota rate of duty to the merchandise. To this end, the time that CBP discovered the error in the entry summary constituted the time of proper presentation of the entry summary for quota purposes (see Customs Directive No. 3230–025A, dated May 5, 1999 (paragraph 5.5)).

Against this overall backdrop, therefore, the obligation clearly did not rest upon CBP to find and correct the mistake as to entry type when the entry summary was filed and before the quota was filled, so that the importer could receive the benefit of the in-quota rate of duty then in effect (see also 19 CFR 141.64 (entry/entry summary documentation may be reviewed before acceptance for correctness)). Furthermore, to afford the merchandise the lower or in-quota rate of duty after the quota was filled would occasion the circumvention of the quota in violation of the law inasmuch as a greater amount of merchandise would obtain a lower duty than the quota otherwise permitted (see DMV USA, *supra*, at 55).

HOLDING:

The imported merchandise was lawfully subject to the over-quota tariff rate under the facts described in this case. HQ 958810 holding to the contrary is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling revoking HQ 958810 will become effective 60 days after its publication in the CUSTOMS BULLETIN.

LARRY L. BURTON,
Director,
International Trade Compliance Division.

