

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

#### 19 CFR Parts 4, 103, 113, 122, 123 and 192

RIN 1515-AD33

#### Required Advance Electronic Presentation of Cargo Information

**AGENCY:** Customs and Border Protection, Homeland Security.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Customs Regulations to provide that 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 so as to prevent smuggling and ensure cargo safety and security pursuant to the laws enforced and administered by CBP. The proposed regulations are specifically intended to implement the provisions of section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002.

**DATES:** Written comments must be received on or before August 22, 2003.

**ADDRESSES:** Written comments are to be addressed to the Bureau of Customs and Border Protection (CBP), Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments may be inspected at CBP, 799 9th Street, NW., Washington, DC 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:

*Legal matters:* Glen E. Vereb, Office of Regulations and Rulings, (202) 572-8724;

*Trade compliance issues:*

*Inbound vessel cargo:* Kimberly Nott, Field Operations, 202-927-0042;

*Inbound air cargo:* David M. King, Field Operations, 202-927-1133;

*Inbound truck cargo:* Enrique Tamayo, Field Operations, 202-927-3112;

*Inbound rail cargo:* Juan Cancio-Bello, Field Operations, 202-927-3459;

*Outbound cargo, all modes:* Erika Unangst, Field Operations, 202-927-0284;

*For economic impact issues:* Daniel J. Norman, Field Operations, 202-927-4305.

#### 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), and codified at 19 U.S.C. 2071 note, requires that the Secretary endeavor to promulgate final regulations not later than October 1, 2003, that provide for the mandatory collection of electronic cargo information by the Customs Service (now part of 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, 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 prevent smuggling and ensure cargo safety and security pursuant to the laws that are enforced and administered by CBP.

Consequently, for the purposes set forth in section 343(a), as amended, and within the parameters prescribed in the statute, as highlighted below, this document proposes 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.

##### CBP Authority for Issuance of Proposed Rule

When the Trade Act of 2002 was enacted (Public Law 107-210; August 6, 2002), CBP was part of the Department of the Treasury as the Customs Service. 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 proposed rule which is designed to ensure cargo safety and security rather than revenue assessment, now fall solely within the jurisdiction of DHS.

Therefore, inasmuch as CBP is an integral component of DHS, and in view of the subject functions transferred/delegated in this regard from Treasury to DHS, this proposed regulation is being issued by CBP with the approval of DHS. Nevertheless, CBP has also coordinated the development of this proposed rule jointly with the Treasury Department.

##### Statutory Factors Governing Development of Regulations

Under section 343(a), as amended, the requirement to provide particular cargo information to CBP is generally to be imposed upon the party likely to have direct knowledge of the required information. However, where doing so is not practicable, CBP in the proposed regulations must take into account how the party on whom the requirement is imposed acquires the necessary information under ordinary commercial practices, and whether and how this party is able to verify the information it has acquired. Where the party is not reasonably able to verify the information, the proposed regulations must allow the party to submit the information on the basis of what it reasonably believes to be true.

Furthermore, in developing the regulations, CBP, as required, has taken into consideration the remaining parameters set forth in the statute, including:

- The existence of competitive relationships among parties upon which the information collection requirements are imposed;
- Differences among cargo carriers that arise from varying modes of transportation, different commercial practices and operational characteristics, and the technological capacity to collect and transmit information electronically;
- The need for interim requirements to reflect the technology that is available at the time of promulgation of the regulations for purposes of the parties transmitting, and CBP receiving and

analyzing, electronic information in a timely fashion;

- That the use of information collected pursuant to these regulations is to be only for ensuring cargo safety and security and preventing smuggling and not for determining merchandise entry or for any other commercial enforcement purposes;
- The protection of the privacy of business proprietary and any other confidential cargo information that CBP receives under these regulations, with the exception that certain manifest information is required to be made available for public disclosure under 19 U.S.C. 1431(c);
- Balancing the likely impact on the flow of commerce with the impact on cargo safety and security in determining the timing for transmittal of required information;
- Where practicable, avoiding requirements in the regulations that are redundant with one another or with requirements under other provisions of law; and
- The need, where appropriate, for different transition periods for different classes of affected parties to comply with the electronic filing requirements in the regulations.

Additionally, the statute requires that a broad range of parties, including importers, exporters, carriers, customs brokers, and freight forwarders, among other interested parties, likely to be affected by the regulations, be consulted and their comments obtained and evaluated as a prelude to the development and promulgation of the regulations. In furtherance of this, by a notice published in the **Federal Register** (67 FR 70706) on November 26, 2002, the United States Customs Service, which is now merged into CBP, announced a series of public meetings in accordance with section 343(a) to assist in the formulation of these proposed regulations. The meetings were also announced on the Customs Web site.

Separate meetings were scheduled and held to address specific issues related to the advance electronic presentation of information prior to the arrival or departure of air cargo (January 14, 2003), truck cargo (January 16, 2003), rail cargo (January 21, 2003) and sea cargo (January 23, 2003). "Strawman" proposals were offered by Customs at the meetings and were made available on the Customs Web site. In the meetings, members of the importing and exporting community made many significant observations, insights, and suggestions as to what CBP should consider and how CBP should proceed in composing the proposed regulations.

Also, at the meetings and on the Customs Web site, suggestions and comments were solicited from the public. The CBP received numerous submissions via e-mail which similarly provided valuable insights and recommendations regarding the development of the proposed rule.

Moreover, an extensive number of 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), which greatly assisted CBP in its development of these proposed regulations. Indeed, much of the input and recommendations from those members of the trade who participated in the public meetings, the various workgroups of the COAC subcommittee, as well as the views expressed in the many e-mail submissions in this matter, are reflected in these proposed regulations.

In this regard, what follows is a review of, and CBP's response to, the most salient issues and recommendations that were presented pursuant to this consultation process, along with an overview of the proposed programs for advance information filing for cargo destined to, or departing from, the United States by vessel, air, rail or truck.

#### Public Comments; General

##### *Costs of Automation; Economic Analysis*

###### Comment

Any implementing regulations compelling the advance presentation to CBP of electronic information for cargo destined to the United States, under section 343(a), as amended, would impose substantial automation costs on the carrier trade. The CBP should conduct an economic impact analysis to this effect.

###### CBP Response

As is set forth below, there are electronic data transmission systems already in place in many of the modes. When coupled with the fact that much of the trade already uses these systems, it does not appear that requiring advance electronic cargo information would impose substantial costs on the trade.

Nevertheless, Customs and Border Protection (CBP) has conducted an economic analysis to determine whether the proposed rule is an "economically significant regulatory action" under Executive Order 12866 and whether the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et*

*seq.*) would apply to this rulemaking. It has been determined, as a result of the *initial* analysis conducted, that this proposed rule would not have a significant economic impact upon a substantial number of small entities under the RFA. This economic analysis is attached as an Appendix to this document. For the reasons set forth in the analysis, the agency does not make a certification at this time with regard to the regulatory requirements of 5 U.S.C. 603 and 604. Comments are specifically requested as to the impact of the proposed rule on small entities.

This rule is a "significant regulatory action" under Executive Order (E.O.) 12866 and has been reviewed by the Office of Management and Budget in accordance with that E.O. However, it is our preliminary determination that the proposed rule would not result in an "economically significant regulatory action" under E.O. 12866, as regards the impact on the national economy.

##### *Protection of Confidential Information Presented to CBP*

###### Comment

Cargo manifest data collected by CBP under section 343(a), as amended, should be kept confidential by the agency and not be released to the public.

###### CBP Response

Section 343(a)(3)(G), as amended, expressly requires that CBP in its implementing regulations protect the privacy of any business proprietary and any other confidential cargo information that is furnished to CBP in accordance with section 343(a), except for any manifest information that is collected pursuant to section 431, Tariff Act of 1930, as amended (19 U.S.C. 1431), and required to be available for public disclosure pursuant to section 1431(c). It is emphasized in this connection that the application of section 1431(c) has been effectively limited only to vessel cargo manifest information (§ 103.31, Customs Regulations (19 CFR 103.31)).

As thus mandated by the law, CBP intends to accord full protection to the privacy of air, rail, or truck cargo information that is collected under section 343(a), as amended; to this effect, CBP has included in this document a proposed amendment to part 103, Customs Regulations (19 CFR part 103) (*see* proposed § 103.31a).

##### *Information Technology; Interface With Other Government Agencies*

###### Comment

The regulations should avoid redundancy requirements with those of

other Federal agencies. There should be one filing procedure for all Federal agencies (e.g., the Food and Drug Administration (FDA); and the Animal and Plant Health Inspection Service (APHIS)). All data elements to be required by Federal agencies, both within and without the Department of Homeland Security (DHS), for traffic entering the United States should be coordinated through a single entity, preferably CBP. Toward this end, the notification requirements of other Federal agencies should be integrated into the CBP regulations for section 343(a), as amended.

#### CBP Response

To the extent feasible, CBP will continue to explore ways and methods to harmonize and synchronize information collection requirements among the several agencies involved, so that the cargo information CBP collects under section 343(a), as amended, may be provided by electronic means to other Federal offices. Indeed, efforts in this regard are already underway in connection with the development of the Automated Commercial Environment (ACE) and the International Trade Data System (ITDS) (a single system that will fully integrate all requisite information about goods entering and exiting the United States). These discussions may ultimately lead to a sole portal ("single window") for receiving all inward cargo information that may be required to assist other agencies in administering and enforcing statutes enacted to further combat threats to the safety and security of the nation.

However, at present, CBP is of necessity operating under severe time constraints in endeavoring to comply with the statutory deadline for promulgating final regulations under section 343(a) as a national security imperative. Given the limited time available, the construction of a fully-integrated, comprehensive multi-agency electronic data interchange system does not, at this moment, appear to be a practicable or feasible concept, especially in view of the multitude of technological modifications and substantial reprogramming that would be needed for existing systems in order to effectuate this; and withholding the implementation of the final regulations pending the completion of an undertaking of such magnitude would quite clearly be inconsistent with the urgency of the legislation.

The CBP notes that other agencies, such as FDA, have different statutory requirements regarding advance notice of imports. The CBP further notes that, due to these different statutory

requirements, these agencies may have different information needs to accomplish their different statutory mandates. For example, some of the information requirements in section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 to address food safety and security assessments, are different from those required by CBP. In some instances, the time needed by other agencies to receive, review, and respond to this information to accomplish their statutory mission may be different from the time required by CBP to assess and respond to information needed to achieve CBP's statutory mission. To the extent possible, CBP will work with other interested agencies to share the information collected under section 343(a), as amended, with other Federal agencies.

#### Postal Shipments

##### Comment

The advance cargo information provisions for incoming cargo should apply to air/vessel shipments through the United States Postal Service (USPS).

##### CBP Response

As prescribed in section 343(a)(3)(K), as amended, CBP has the authority, in consultation with the Postmaster General, to require advance cargo information for shipments by 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 notice of proposed rulemaking.

#### Overview; Electronic Filing; Shipper on Master/House Bills

Pursuant to section 343(a)(1), as amended, cargo information for required inbound and outbound shipments must be transmitted to CBP by means of a CBP-approved electronic data interchange system. In this document, CBP is proposing that cargo information be transmitted or presented through existing CBP-approved data systems. As is further elucidated *infra*, for each incoming mode and for all outbound modes, these existing data systems are as follows:

*Outbound, all modes:* Automated Export System (AES);

*Inbound vessels:* Vessel Automated Manifest System (Vessel AMS);

*Inbound aircraft:* Air Automated Manifest System (Air AMS);

*Inbound rail:* Rail Automated Manifest System (Rail AMS);

*Inbound truck:* Free And Secure Trade System (FAST); Pre-Arrival Processing System (PAPS) (which employs the Automated Broker Interface (ABI)); Border Release Advanced Screening and Selectivity program (BRASS, modified as appropriate); and Customs Automated Forms Entry System (CAFES) or ABI in-bond reporting.

In this latter regard, and to the additional extent that future approved automated data systems are to be implemented, CBP, either generally or on a port-by-port basis, as applicable, will give advance notice of the effective date of implementation of the specific system at particular port(s) of arrival by publishing a notice to this effect in the **Federal Register**.

#### Master Bills/House Bills

Generally speaking, a master bill of lading refers to the bill of lading that is generated by the incoming carrier covering a consolidated shipment. A consolidated shipment would consist of a number of separate shipments that have been received and consolidated into one shipment by a party such as a freight forwarder or a Non Vessel Operating Common Carrier (NVOCC) for delivery as a single shipment to the incoming carrier. The consolidated shipment, as noted, would be covered under the incoming carrier's master bill; and this master bill could reflect the name of the freight forwarder, the NVOCC or other such party as being the shipper (of the consolidated shipment). However, each of the shipments thus consolidated would be covered by what is referred to as a house bill. The house bill for each individual shipment in the consolidated shipment would reference the name of the actual shipper (which would be the actual foreign owner and exporter of the cargo to the United States). As will be seen from the data elements as proposed in this rulemaking, it is this latter information as to the identity of the actual shipper from the relevant house bill that CBP is seeking for targeting purposes.

#### Public Comments; Vessel Cargo Destined to the United States

##### Summary of Principal Comments

Most of the comments received concerning the advance information reporting requirements for incoming vessel cargo evidenced an intent to revisit the "24-hour rule" that was issued and became effective last year (T.D. 02-62, 67 FR 66318; October 31, 2002).

In brief, it was principally requested that advance cargo information filing by

Non Vessel Operating Common Carriers (NVOCCs) be eliminated, due to a number of operational problems experienced by incoming carriers, that have resulted from limitations said to be inherent in the Vessel Automated Manifest System (AMS) when NVOCCs, as opposed to the vessel carriers, transmit shipment information to CBP; at the same time, though, it was advocated that importers should be permitted, at their discretion, to file through AMS certain information that would likely best be known to them as to the identification and nature of the incoming cargo. Also, it was asked that definitions be added to the regulations regarding those data elements pertaining to shipper and consignee information. In addition, it was asked that Department of Defense-contracted conveyances be exempted from the 24-hour rule.

#### *CBP Response*

In sum, CBP stands by the 24-hour rule for incoming vessel cargo and does not contemplate any major change to it under this rulemaking, with one exception: to introduce the mandate that vessel carriers file their advance cargo manifest information with CBP electronically.

As explained in the final rule (67 FR at 66319), the 24-hour pre-lading requirement for incoming vessel cargo, especially containerized vessel cargo, is tied inextricably to the Container-Security Initiative (CSI). CSI was developed to secure an indispensable, but vulnerable, link in the chain of global trade: containerized shipping. Annually, more than 6 million cargo containers are off loaded at U.S. seaports. A core element of CSI is to pre-screen such containers at the port of departure *before* they are shipped. To enable this pre-screening to be done fully and effectively, it is essential that the required advance cargo declaration information be presented to CBP at least 24 hours prior to lading the cargo aboard the vessel at the foreign port.

With the implementation of CSI and the 24-hour rule, CBP has been able to identify shipments that have posed potential threats; and security-related seizures of problematic shipments have occurred. In short, these programs—CSI coupled with the 24-hour rule—have become a critical bulwark against threats to the safety and security of United States seaports, trade, industry, and the country.

#### *Non Vessel Operating Common Carriers (NVOCCs)*

In consideration of the competitive relationships that exist in the

international freight forwarding field, those NVOCCs that seek to file required business proprietary and other confidential cargo information for their incoming shipments directly with CBP should be allowed to do so, rather than having to furnish such information to vessel carriers for electronic presentation to CBP. The CBP is confident that operational issues that have arisen in relation to the implementation of the 24-hour rule will over time be satisfactorily addressed; toward this end, CBP will continue to be available to assist the trade in resolving such issues.

There is no consensus in the trade community as to whether importers should provide sea cargo data to CBP. When this split is coupled with the current design and functionality of the AMS system, CBP finds that allowing importers, at their discretion, to participate in advance electronic filing through the system would at this time be neither advisable nor practicable.

#### *Government Vessels*

Government vessels falling within the purview of § 4.5(a), Customs Regulations (19 CFR 4.5(a)), are exempt from the requirement to make entry, and, as such, they would already be exempt from having to comply with advance cargo declaration reporting under the 24-hour rule (*see* 19 CFR 4.7(a), (b)(2)). For purposes of enlarging upon those vessels that would be subject to such exemptions, it is noted that by a separate, interim rule, CBP will expand the definition of government vessels.

#### *Data Elements—Shipper, Consignee; Date and Time of Departure*

With reference to the identity of the shipper, 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 would be sufficient. For non-consolidated shipments, and for each house bill in a consolidated shipment, the identity of the actual shipper (who is both the owner and the exporter) of the cargo from the foreign country would be needed. To elaborate, the foreign owner of the goods just before they are delivered for export, and who initially consigns and ships them from the foreign country, is the party who ultimately decides that the goods are to be disposed of in another country, such as the United States. The foreign shipper and owner of the goods is, therefore, the exporter, because this is the party initially responsible for causing the export. Section

4.7a(c)(4)(viii), Customs Regulations (19 CFR 4.7a(c)(4)(viii)), would be revised to include the additional meaning of this data element.

In addition, with reference to the identity of the consignee, for consolidated shipments, at the master bill level, the identity of the NVOCC, freight forwarder, container station or other carrier would be sufficient. However, parties identified as “consolidators,” even though they may also be NVOCCs, may not participate in Vessel AMS.

For non-consolidated shipments, and for each house bill in a consolidated shipment, the consignee would be the party to whom the cargo would be delivered in the United States, with the exception of “FROB” (Foreign Cargo Remaining On Board). If the name of the consignee, as described, is available, the carrier must disclose this information. However, where cargo is shipped “to the order of [a named party],” which is a common business practice, the carrier must report this named “to order” party as the consignee in the advance cargo information submission; 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/phone number) 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. Section 4.7a(c)(4)(ix) would be revised to include the added meaning of this data element.

Also, § 4.7a(c)(4) would further be amended to require the date and time of the departure of the vessel from foreign, as reflected in the vessel log.

#### **Overview; Vessel Cargo Destined to the United States**

##### *Electronic Filing Mandate*

Under this proposed rule, in principal part, the 24-hour rule would be amended to provide that vessel carriers must present their cargo declarations to CBP by means of a CBP-approved electronic data interchange system, 24 hours before lading the cargo aboard the vessel in the foreign port.

##### *Transition/Timetable for Compliance With Electronic Filing Mandate*

Within 90 days of the publication of this advance electronic cargo information requirement as a final rule in the **Federal Register**, all ocean carriers, and NVOCCs choosing to participate, must be automated on the Vessel AMS system at all ports of entry

in the United States where their cargo will initially arrive.

#### **Comments; Air Cargo Destined to the United States**

##### *Time Frame for Presenting Advance Cargo Information to CBP*

##### **Comment**

The time frames for presenting electronic cargo information to CBP for air cargo prior to the cargo's arrival in the United States that were set forth in the "strawman" proposal (12 hours in advance of foreign lading generally, and 8 hours in advance of foreign lading in the case of express courier shipments) were excessively long. Such lengthy advance time frames would destroy "just-in-time" delivery systems. Instead, it was chiefly recommended that the time frame be one hour prior to arrival in the United States; other commenters, however, thought that the time frame for transmission should be determined on a country-by-country basis, or, in the alternative, at the time of "wheels-up" on the aircraft.

Also, it was asserted that the advance notice time frame should be consistent within each mode of transport; alternatively, it was suggested that the advance filing time frame for charter flights should be shorter than for other flights, and that there should be special procedures for time-sensitive cargoes (short haul).

##### **CBP Response**

The time frames in the "strawman" proposal were put forth only for purposes of stimulating a dialogue with the importing trade regarding the development of an appropriate time frame for the electronic submission of information for inbound air cargo. This issue is central to the implementation of section 343(a) of the Trade Act of 2002, as amended.

Accordingly, after considering the feedback received from the importing trade in response to the "strawman," CBP is proposing in this rulemaking that information for inbound air cargo be electronically presented no later than the time of departure of the aircraft for the United States (no later than the time that wheels are up on the aircraft, and it is en route directly to the United States), in the case of aircraft departing for the United States from any foreign port or place in North America, which includes locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda. For aircraft departing for the United States from any other foreign area, information for the inbound air cargo would be required to be

electronically presented to CBP no later than 4 hours prior to the arrival of the aircraft at the first port of arrival in the United States.

At present, CBP believes that these time frames (no later than "wheels-up" or 4 hours prior to arrival, as applicable) should enable CBP to properly conduct a risk assessment for incoming air cargo and, if found advisable, to make preparations to hold the cargo for further information or for examination, as required to ensure cargo safety and security under section 343(a), as amended. At the same time, CBP has determined that these time frames should realistically accommodate the concerns of the trade, and should not disrupt the flow of commerce. Indeed, an important reason for the different time frames proposed is the need to obviate disruptions in the flow of commerce; given this consideration, the effect on "just-in-time" ("JIT") delivery systems should be nonexistent.

The time frames proposed for submitting electronic information to CBP for inbound air cargo would thus be consistent for all air cargo shipments regardless of the type of operator or the nature of the cargo; the time frames would differ based only upon the foreign area from which the incoming air carrier was departing for the United States.

##### *Parties Required/Eligible To Participate in Advance Cargo Information Filing*

##### **Comment**

It was asked whether freight forwarders to the United States would be required to participate in advance cargo information filing. In the alternative, it was requested that advance electronic shipment information be supplied to CBP by the foreign shipper (the exporter to the United States) or by the U.S. importer. In addition, it was recommended that freight deconsolidators (Container Freight Stations) be allowed to transmit in-bond information electronically to CBP at the house air waybill level. In this overall context, it was further mentioned that CBP would need to specify what type of bond would be required for any non-carrier commercial participants in advance electronic cargo information filing under section 343(a), as amended. Also, two commenters urged that cargo information be supplied to CBP by the foreign country (government).

It was also generally stated that some parties in the air environment would simply be unable to comply with the advance electronic cargo information requirements. In any case, it was

asserted that any liability for the accuracy of the information that a party presented to CBP should fall upon the entity that supplied the information to the presenting party.

##### **CBP Response**

Inbound air carriers that are otherwise required to make entry under § 122.41, Customs Regulations (19 CFR 122.41), would be required to file advance cargo information electronically with CBP. The existing automated air cargo manifest system (the Air Automated Manifest System (Air AMS)) was originally designed and structured to receive electronic data directly from the incoming air carrier.

Nevertheless, in addition to the incoming air carrier's mandatory participation in presenting advance electronic air cargo information, CBP has concluded that one of a number of other parties would be able to voluntarily present to CBP a part of the electronic information required for the inbound air cargo. These parties could consist of one of the following:

(1) An ABI (Automated Broker Interface) filer as identified by its ABI filer code (this entity could be either the importer of the cargo or the importer's authorized Customs broker);

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

(3) An Express Consignment Carrier Facility likewise identified by its FIRMS code; or

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

Unlike Vessel AMS, as explained above, and Rail AMS, as discussed below, Air AMS has the existing design capabilities and functionality to, and in fact already does, accept information from parties other than the importing carrier for inward cargo shipments. The CBP expects to make this capability to supply data available to a wider group of trade members, as appropriate, and to make any systems modifications necessary to accommodate possible variations in the order in which data might be received.

Hence, along with the incoming air carrier for whom participation in Air AMS is compulsory, any one of the foregoing parties could elect to supply certain data for air cargo to CBP, provided that the party established the communication protocol required by CBP for properly presenting electronic data through the system, and provided further that the party, other than an

importer or broker, was in possession of a Customs international carrier bond containing all the necessary provisions of 19 CFR 113.64.

However, in the case of cargo shipments transported under a consolidated master air waybill, only one party could supply information for all such cargo so shipped.

It is observed that the importer or its authorized agent would be the party in the United States most likely to have direct knowledge as to particular information about the nature and destination of the cargo. Secondly, a facility, such as a Consolidator or an Express Consignment Carrier, that handled the shipment and/or arranged for its delivery to the incoming carrier, would also have access to particular information about the cargo, more so than the incoming carrier. Generally speaking, for consolidated shipments, information in the direct possession of such a facility would consist of data from its house air waybill(s) that would not be directly known by the incoming carrier.

Thus, in recognition of possible competitive relationships that a party such as a container freight station, freight forwarder, or express consignment or other carrier, might have with the incoming air carrier, such party would have the opportunity, if it so elected, to present the required information directly to CBP, as opposed to having to present this information to the inward air carrier or a service provider who would, on its behalf, transmit this information for the cargo to CBP.

In any event, it would not be realistic or feasible to seek to obligate a foreign country (government) to transmit advance cargo information for commercial cargo sent from that country to the United States; and it is submitted in this connection that section 343(a)(3)(B), as amended, clearly envisages the electronic filing of cargo information by appropriate commercial or business entities, rather than foreign governments.

Since the party from whom electronic air cargo information would be required might not necessarily, in all situations, be the party with direct knowledge of that information, CBP would take into consideration how, in accordance with ordinary commercial practices, the electronic filer acquired such information, and whether and how the filer was able to verify this information. Where the party electronically presenting the cargo information to CBP was not reasonably able to verify such information, CBP would permit the party to electronically present the

information on the basis of what the party reasonably believed to be true.

#### Comment

There should be an exemption from the advance cargo filing requirements for aircraft that are owned or leased by the Department of Defense.

#### CBP Response

Aircraft, including public aircraft as defined in 19 CFR 122.1(i), that are exempt from entry under 19 CFR 122.41 would be exempt from advance cargo information filing under this proposed rule. It is noted that by a separate, interim rule, CBP will expand upon those aircraft that are subject to such an exemption from entry.

#### Comment

Participants in the Customs-Trade Partnership Against Terrorism (C-TPAT), and related parties, should be excluded from the advance cargo information requirement or should be subject to a reduced time frame within which the advance cargo information must be transmitted.

#### CBP Response

The CBP disagrees with this suggestion. However, participation in C-TPAT would be considered as one factor in targeting whether cargo needed to be held upon arrival pending the receipt of further information or for examination. Such additional information, if required, would have to be made available at the port of arrival.

#### *Required Cargo Information; Availability/Correction of Data Transmitted*

#### Comment

For freight forwarders that might participate in the advance electronic filing of cargo information, it was asked what information they would specifically be required to transmit to CBP.

#### CBP Response

The specific data elements that would be required from a participating party are enumerated below under the heading "Overview; Air Cargo Destined to the United States" (see "Additional Data Elements from Incoming Carriers; Other Participants"); and these data elements are also set forth in proposed § 122.48a(d). A freight forwarder could be included among those parties that could participate voluntarily in electronic cargo information filing, provided that the freight forwarder was either an ABI filer, a Container Freight Station/deconsolidator or an Express Consignment Carrier Facility; that it had

posted a Customs international carrier bond containing all necessary provisions of 19 CFR 113.64; and that it had established the communication protocol required by CBP for properly presenting electronic data through the system.

#### Comment

The CBP should clearly define the meaning of those data elements which must be presented for inbound air cargo.

#### CBP Response

The CBP believes that the proposed data elements to be required in advance for incoming air cargo are fairly well known; however, a number of the data elements set out in the proposed regulations are accompanied by detailed explanations as to their meaning. Should it be called for, CBP will include additional definitions for those elements about which the importing air community might prefer greater elucidation.

Therefore, CBP requests comments in response to this proposed rule especially concerning those data elements contained in proposed § 122.48a(d) for which the importing air community seeks additional guidance.

#### Comment

Most of the necessary data for incoming cargo would not necessarily be available prior to its lading aboard the aircraft. Moreover, the line-item Harmonized Tariff Schedule (HTS) number for air cargo would not be available prior to the departure of the aircraft. The air carrier would not always have information for cargo at the house air waybill level; and CBP should allow in-transit consolidations to be reported at the master air waybill level. Also, CBP should permit an air carrier to submit electronic cargo data for shipments brought in by truck.

#### CBP Response

Because CBP proposes to require advance cargo information for incoming aircraft either no later than the time of "wheels-up" or no later than 4 hours prior to arrival in the United States, as applicable (and not prior to the foreign lading of the cargo aboard the aircraft), the commenters' concerns as to the availability of the necessary data for the cargo prior to foreign lading are addressed.

Nevertheless, concerning the possible unavailability of the 6-digit HTS number for the cargo prior to foreign departure, it is emphasized that either a precise description of the cargo or its HTS 6-digit tariff subheading would be sufficient. In any case, under the

proposal, as already explained, the line-item HTS number for the cargo would essentially not be required prior to the departure of the aircraft for the United States.

As to the carrier not always having cargo information from the house air waybill, should another party, such as an ABI filer, elect to participate in advance automated cargo information filing, the carrier would only be responsible for transmitting information from the master air waybill. However, if another electronic filer did not participate in transmitting needed cargo information to CBP, the incoming carrier would need to obtain the house air waybill information from the relevant party for presentation to CBP.

In-transit consolidations of inbound cargo typically present the same issues of cargo safety and security as other inbound shipments. Thus, the complete house air waybill information would be required from the carrier or the other party electing to participate in advance cargo information filing. Also, should an air carrier choose to ship freight by truck, advance cargo information would be required to be presented to CBP through the truck processing system (*see* proposed § 123.92); electronic air documents would not be accepted in lieu of advance electronic truck cargo information.

#### Comment

If cargo were bumped from one flight to a later flight, there should be no need to re-transmit related cargo information that was previously transmitted to CBP.

#### CBP Response

Given the time frames proposed, since cargo information would essentially not be required prior to the departure of the aircraft for the United States, this issue should not present a significant concern.

#### Comment

The CBP should allow changes and additions to electronically transmitted manifest information in accordance with current manifest discrepancy reporting policies.

#### CBP Response

Complete and accurate information would need to be presented to CBP for cargo aboard the aircraft no later than the time period specified for the particular foreign area from which the aircraft departs for the United States. As for any changes in the cargo information already transmitted for a flight, the procedures for discrepancy reporting will be the subject of a separate rulemaking.

### *Pre-Departure Screening of Cargo; Cargo Inspections in the United States*

#### Comment

Air cargo security is already highly regulated by the Transportation Security Administration (TSA), the Federal Aviation Administration (FAA), and other agencies and foreign governments. As such, there should be no pre-departure screening process required for incoming air cargo. In the alternative, it was advocated that CBP should consider a CSI (Container Security Initiative)-type program for air cargo. In the event that pre-departure/lading information is necessary for pre-screening purposes, CBP should provide a positive load/no-load message to the electronic filer. Also, for cargo that may be identified as high risk, CBP should not compel inspections of such cargo at locations in the United States that are merely technical stops.

#### CBP Response

There will be no pre-departure-screening-and-hold process applied to air cargo under this proposal. While CBP may consider the possibility of developing a CSI-type initiative for air cargo based on a number of factors, including the terrorist threat, the success of industry security programs, and the success of this rulemaking and related CBP security efforts, such a proposal falls outside the scope of this rulemaking.

In addition, inspections of cargo in the United States conducted for the purpose of ensuring cargo safety and security and for the prevention of smuggling would only be conducted if the cargo had been identified as potentially posing a safety, security or smuggling risk; and CBP would work with the carrier and other affected Government agencies to determine an appropriate location to examine such potentially high-risk cargo. In appropriate cases, however, landing rights could be denied to an incoming carrier if advance cargo information was not timely, accurately, and completely presented to CBP (*see* proposed § 122.14).

#### Comment

The possible need for a carrier to retain cargo in a staging/storage area at a foreign location in order to comply with a pre-departure advance information requirement for inbound cargo would create a security risk for the cargo that would not otherwise exist.

#### CBP Response

As indicated, the time frames proposed for the advance reporting of

air cargo information have been designed so as to preclude any need to retain cargo in a foreign area in order to comply with the pre-arrival reporting mandate.

### *Requested Exemptions/Exclusions From Electronic Filing Requirements*

#### Comment

Advance electronic information should not be required for inbound air cargo in diplomatic pouches. Merchandise brought in by the air carrier for its own use should be exempt as well from the advance electronic information provisions. Also, letters and documents should be exempted from the detailed advance electronic cargo information submission. It was further asked whether the advance filing requirements would apply to hand-carried merchandise or merchandise checked in passenger baggage.

#### CBP Response

For purposes of this rulemaking, all air cargo shipped under an air waybill, regardless of its nature, would be subject to the advance electronic reporting provisions. This would include diplomatic pouches and letters and documents. Also, 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. However, hand-carried merchandise and merchandise contained in passenger baggage would not be subject to the advance cargo information requirements in this rulemaking; such merchandise would be included in the passenger baggage declaration.

### *Required Information Technology; Trade Support; Transition Periods*

#### Comment

It was asked whether CBP would provide staffing for data/targeting analysis and related trade support on an around-the-clock basis; and two commenters were insistent that CBP conduct extensive training in Air AMS filing procedures at all ports. Various concerns were also expressed as to the ability of CBP to effectively analyze advance cargo information.

#### CBP Response

An automated targeting system for performing a risk assessment for incoming air cargo will be fully in place upon the effective date of the final regulations. Automated data/targeting analysis for risk assessment will be available at all times. Related trade support will be available during regular



port hours; and CBP will conduct any training that CBP personnel might need in Air AMS procedures.

#### Comment

To effectuate the filing of electronic cargo information under section 343(a), as amended, CBP should consider integrating advanced information technology (IT) products into its current automated manifest filing system. Additionally, the Automated Commercial Environment (ACE) system should be compatible with the implementing regulations. Also, there should be a grace period given under the implementing regulations in order to afford trade participants the chance to make suitable changes to their computer programming; and there should likewise be a grace period allowed during which such trade participants could bring the detail and accuracy of their advance information filing up to the level that CBP would require.

#### CBP Response

While disposed to explore any advances in IT products, CBP will largely rely, at least initially, upon the Air AMS, with appropriate future modifications, as the principal vehicle to achieve the goal of advance air cargo information presentation under section 343(a), as amended. However, any new system developed within the framework of ACE will be compatible with the implementing regulations. For this reason, therefore, the implementing regulations will refer generally to a CBP-approved electronic data interchange system (rather than to Air AMS, specifically).

The CBP contemplates that, pursuant to section 343(a)(3)(J), as amended, the effective date that would be set for the final implementing regulations following their promulgation should afford sufficient time for Air AMS participants to make suitable changes to their programming for the advance transmission of cargo data; and the effective date would similarly incorporate a reasonable grace period within which Air AMS participants should be able to bring their advance data filing up to the level of detail and accuracy that CBP seeks. Specifically, the proposed effective date, and the provisions for delaying the effective date, for compliance with the advance presentation of electronic air cargo information to CBP under section 343(a), as amended, are contained in proposed § 122.48a(e).

### Overview; Air Cargo Destined to the United States

#### *Electronic Systems To Be Used*

Air carriers, and certain other parties authorized for voluntary participation in the program, must transmit through a CBP-approved electronic data interchange system advance cargo air waybill information, in accordance with the "Transition and Implementation Timeline" discussed below. The current CBP system for transmitting air cargo information is the Air Automated Manifest System (Air AMS). Also, certain express consignment carriers have proprietary electronic data systems which CBP personnel can access. The CBP will permit the use of these electronic proprietary systems, provided that the participants are capable of providing the data in a suitable electronic format to CBP for the purposes of ensuring cargo safety and security and preventing smuggling, unless CBP determines that it is necessary to migrate those participants to Air AMS. In addition, these express consignment carriers will be required to provide CBP with an electronic record of the data in a CBP-approved storage medium. All other express consignment carriers, including those that currently submit information to CBP using paper documents, will be required to participate in Air AMS.

#### *Data Submission Timelines*

Air carriers and other parties electing to participate in the program would transmit the required information to CBP no later than the time of departure ("wheels-up") for aircraft that are departing 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. For aircraft departing for the United States from any other foreign area, such carriers and other parties would transmit the required information to CBP no later than 4 hours prior to the arrival of the aircraft at the first port of arrival in the United States. This amount of time should enable CBP to conduct an adequate analysis of the data and to select individual shipments for further document review or physical examination, while not disrupting the flow of commerce and "just-in-time" delivery systems.

#### *Parties Required/Eligible To Present Advance Electronic Cargo Information*

All carriers required to enter under § 122.41, Customs Regulations (19 CFR 122.41), would be required to participate in the electronic data

interchange system and present the necessary cargo information to CBP.

The carrier will only need to be automated at each port where entrance and clearance of the aircraft is required. Incoming air carriers and other authorized parties who choose to do so may participate in Air AMS until CBP migrates to a different processing system. For this reason, the implementing regulations will refer only to a "CBP-approved electronic data interchange system" in order to accommodate the future migration to any superseding data processing systems.

In addition to an incoming air carrier for whom participation will be mandatory, one of the following parties may elect to transmit particular data to CBP for incoming cargo: an ABI filer (importer or its Customs broker); a Container Freight Station/deconsolidator as identified by its FIRMS code; an Express Consignment Carrier Facility likewise identified by its FIRMS code; or an air carrier as identified by its IATA code, that arranged to have the incoming air carrier transport the cargo to the United States. To be qualified to file cargo information electronically, the party would need to establish the communication protocol required by CBP for properly presenting electronic information through the data interchange system; and, except for an importer or broker, the party would have to possess a Customs international carrier bond containing all the necessary provisions of 19 CFR 113.64.

Consequently, the carrier will either have to obtain all the needed cargo shipment information for presentation to CBP, or the carrier will need to obtain the unique identifier of the party that will separately transmit to CBP a portion of the required data for the cargo; the other party's unique identifier code would have to accompany the carrier's data transmission to CBP, so that CBP could associate the subject cargo shipment with both electronic transmissions related to the cargo.

Permission to unlade all or part of the cargo could be denied or delayed, and penalties and/or liquidated damages could be assessed, where the air carrier or other electronic filer transmitted inaccurate, incomplete or untimely information to CBP.

#### *Information Required From Air Carriers*

An incoming air carrier would need to transmit all of the necessary information for non-consolidated air waybills. For consolidated shipments: the carrier would have to present to CBP all the required information from the master air



waybill record; and the carrier would supply all the information for associated house air waybill records where another authorized party did not electronically transmit information for the associated house air waybills directly to CBP. If another approved party did transmit the information, the carrier would not be required to electronically supply such information.

The carrier would still be required under 19 U.S.C. 1431 to have a manifest for all cargo aboard the aircraft, whether that cargo was manifested under a non-consolidated air waybill or a house air waybill that was part of a consolidation.

These proposed regulations apply to air cargo that would be entered into the United States, as well as to in-transit air cargo including any cargo which remained aboard the aircraft on the same through flight.

#### *Specific Data Elements; Air Carriers*

In the following listing of data elements for air carriers, an "M" next to any element indicates that the data element would be mandatory in all cases; a "C" next to the data element indicates that the data element was conditional and would be transmitted to CBP if the condition were present for that particular air waybill.

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

(2) Trip/flight number (M);

(3) 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);

(4) 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));

(5) 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));

(6) Scheduled date of arrival (M);

(7) 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);

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

(9) 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);

(10) Shipper name and address (M) (for consolidated shipments, this may be the name and address of the consolidator, express consignment or other carrier, for the master air waybill record; for non-consolidated shipments, this must be the name and address of the actual shipper (the owner and exporter) of the merchandise from the foreign country);

(11) Consignee name and address (M) (for consolidated shipments, this may be the name and address of the container freight station, express consignment or other carrier, for the master air waybill record; for non-consolidated shipments, this must be the name and address of the party to whom the cargo will be delivered, with the exception of "FROB" (Foreign Cargo Remaining On Board));

(12) Consolidation identifier (C);

(13) Split shipment indicator (C) (this data element includes information indicating the particular portion of the split shipment that will arrive; the boarded quantity of that portion of the split shipment (based on the smallest external packing unit); and the boarded weight of that portion of the split shipment (expressed in either pounds or kilograms));

(14) 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);

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

(16) 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

(17) Local transfer facility (C).

#### *Additional Data Elements From Incoming Carriers; Other Participants*

In addition to the data elements listed in items "1" through "17" above, the incoming air carrier, or another eligible electronic filer electing to do so, must transmit the following information to CBP for the inward cargo:

(1) 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));

(2) 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));

(3) Cargo description (M) (a precise description of the cargo 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);

(4) 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);

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

(6) Shipper name and address (M) (the name and address of the actual shipper (the owner and exporter) of the cargo from the foreign country);

(7) 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"); and

(8) 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)).

#### *Advance Electronic Information for Letters and Documents*

For purposes of compliance with the advance cargo information filing requirements under section 343(a), as amended, letters and documents would be subject to the same procedures as all other types of cargo. Such "letters and documents" comprise the data (for example, business records and diagrams) described in General Note 19(c), Harmonized Tariff Schedule of the United States (HTSUS); personal correspondence, whether on paper, cards, photographs, tapes, or other media; and securities and similar evidence of value described in subheading 4907, HTSUS, but not

including monetary instruments covered under 31 U.S.C. 5301–5322.

#### *Electronic Freight Status Notifications*

If the facility (carrier, deconsolidator, or other party) currently holding the goods was automated, that party would have to honor all freight status notifications transmitted by CBP. Cargo could not be transferred to another facility, moved under the provisions of the in-bond regulations or released to the consignee except upon electronic status notifications from CBP. Should the cargo be transferred to a non-automated facility (e.g., a Container Freight Station, a carrier facility in another port, or the like), that facility would be required to accept only paper documents for the disposition of the cargo.

#### *Transition and Implementation Timeline*

All air carriers, and those authorized parties that choose to participate in presenting advance cargo information electronically to CBP through the approved automated system, would be expected to comply with the provisions of these regulations on and after 90 days from the date that the final rule in this matter is published in the **Federal Register**. However, CBP could delay the implementation of the final regulations at a given port until the necessary training had been provided to CBP personnel at that port. Also, CBP could delay the effective date of the final regulations in the event that any essential programming changes to the applicable CBP-approved electronic data interchange system were not in place. Finally, CBP could delay the effective date of the regulations if further time were required to complete certification testing of new participants. Any such delay would be the subject of a notice provided through the **Federal Register**.

#### *Electronic System Failure; Downtime*

Should the approved electronic data interchange system go down, the incoming air carrier and, if applicable, any other electronic filer would have to submit a hard copy equivalent of all required electronic cargo information to CBP either no later than “wheels-up” or no later than 4 hours prior to the arrival of the aircraft in the United States, depending upon the foreign area from which the incoming aircraft departs for the United States.

#### **Comments; Rail Cargo Destined to the United States**

##### *Time Frame for Transmitting Information; Impact on Commerce*

###### **Comment**

Various suggestions were made regarding the time in which advance rail cargo data would need to be electronically presented to CBP. Specifically, the following time frames were put forth: 4 hours prior to departure for the United States; 4 hours prior to arrival in the United States; 2 hours prior to arrival; and under 2 hours prior to arrival. By contrast, it was stated that the time frame set forth in the “strawman” proposal (24 hours prior to lading in the foreign country) was unworkable/unrealistic. It was also stated that any time frame that CBP proposed should not adversely impact “just-in-time” shipping practices.

###### **CBP Response**

The time frame in the “strawman” was put forth only as a perfunctory proposal, merely for the purpose of eliciting feedback from the trade in order to assist CBP in developing an appropriate time frame for inclusion in the proposed regulations. After considering the various recommendations from the rail trade, CBP agrees with those commenters who recommended that electronic cargo data for incoming rail cargo be presented no later than 2 hours prior to the arrival of the cargo at a United States port of entry.

The CBP is of the opinion that this minimum 2-hour period for presenting rail cargo information electronically in advance of arrival is a reasonable and practical time frame for the submission of the necessary cargo data, and one that should not disrupt the flow of rail commerce into the country. This view is based in large part on the understanding that rail carriers will transmit cargo data on many types of shipments (e.g., intermodal sea traffic) as it becomes available, thereby limiting the amount of data that is transmitted 2 hours prior to arrival.

At present, CBP finds that this is the minimum time period needed to perform the requisite risk analysis in relation to the transmitted data, and, if necessary, to request further information about the cargo, or to arrange for its examination in those instances, which are anticipated to be rare, where an examination should be found warranted.

Rail carriers need to be advised, however, that while CBP is confident that the targeting can be accomplished

within the 2-hour period, it may result in more trains spending time at the border uncoupling cars in order for them to be examined. Nevertheless, CBP is confident that this proposed time frame should not have any notable impact upon rail business practices, including “just-in-time” (JIT) inventory shipments. In this latter respect, CBP is aware that commerce has increasingly relied on “JIT” shipping as a more cost effective way of conducting business.

##### *Party Required To Present Data to CBP*

###### **Comment**

One commenter asked that the shipper (the exporter from the foreign country) and the United States importer be required to transmit the required cargo data to CBP. Another commenter said that the shipper should supply the data. Three commenters asserted that data should be accepted utilizing current systems and that the trade not be forced to incur extraordinary expenses for system upgrades which might only have to be quickly replaced due to the establishment of the Automated Commercial Environment (ACE).

###### **CBP Response**

While it is recognized that the shipper and/or the United States importer could be the parties most likely to possess direct knowledge of particular information about the incoming rail cargo, CBP has initially concluded that it should be incumbent upon the rail carrier to submit the required information for the cargo. Simply stated, the current CBP-approved electronic data interchange system (the Rail Automated Manifest System (Rail AMS)) is essentially structured and programmed only to receive such data directly from the carrier. Accepting advance cargo information from the shipper and/or the United States importer would not be practicable in the present automated rail environment.

The CBP will employ the prevailing system to electronically transmit and receive cargo information pending the advent of the Automated Commercial Environment (ACE). When ACE is established and in place, it may have the capability to receive data from the foreign exporter and/or the U.S. importer.

##### *Requested Exemptions From the Advance Electronic Filing Requirements*

###### **Comment**

Vessel-to-rail containers and bulk/break-bulk shipments should be exempted from the filing requirements.

Members of C-TPAT (the Customs-Trade Partnership Against Terrorism) and participants in the FAST (Free And Secure Trade) system should be exempted from having to present advance electronic cargo data for their shipments; and the Department of Defense (DoD) should have exemptions based on the nature of their shipments (descriptions for sensitive military cargo should be general).

#### CBP Response

Generally speaking, it is the view of CBP that a straightforward and streamlined regulation, unencumbered with multiple special exemptions, would present the most workable system especially with respect to the rail environment. Given the abbreviated time frame proposed (no later than 2 hours prior to arrival at a U.S. port of entry), CBP believes that the rail community in particular should be able to comply with the advance transmission of needed cargo data, with no measurable disruption in the flow of cross-border commerce; this should render moot most of the special requests for exemptions from the proposed advance filing requirements.

Nevertheless, CBP is proposing to exempt one category of cargo from the advance automated notification rule: Domestic cargo that would arrive by train at one port from another in the United States after transiting a foreign country would not be subject to the advance electronic information filing requirement for incoming cargo; but advance information for such domestic cargo may be electronically presented to CBP, if desired.

#### *Required Data Elements*

##### Comment

Required data elements to be transmitted to CBP should be clearly set forth; and CBP should give clear instructions as to what level of data would be sought.

##### CBP Response

The proposed data elements for incoming rail cargo are contained in proposed § 123.91(d). A number of the data elements contained in this proposed regulation are accompanied by explanations. The CBP will include additional definitions for those elements about which the importing rail community may desire greater elucidation. To assist in making this determination, CBP requests comments especially concerning those data elements for which the importing rail community seeks further guidance.

#### *Information Technology; High Risk Cargo*

##### Comment

The CBP would need to automate any ports that were not already automated in order to enable the port to transmit or receive electronic data as part of the advance information filing program.

##### CBP Response

The CBP will automate any remaining port that is not now operational on the existing CBP-approved electronic data interchange system (Rail AMS).

##### Comment

Mandatory automation under section 343(a), as amended, would place additional pressure on trade participants. The CBP should take steps to ensure that its offices would be fully staffed around-the-clock at all rail crossings in order to handle any eventualities resulting from the implementation of the final advance cargo information filing regulations.

##### CBP Response

The CBP will make every effort to ensure that there will be sufficient staff to assist the trade in effectively complying with the regulations. The CBP is aware that effectively administering the advance cargo information program will undoubtedly place upon it additional burdens, especially on some of the smaller ports along the border.

##### Comment

Railroads rely extensively on Automated Line Release. The CBP should retain the C-4 Line Release Program (19 CFR part 142, subpart D) for the rail industry; eliminating Line Release would negatively affect carriers participating in Rail AMS as it would delay the time required for rail release.

##### CBP Response

For the present, CBP intends to keep some type of Line Release, which might necessitate only some slight changes in names and terms.

##### Comment

The CBP should establish procedures to be followed if Rail AMS were not functioning properly when a carrier attempted to file information through the system. Specific backup systems should be designated in the event of unplanned outages of either CBP's system or the rail carriers' systems.

##### CBP Response

The CBP contemplates that the existing procedures of presenting a

paper copy of the electronic data elements would still be used, with some adjustments as appropriate.

##### Comment

Should an examination of any cargo aboard the incoming train be found warranted, the train should be allowed to proceed to the first inland port where the examination would be conducted.

##### CBP Response

Absent special circumstances, all security-related examinations under section 343(a), as amended, would occur at or near the border.

#### *Transition Period for Complying with Advance Cargo Information Filing*

##### Comment

A number of commenters advocated that they be afforded a transition period for complying with the regulations, without specifying what the period should be. One commenter asked for a period of 180 days; another suggested that different periods be allowed for different types of affected parties; and another requested that there be a period similar to the 90-day transition period granted for incoming vessel cargo under the "24-hour rule" (T.D. 02-62, 67 FR 66318; October 31, 2002).

##### CBP Response

The CBP, as noted, seeks uniformity and simplicity in its advance cargo reporting rule for rail traffic, and agrees with the recommendation that a 90-day transition period would be adequate under the circumstances, particularly given that the rail industry is highly automated. Hence, a rail carrier would need to begin the electronic transmission to CBP of the required cargo information 90 days from the date that the port of arrival becomes automated.

#### **Overview; Rail Cargo Destined to the United States**

#### *Rail Carrier Transmittal of Required Information for Incoming Cargo*

For any train requiring a train sheet under 19 CFR 123.6, that would have commercial cargo aboard, the rail carrier would be required to electronically present to CBP certain information concerning the incoming cargo no later than 2 hours prior to arrival at a United States port of entry. Specifically, based upon the transition/timetable as discussed below under "Transition Period," to effect the advance electronic transmission of the required rail cargo information to CBP, the rail carrier would have to use a CBP-approved electronic data interchange system.

Currently, the CBP-approved automated system for this purpose is the Rail Automated Manifest System (Rail AMS).

As indicated, the current CBP-approved automated system (Rail AMS) for electronically collecting cargo information for incoming rail cargo is programmed and structured to receive cargo data only from the inward rail carrier. Additionally, it is highly practicable and administratively expeditious for CBP to obtain the necessary cargo data from rail carriers as these carriers would already have the most direct contact with CBP, as opposed to the foreign shipper (exporter), a foreign freight forwarder, or the U.S. importer, who could, nevertheless, be more likely to have direct knowledge of particular information involving the incoming cargo. For this latter reason, and as a pre-requisite to accepting the cargo, the carrier would need to receive any necessary cargo information from the foreign shipper and owner of the cargo or from a freight forwarder, as applicable.

#### *Foreign Cargo Transiting the United States*

Any foreign cargo arriving by train for transportation in transit across the United States would be subject to the advance electronic information filing requirement for incoming cargo. This includes foreign cargo being transported from one foreign country into another, and cargo arriving by train for transportation through the United States from one point to another in the same foreign country. Further, cargo that was to be unladen from the arriving train and entered, in bond, for exportation, or for transportation and exportation, in another vehicle or conveyance would also be subject to this advance electronic information filing requirement.

#### *Exemption From Filing Mandate; Domestic Cargo Transiting Foreign Country*

With respect to incoming rail cargo, CBP believes that, as a general proposition, exemptions from the advance electronic filing requirements would unduly complicate the administration of the program. In consideration of the fairly abbreviated time frame for transmitting the electronic cargo information, CBP finds that a basic, uniformly-imposed advance filing requirement would occasion only minimal disruption to cross-border commerce in the rail environment.

Nevertheless, domestic cargo that would arrive by train at one port from another in the United States after

transiting a foreign country would not be subject to the advance electronic information filing requirement for incoming cargo; however, advance information for such domestic cargo could be electronically presented to CBP, if desired.

#### *Specific Information Required From the Carrier*

The rail carrier must electronically present to CBP the following cargo shipment information for all incoming cargo, as outlined above, that would 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 19 CFR 4.7a(c)(2)(iii));

(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 description (or the Harmonized Tariff Schedule (HTS) numbers 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 (this means the actual owner (exporter) of the cargo from the foreign country; listing a freight forwarder or broker under this category 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 the 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/phone number) 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 the electronic system can accept this information (currently, Rail AMS only has the capability to accept two seal numbers per container; the electronic presentation of up to two seal numbers for each container would be considered as constituting full compliance with this data element).

#### *Electronic Freight Status Notifications*

If the party holding the goods was automated, that party would have to honor all freight status notifications transmitted by CBP. Cargo could not be transferred to a facility, moved under the provisions of the in-bond regulations or released to the consignee except upon electronic status notifications from CBP.

#### *Transition Period*

The CBP will be automating any existing port that currently is not able to receive or transmit electronic information through the CBP-approved electronic data interchange system. There are currently up to 12 ports, most of them Permit Ports, that would require automation and training for CBP staff who are unfamiliar with the electronic data interchange system. Rail carriers would have to commence the advance electronic transmission to CBP of the required cargo information on and after 90 days from the date that CBP publishes a notice in the **Federal Register** informing affected carriers that Rail AMS is in place and operational at the port of entry where the train would initially arrive in the United States.

#### *Electronic System Failure; Downtime*

Should the automated system fail, after going online, existing procedures, with some adjustments, if necessary,

would be used for presenting a hard copy equivalent of the electronic documentation to CBP.

### **Public Comments; Truck Cargo Destined to the United States**

#### *Summary of Principal Comments*

The following comments were received regarding the procedures for advance reporting of inbound cargo information for trucks:

1. Any provision for pre-reporting information for inbound truck cargo should be pre-arrival, rather than pre-lading; and it was variously recommended that such notification be required no earlier than either 15 minutes or 30 minutes prior to reaching the port of arrival in the United States. These time frames are necessary to account for the "just-in-time" delivery systems that have been developed around land border operations.

2. To accomplish the electronic transmission of the requisite data to CBP, on an interim basis, pending the establishment of the electronic truck multi-modal manifest system in the Automated Commercial Environment (ACE), the trade should be able to satisfy the pre-notification requirements of the statute by using existing systems/programs, such as PAPS (the Pre-Arrival Processing System), BRASS (the Border Release Advanced Screening and Selectivity program, and FAST (the Free and Secure Trade program). In particular, CBP should take into consideration the importance of the role of the BRASS system in expediting the flow of traffic at the land borders.

No new information-submission systems should be initiated or imposed during the interim period. The proposed pre-reporting provisions should be uniform for all ports on the U.S./Canada as well as the U.S./Mexico borders. Filers should not be held liable for incorrect/incomplete information supplied by others.

3. There should be transition periods for implementing advance cargo information transmissions for the trucking industry that would take into account the fact that the industry has, at present, multiple sectors with varying, limited degrees of automation; indeed, much of the trucking trade on the U.S./Mexico border is currently not automated. Further, a contingency plan for handling shipments arriving without any pre-notification should be created and publicized.

4. CBP should expand its hours of operation to 24 hours a day, seven days a week and have sufficient staffing to perform any inspections during those hours.

5. Participation in special programs such as the Customs-Trade Partnership Against Terrorism (C-TPAT) should be taken into account by CBP and CBP should work with the Canadian government under the Shared Border Accords to arrive at common procedures and requirements to ease the burden on the trade.

#### **CBP Response**

Taking into account the flexibility provided by the Trade Act (e.g., developing interim measures based on existing technology to enable CBP to identify high-risk shipments), CBP agrees that, on an interim basis, existing systems, especially the Free and Secure Trade (FAST) system, will be employed, being enhanced and adapted as appropriate, to effect the advance presentation of the necessary commodity and carrier information for inbound truck cargo, as a prelude to the creation and activation of the Truck Manifest module in ACE. (The Truck Manifest module in ACE will be the subject of a separate notice in the **Federal Register**.) However, regardless of what actual program(s)/procedure(s) may be employed at any given time or place to comply with the pre-arrival information filing requirements of section 343(a), as amended, the regulations, for uniformity and continuity, will simply reflect that the required data elements must be presented through a CBP-approved electronic data interchange system.

#### *Interim Measures*

As indicated, until the development of the Truck Manifest Module in ACE, CBP will employ existing systems on both the Northern and Southern borders to receive and evaluate information for incoming truck shipments. These systems are FAST, PAPS (which uses the Automated Broker Interface (ABI)), BRASS (which would be modified as necessary), and CAFES (the Customs Automated Forms Entry System) or ABI in-bond reporting.

The Pre-Arrival Processing System (PAPS) is a method of speeding the release of Border Cargo Selectivity or regular Cargo Selectivity entries on the land border. The shipment data required to submit an entry through the Automated Broker Interface (ABI) must be provided to the entry filer by the shipper or the carrier or other trade partner in advance of the conveyance arrival. Also included in that ABI data is the Pro-Bill or Bill of Lading assigned to the shipment by the carrier and the Standard Carrier Alpha Code (SCAC) assigned to the carrier. That code and number is submitted through ABI to

CBP by the entry filer. The carrier provides the driver with a bar-coded representation of that information to accompany the paper inward manifest (CF 7533) and invoices. The CBP inspector uses that bar code to retrieve the electronic record and targeting results in the automated system. The carrier can then be processed without the necessity of stopping at the entry filer's office and be released from either the primary truck inspection booth or from the cargo examination facility.

The advance transmission, via fax or other means, of the SCAC/Pro-bill number from the carrier or shipper to the filer eliminates the requirement of any return communication from the filer to the carrier. The submission of the ABI data in advance of arrival eliminates the need for carriers to park in an import lot and spend additional time at an entry filer's office; traffic congestion decreases and efficiencies in the release process increase.

The electronic filer would have to present commodity and transportation information to CBP for the subject cargo no later than either 30 minutes or 1 hour prior to the carrier's arrival at a United States port of entry, depending upon the specific CBP-approved system employed in transmitting the required data, with the exception of CAFES and BRASS, as described below. This 30-minute or 1-hour period would be measured by the time that CBP receives the information, as opposed to the time that the electronic filer transmits the information for the cargo. The CBP believes that this time period, in relation to the particular automated system used, would be 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. This advance cargo information reporting requirement would thus be the same at all ports, depending on the approved system used to present the cargo information to CBP.

Specifically, in this latter respect, under the Free and Secure Trade (FAST) system, the electronic filer would have to present commodity and transportation information to CBP for the subject cargo no later than 30 minutes prior to the carrier's arrival at a United States port of entry. The CBP believes that FAST shipments can be screened and targeted, as appropriate, with less advance notification than would otherwise be necessary, because of the prior screening incurred by the parties to the FAST transaction, including the driver. However, under PAPS or ABI in-bond reporting, the required cargo data would need to be

presented no later than 1 hour prior to arrival at the U.S. port of entry. By contrast, for CAFES and BRASS (as modified), given the limitations of these systems, the necessary information would be submitted upon arrival at the first port of entry.

The only system currently in effect that allows carrier transmission of data electronically to CBP is FAST, with respect to those transactions that have data submitted totally through an electronic interface with CBP. Other participants in FAST have the electronic shipment data transmitted via the entry filer in the Automated Broker Interface (ABI) system of the Automated Commercial System (ACS), while the carrier/driver presents a paper manifest for the goods on the conveyance. In either case, the driver must be a registered driver in the FAST Driver Registration Program. Under the FAST system, the electronic filer would need to present cargo data to CBP no later than 30 minutes prior to the carrier's arrival at a U.S. port of entry.

Additionally, CBP acknowledges the role that BRASS (formerly Line Release (19 CFR part 142, subpart D)) plays in the expeditious movement of cargo on the land border. However, the current methodology utilized in BRASS for trucks does not allow for an advance electronic notice prior to arrival. The BRASS system is, and remains, heavily based upon the presentation of paper manifests, invoices and C-4 bar code labels (19 CFR 142.43(b)). It is observed, though, that CBP has already instituted an electronic form of BRASS in the Rail Automated Manifest System, and intends to do the same with the introduction of a Truck Automated Manifest System in ACE. In the interim, CBP intends to allow the continuation of BRASS for trucks, but may institute some additional requirements or otherwise modify BRASS in order to increase the security of BRASS transactions.

The CBP proposes a gradual transition from the reliance on the paper based BRASS release system. With the incorporation of a fully electronic version of BRASS planned in the new automated truck manifest scheduled for delivery under the Automated Commercial Environment (ACE), CBP does not propose making any changes to the method in which the current paper based BRASS operates. A gradual reduction in the parties eligible to utilize the existing paper based BRASS system is planned, with limitations in participation based on concerns of other government agencies, the level of compliance within past BRASS shipments and the volume of usage over

the course of the preceding year. Additionally, CBP will take measures considered necessary to ensure the security of the BRASS program by incorporating voluntary program requirements such as FAST Driver registration and participation in the Customs-Trade Partnership Against Terrorism.

Moreover, for in-bond shipments transiting the United States that arrive by truck, as an interim procedure, CBP will also make use of those systems that are currently available, since the necessity for screening advance data for in-bond truck shipments must be addressed while awaiting future automated systems in the truck environment. In particular, the Customs Automated Forms Entry System (CAFES) will be utilized to prepare the Customs Form (CF) 7512 in-bond document at all land border crossings where no other automation is available for in-bond shipments. While this capability does not include advance notice of the details of a shipment, it does include automated screening when the shipment arrives and is processed by CBP. As an alternative, carriers or their agents may use the Automated Broker Interface (ABI) to transmit in-bond information for shipments arriving by truck.

#### *Interim Transition Periods*

Furthermore, CBP recognizes the merit, and necessity, of affording suitable transition periods for implementing the regulations for inward truck cargo. To this effect, CBP proposes that cargo information be filed electronically for truck cargo that would arrive at a United States port of entry on and after 90 days from the date that CBP has published a notice in the **Federal Register** informing affected carriers that:

- (1) The approved data interchange is in place and fully operational at that port; and
- (2) The carrier must commence the presentation of the required advance cargo information through the approved system.

During these interim periods, however, if CBP suspected that goods were being routed in an attempt to evade advance scrutiny at an automated United States port of arrival, those goods would very likely be treated as high risk upon their arrival at a non-automated port.

#### *Mandatory Filing by Truck Carrier; Voluntary Importer Participation*

Under the proposed pre-notification program, the incoming truck carrier would be obliged to submit all essential information to CBP within the

designated time period. However, the United States importer, or its Customs broker, if electing to do so, could instead timely file with CBP any required commodity and other data that it possessed in relation to the cargo. Such information would likely be directly known by the importer or its broker. If the importer or broker did elect to file the commodity data with CBP, the carrier would have to present the required data pertaining to the transportation of the cargo. Such information would, of course, be best known by the carrier.

In any event, should the electronic filer of the cargo information receive any of this information from another party, the law mandates that where the electronic filer is not reasonably able to verify the information received, the regulations must allow the filer to transmit the information based on what it reasonably believes to be true. The CBP has expressly included this mandate in the proposed regulations.

The CBP will make every effort to ensure that there will be sufficient staff to assist the trade in effectively complying with the regulations. The CBP is aware that effectively administering the advance cargo information program will undoubtedly place additional burdens upon it, especially on some of the smaller ports along the border.

Finally, CBP will not propose a contingency plan for handling cargo that is not pre-reported in accordance with the regulations; once implemented at a port, the advance reporting provisions would be mandatory for all required cargo. For any inward cargo for which advance electronic commodity and transportation information was not presented to CBP, as otherwise required in the regulations, the transporting carrier could be refused admission to the United States, or be denied a permit to unlade such cargo.

#### **Overview; Truck Cargo Destined to the United States**

##### *Transmittal of Required Information for Incoming Cargo*

For any truck required to report its arrival under 19 CFR 123.1(b), that will have commercial cargo aboard, CBP must electronically receive from the inbound truck carrier, and from the United States importer, or its Customs broker, if they choose to do so, certain information concerning the incoming cargo. Except as provided for BRASS and CAFES under the previous section concerning "Interim Measures," CBP must receive such cargo information by means of a CBP-approved electronic

data interchange system no later than either 30 minutes (for FAST) or 1 hour (for PAPS and ABI in-bond reporting) prior to the carrier's arrival at a United States port of entry.

#### *Foreign Cargo Transiting the United States*

For foreign cargo transiting the United States in-bond, as an interim measure, CBP intends to employ CAFES or ABI in-bond reporting when either of these systems is available at the given port of arrival. In addition, any foreign cargo arriving by truck for transportation in transit across the United States would be subject to the advance electronic information filing requirement for incoming cargo when the Truck Manifest module in the Automated Commercial Environment (ACE) is implemented and made mandatory at the port of arrival. This reporting requirement for in-transit cargo would include foreign cargo being transported by truck from one foreign country to another (19 CFR 123.31(a)), and cargo being transported from point to point in the same foreign country (19 CFR 123.31(b); and 19 CFR 123.42). Further, cargo that is to be unladen from the arriving truck and entered, in bond, for exportation, or for transportation and exportation, in another vehicle or conveyance would also be subject to this advance electronic information filing requirement, either under CAFES or ABI in-bond reporting, or under ACE when it is implemented and made mandatory at the port of arrival. However, as previously observed, the implementation of ACE will be the subject of a future **Federal Register** notice.

#### *Exemptions; Domestic Cargo Transiting Foreign Country; Certain Informal Entries*

By contrast, domestic cargo transported by truck to one port from another in the United States by way of a foreign country (19 CFR 123.21; and 19 CFR 123.41) is not subject to the advance electronic filing requirement for incoming cargo. However, such information may be electronically transmitted in advance to CBP, if desired, when the electronic cargo information system is made available at the port of arrival.

Similarly, the following merchandise would be exempt from the advance cargo information reporting requirements under this proposed rule, to the extent that such merchandise qualifies for informal entry pursuant to part 143, subpart C, Customs Regulations (19 CFR part 143, subpart C): (1) Merchandise which may be

informally entered on Customs Form (CF) 368 or 368A (cash collection or receipt); (2) Goods, unconditionally or conditionally free, not exceeding \$2,000 in value, that are eligible for entry under CF 7523; and (3) Products of the United States being returned, for which entry is prescribed on CF 3311. In these instances, the paper entry document alone would serve as both the manifest and entry.

#### *Affected Parties*

The incoming truck carrier must present the required commodity and transportation information in advance to CBP electronically via the CBP-approved electronic data interchange, currently through FAST, PAPS, BRASS (modified as necessary), CAFES or ABI in-bond reporting, and, when available, through ACE. However, the United States importer, or its Customs broker, if choosing to do so, may instead electronically submit to CBP, within the designated time period, that portion of the required information that it possesses in relation to the cargo. Where the importer, or broker, elects to file a portion of the cargo information, the carrier would be responsible for timely presenting to CBP the remainder of the required data.

#### *Specific Information Required*

The cargo data elements that would need to be presented electronically to CBP, on an interim basis, are those data elements that are currently required under FAST. The anticipated data elements for electronic submission under ACE have not been completely finalized yet. The data elements that would be required under ACE will be identified at a future date pursuant to a future **Federal Register** notice.

Accordingly, the following commodity and transportation information, as applicable, would have to 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 19 CFR 4.7a(c)(2)(iii));

(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 (this is the actual shipper (the owner and exporter) of the cargo from the foreign country; 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 (this 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).

#### *Transition/Timetable for Compliance*

The incoming truck carrier and, if electing to do so, the United States importer, or its Customs broker, must present the advance electronic cargo



data to CBP, as discussed above, at the particular port of entry where the truck will arrive in the United States on and after 90 days from the date that CBP has published a notice in the **Federal Register** informing affected carriers that:

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

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

#### **Comments; Cargo Departing From the United States; All Modes**

The following comments were received regarding the electronic submission of cargo data for outbound shipments.

#### *Setting Transmittal Times for Electronically Presenting Information*

##### **Comment**

The time frames proposed by Customs were too long, would significantly impede or eliminate Just-in-Time ("JIT") business practices, and impede or eliminate express shipping services.

##### **CBP Response**

The pre-departure filing time frames set forth in this proposed rule for export cargo information reporting are far shorter than the 24-hour period prior to lading that was included in the "strawman" proposals. As previously indicated, the time frames set forth in the "strawman" proposals were only intended to stimulate feedback from the trade, for consideration by CBP in formulating time frames for presenting the required cargo data under this proposed rule. The time frames proposed in this rule, discussed in further detail below, range from 24 hours prior to departure for vessels to not later than 1 hour prior to departure for trucks.

In determining the time frames for the advance reporting of information for outbound cargo in this proposed rule, CBP considered existing commercial practices. The CBP also took into account the minimum amount of time necessary to perform automated targeting and analysis and to request further information about the cargo or to schedule its examination, in the event that a shipment were identified as being potentially high-risk. The CBP also considered the different threats to the United States and others posed by outbound shipments. It is anticipated that these time frames are sufficiently abbreviated that there will be no palpable impact on "JIT" business/inventory practices.

##### **Comment**

The reporting time frames should be based on when the electronic filer transmits the information, as opposed to when the Government-administered automated system verifies the receipt of the transmitted information.

##### **CBP Response**

There is no mechanism in the approved electronic data interchange system (currently, the Automated Export System (AES)) for capturing the date and time of submission by the filer. The time of receipt is quantified by the time that an Internal Transaction Number (ITN) is generated, and the system records this date and time.

The AES has an Office of Management and Budget (OMB) performance measure for 2003 which sets the goal of monitoring and tuning trade processing to maintain the average monthly percent of filer transmissions with a turnaround time below one minute at 95%. The AES consistently meets this new performance measure. The CBP cannot monitor compliance and/or perform enforcement based on the date and time of submission by the filer.

#### *Load/No Load Messages*

##### **Comment**

The trade expressed the need for both a "No Load" message, and an "OK to Load" message for both imports and exports.

##### **CBP Response**

The CBP sees "No Load" situations for exports as an extremely infrequent occurrence. Therefore, a constant stream of "OK to Load" messages would not be useful to the export process.

The AES Commodity module, which will be used to meet the Trade Act mandate, currently does not have the capability to provide an automated "No Load" or "Hold" message to the carrier. The AES Commodity module does provide feedback to the United States Principal Party in Interest (USPPI) or its authorized filing agent in the form of warning messages for data inconsistencies as well as for data errors in cases where the system cannot accept the data as transmitted. (The CBP will use the term "USPPI," as defined in 15 CFR part 30; the term "Exporter" will not be used again in this document.) A "No Load" message transmitted to the USPPI or its filing agent is not the most efficient notification path for denying lading to a specific shipment. A "No Load" message will be feasible when export manifest modules for all modes are in place in AES.

At the time of promulgation of a final rule in this matter, automated manifest options will not be available for air, truck, and rail modes in AES. For the purposes of this rulemaking, pursuant to the Trade Act of 2002, CBP has determined that the option of waiting for the availability of automated export manifest systems in AES does not meet the intent of the Trade Act to improve cargo safety and security in the near term. Accordingly, should export manifest modules not be available upon the effective date of a final rule in this matter, CBP proposes to collect the following 6 transportation data elements for outbound cargo, which should otherwise be readily known to the USPPI or its authorized agent, as further discussed, *infra*: Mode of transportation; Carrier identification; Conveyance name; Country of ultimate destination; Estimated date of exportation; and Port of exportation.

#### *Exemptions; Retention of Post-Departure Filing*

##### **Comment**

The trade strongly supported retaining the Option 4 Post-Departure filing privilege.

##### **CBP Response**

The CBP supports a structured system of exemptions and/or pre-approval programs that recognize the varying degrees of risk associated with export shipments and the different threats posed to the United States and others by such shipments. Given the differences in in-bond and export shipments, a limited post-departure filing option may be appropriate for certain types of export shipments. The CBP will work with the Bureau of Census and the trade in designing these programs, building upon current initiatives such as AES Option 4, the Customs-Trade Partnership Against Terrorism (C-TPAT), and the Transportation Security Administration's (TSA's) "Known Shipper" Program. The C-TPAT is a joint government-business initiative designed to enhance security procedures over the entire supply chain of incoming cargo while improving the flow of trade. In return for tightening the security of their supply chains, C-TPAT participants can get their cargo processed through CBP faster.

At the present time, while not exempting any USPPI from the advance pre-departure cargo information reporting requirements, this rulemaking supports post-departure reporting by highly compliant exporters. The CBP and Census will develop and implement

changes to post-departure reporting jointly, and as appropriate.

#### Comment

The trade indicated a need for priority/exemption for a range of commodities and transaction types. Examples of commodities proposed for exemption were bulk cargo, perishables, and human organs/perishable medical products. Related or "twin plant" shipments were also suggested as candidates for exemption.

#### CBP Response

The CBP is not planning to eliminate exemptions or pre-approval programs in regulations promulgated pursuant to the Trade Act. The CBP agrees with the exemption of select export shipments such as human organs, perishable medical supplies, and emergency humanitarian aid. As such, the scope of future exemptions and the requirements for participation in low-risk exporter programs for reporting export commodity data will be determined jointly by CBP and Census.

#### *Internal Transaction Number; External Transaction Number*

#### Comment

The External Transaction Number (XTN) was preferred by most of those who commented. The XTN is generated by the USPPPI or its authorized agent who transmits the electronic data. At the same time, some support in the trade community was expressed for the Internal Transaction Number (ITN), and there was near unanimity that CBP should not require reporting of both numbers. The ITN is the AES system-generated number that indicates that the transmission of required export cargo information has been received and accepted through the system.

#### CBP Response

The preference for the XTN is understandable, but because an XTN can be generated and annotated on export documents without transmitting shipment data to AES, the XTN is susceptible to abuse. This assertion is supported by a 60-day AES exemption statement survey conducted by CBP during the summer of 2002. Then Customs (now CBP) field locations nationwide audited over 13,000 AES exemption statements and found 25% to be invalid at the time of export. Therefore, CBP's position will be to require that the ITN number be annotated on the appropriate export documents for shipments which require full pre-departure reporting. However, CBP wishes to especially emphasize in this regard that the annotation of the

ITN number on any export documentation will not be required or enforced until the implementation of the redesign of the AES commodity module, which is anticipated to be completed in mid 2004.

The ITN provides a link to a create date and time for the record in AES from which to verify compliance with pre-departure filing requirements. The ITN is also consistent in format, starting with an "X", followed by an 8-position date (century, year, month, day) and a 6-position sequential number that is assigned by the AES system. In addition, the AES mainframe typically returns the ITN in less than one minute.

By contrast, External Transaction Numbers (XTNs) consist of the 9-digit electronic filer identification and a Shipment Reference Number (SRN) that are separated by a hyphen. The SRN may contain up to 17 letters, numbers and symbols, allowing for a longer format with more variability than the ITN.

The CBP notes that ITNs will not be required for shipments authorized for post-departure (currently AES Option 4) reporting of export cargo information. The post-departure filing citation annotated on export documentation will continue to conform to approved formats contained in the Bureau of Census Foreign Trade Statistics Regulations (FTSR) (15 CFR part 30).

The CBP recognizes conditions under which ITNs will not be available due to a failure of an automated system. Procedures for dealing with system downtime—where the Government's electronic system and/or the USPPPI's system for receiving and processing export cargo data fails—will be detailed in the Automated Export System Trade Interface Requirements handbook (AESTIR), and any successor publication. The AESTIR is available on the CBP Web site (<http://www.cbp.gov>).

#### **Overview; Cargo Departing From the United States; All Modes**

##### *Outward Cargo Information Reporting; System To Be Used*

To ensure the safety and security of cargo that would be sent from the United States, as mandated by section 343(a), as amended, CBP would use the existing approved electronic data interchange system for receiving export commodity data from the United States Principal Party in Interest (USPPPI). The current system being used for this purpose is called the Automated Export System (AES).

The CBP has elected, in consultation and cooperation with the Bureau of Census, to utilize the commodity

module of the AES (the automated Shipper's Export Declaration), to meet the mandate of the Trade Act. At such time as automated manifest modules are available for all modes, these enhanced capabilities will be reviewed to determine additional compliance with the Trade Act of 2002.

This is a considered decision recognizing that at the time of promulgation of the final rule under section 343(a), as amended, the filing of export data via the AES will not be mandatory. In short, it is intended that the final rule in this matter for the advance filing of cargo information for all reportable outbound shipments not be implemented until Bureau of Census regulations under the Security Assistance Act (Pub. L. 107-228) are implemented.

Since the inception of AES, the elimination of the paper Shipper's Export Declaration (SED) has been the ultimate goal, and with the passage of the Security Assistance Act, the Bureau of Census has the authority to mandate the electronic filing of all reportable export shipments, with promulgation of regulations planned for mid 2004. Prior to mandatory electronic filing for all reportable export shipments, the Department of Commerce, Bureau of Census, will publish a rule requiring mandatory electronic reporting for commodities on the Commerce Control List (CCL), and U.S. Munitions List (USML), planned for the summer of 2003.

The CBP, however, does intend to accomplish several things with this rulemaking:

(1) Articulate a commitment to strengthening export reporting processes in concert with external agency partners such as the Department of Commerce (the Bureau of Census and the Bureau of Industry and Security), the Department of State (the Directorate of Defense Trade Controls), the Department of Treasury (Office of Foreign Assets Control), the Department of Transportation, the Drug Enforcement Administration, and the Environmental Protection Agency;

(2) Establish time frames for automated reporting that will support targeting for high risk exports and allow CBP or other Government agencies to respond prior to export; and

(3) Establish the system generated Internal Transaction Number as *the* accepted proof of automated filing, for all reportable exports not eligible for exemption.

Utilizing the automated SED within the AES combined with mandatory filing under Census complies with the intent of the Trade Act to collect

advance cargo information electronically from the party with the best knowledge of that information. Under current automated practices, the USPPi or its authorized agent has the capability to transmit export information electronically, and with limited exceptions, has knowledge of the data transmitted.

#### *Time Frames for Presenting Information*

A USPPi, or its authorized agent, participating in advance cargo information filing would have to present export cargo information through the AES commodity module for outbound shipments, as follows:

(1) For vessel cargo, the participating USPPi or its authorized agent must transmit and verify system acceptance of export vessel cargo information *no later than 24 hours prior to the departure of the vessel*;

(2) For air cargo, including cargo being transported by Air Express Couriers, the participating 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*;

(3) For truck cargo, including cargo departing by Express Consignment Courier, the participating USPPi or its authorized agent must present 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

(4) For rail cargo, the participating USPPi or its authorized agent must transmit and verify system acceptance of export rail cargo information *no later than 4 hours prior to the time at which the engine is attached to the train to go foreign*.

The preceding time frames are provided by CBP as minimum guidelines. All parties involved in export transactions should be advised that filing electronic cargo information as far in advance as practicable reduces the need for CBP to delay export of that cargo to complete any screening or examinations deemed to be necessary.

The foregoing time frames for reporting information about outbound vessel, air, truck and 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. The USPPi or its authorized agent may refer to proposed § 192.14(e) for specific guidance concerning the effective date for the time frames detailed herein. 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 a 72-hour advance notice for vehicle exports pursuant to 19 CFR 192.2(c)(1) and (c)(2)(i). The USPPi or its authorized agent should refer to the relevant titles in the Code of Federal Regulations for the pre-filing requirements of other Government agencies.

#### *Electronic Filer of Export Cargo Information; Proposed Requirements*

The USPPi, or its authorized agent, who participates in reporting export data electronically via the commodity module (the automated Shipper's Export Declaration) of the AES, would continue to transmit and verify that such data had been accepted through the system, but would have to do so no later than the time, in advance of departure, prescribed for each mode of transportation under this proposed rule. The USPPi or its authorized agent may refer to proposed § 192.14(e) for specific information concerning effective dates for procedures outlined herein.

Since the AES Commodity Module already captures the requisite export data, and to avoid redundancy with existing export reporting requirements, no new commodity or transportation data elements would need to be required under section 343(a), as amended. Specifically, the export cargo information collected from USPPis or their authorized agents is contained in the Bureau of Census electronic Shipper's Export Declaration (SED) that is presented to CBP through the AES. Those export commodity data elements that are required to be reported electronically through AES are also found in § 30.63 of the Bureau of Census Regulations (15 CFR 30.63). The required transportation data elements are defined below in accordance with 15 CFR 30.63.

1. *Mode of transportation.* The mode of transportation is defined as that by which the goods are exported or shipped (vessel, air, rail, or truck).

2. *Carrier identification.* The USPPi or its authorized agent should reasonably be expected to know the identification of the carrier that would actually be transporting the merchandise out of the United States. For vessel, rail and truck shipments, the unique carrier identifier would be its 4-character Standard Carrier Alpha Code (SCAC); for aircraft, this identifier would be the 2- or 3-character International Air Transport Association (IATA) code.

3. *Conveyance name.* The conveyance name would be the name of the carrier

(for sea carriers, the name of the vessel; for others, the carrier name).

#### 4. *Country of ultimate destination.*

This is the country as known to the USPPi 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.

5. *Estimated date of exportation.* The participating USPPi 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 participating USPPi or authorized agent must report the best estimate as to the time of departure.

6. *Port of exportation.* The port of exportation would be designated by its unique code, as set forth in Annex C, Harmonized Tariff Schedule of the United States (HTSUS).

#### *Identifying High-Risk Shipments*

The CBP finds that the data elements that the USPPi would have to timely present through AES covering both the commodity and transportation information for outbound cargo should prove to be sufficient for identifying and targeting potentially high-risk shipments. For outbound cargo that CBP has identified as high-risk, the carrier, after being duly notified by CBP, would be responsible for delivering the cargo for inspection/examination; if the cargo identified as high-risk had already departed, CBP would exercise its authority to demand that the cargo be redelivered (*see* 19 CFR 113.64(g)(2)).

Notably, in the case of outbound cargo, identifying high-risk shipments would principally be concerned with interdicting any attempted illegal export of technology, and associated goods and materials, that could be employed by terrorist organizations abroad in the construction of weapons of mass destruction (WMDs), such as nuclear and radiological dispersal devices ("dirty bombs"), that would be intended ultimately for use either here in the United States or in another country.

#### *Proposed Requirement; Carrier Data*

The CBP has made a prudent judgment that the transportation data, along with the commodity data (both collected in the AES Commodity Module), that CBP proposes to require from the participating USPPi or its authorized agent, would be sufficient for effective targeting and risk assessment under section 343(a), as amended.

Additional information for outward cargo is not readily available in advance of departure because exporting carriers, who have direct knowledge of this information, generally do not now have the electronic capability to furnish cargo data through AES. Specifically, there are no carrier manifest modules in AES, except for the vessel carrier module which is voluntary and does not yet include the capability to receive cargo data directly from Non Vessel Operating Common Carriers (NVOCCs). Therefore, implementation of mandatory automated cargo data processes for vessel operators in the absence of other such modules would create uneven requirements within and across modes of transportation.

Conversely, to presently obligate USPPIs or their authorized agents to transmit transportation data additional to that which is collected in the AES Commodity Module would be impracticable because such information would not necessarily otherwise be obtainable in a timely enough manner to meet the proposed advance electronic reporting procedures; this would inevitably delay and disrupt the movement of cross-border traffic.

Against this overall backdrop, therefore, CBP has concluded that its proposal to require pre-existing data elements for outward cargo represents a sound and sensible initial step in establishing a solid informational bulwark against threats to cargo safety and security, and one which would not adversely impact or impinge upon the flow of cross-border commerce.

To this end, and pursuant to Bureau of Census regulations that are due to be issued next year, the current AES system is to be upgraded and reprogrammed so as to enable, and require, that USPPIs or their authorized agents transmit, verify acceptance and annotate an ITN (unless otherwise exempt from pre-departure filing) on export documents presented to the exporting carrier in accordance with the time frames and procedures outlined in this rule. Nevertheless, CBP and the exporting trade agree with the advisability of creating carrier manifest modules in AES or a successor system that would facilitate the reporting of additional cargo information for outbound cargo.

Complete transportation data from exporting carriers would be collected for every export shipment when CBP has the system capabilities set up to receive this data directly from carriers. Once this requisite technology is approved and incorporated into an automated system, CBP will then review these new capabilities to determine additional

compliance with the Trade Act of 2002. The CBP would then propose its own regulations in the **Federal Register** calling for exporting carriers, in advance of departure, to electronically file their outward cargo information with CBP through the approved system.

#### *Proof of Electronic Filing; System Verification of Data Acceptance*

For each export shipment to be laden, the participating USPPi, or its authorized agent, must furnish to the outbound carrier a proof of electronic filing citation covering the cargo to be laden, for annotation on the outward manifest, waybill, or other export documentation when cargo information is reported electronically; in the alternative, the USPPi, or authorized agent, would be responsible for providing to the exporting carrier an appropriate low-risk exporter citation (currently Option 4) or an exemption statement for the cargo. The carrier may not load cargo without the related electronic filing citation (e.g., the ITN), low-risk exporter citation, or an appropriate exemption statement.

The proof of electronic filing citation, low-risk exporter citation, or exemption statement, will conform to the approved formats found in the Bureau of Census Foreign Trade Statistics Regulations (FTSR) (15 CFR part 30), or on the Census Web site (<http://www.census.gov/foreign-trade/regulations/index.html>).

When successfully transmitting cargo data for a shipment through the system, the USPPi or its authorized agent will receive a system-generated confirmation number, known as an Internal Transaction Number (ITN), which constitutes verification that the data transmitted has been accepted by the system. For transmitted data that passes system edits, the current approved electronic data interchange (AES) returns this confirmation number routinely in less than one minute. This enables CBP to base the monitoring and enforcement of the time frames on the actual time of receipt (of the data) rather than on its transmission, which cannot be quantified. When the redesign of the AES commodity module is in place, the proof of export filing citation will need to include the ITN.

#### *Exemptions From Reporting Requirements*

Exemptions from reporting requirements for certain cargo are under the authority of the Bureau of Census (15 CFR 30.50 through 30.58). The proposed CBP regulations under section 343(a), as amended, would likewise encompass these exemptions.

#### *Transition Period; Implementation*

For successfully targeting potentially high-risk export commodity shipments, CBP supports the employment of current AES systems that are already heavily in use and widely available to USPPIs. With Internet connections, as noted, AES allows new USPPIs that are relatively small businesses, to be brought into the system fairly easily and inexpensively. To this end, the proposed regulations for the specified pre-departure reporting of cargo commodity and transportation information for outbound shipments, together with the requirement of the ITN, would be implemented concurrent with the completion of the redesign of the AES commodity module and the implementation of mandatory filing regulations by the Department of Commerce pursuant to Public Law 107-228.

#### **Future Rulemaking Regarding Related Laws**

##### *Waterborne Cargo; Section 343(b), Trade Act of 2002*

Section 343(b), Trade Act of 2002, as amended (codified at 19 U.S.C. 1431a), requiring proper documentation for all cargo to be exported by vessel, will be the subject of a separate publication in the **Federal Register**.

##### *Transportation Security Administration—Cargo Security Programs*

It is also stressed that the final regulations that will be issued 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)).

#### **Comments**

Before adopting these proposed amendments, consideration will be given to any written comments that are timely submitted to Customs and Border Protection (CBP). The CBP specifically requests comments on the clarity of the proposed rule and how it may be made easier to understand. Comments are especially requested as to the sufficiency of the explanations that accompany the proposed data elements, as well as the impact on small business entities under the Regulatory Flexibility Act. Comments submitted will be available for public inspection in

accordance with the Freedom of Information Act (5 U.S.C. 552), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), at the Bureau of Customs and Border Protection, 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.

#### **Regulatory Flexibility Act and Executive Order 12866**

Customs and Border Protection (CBP) has conducted an economic analysis to determine whether the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) would apply to this rulemaking. It has been determined, as a result of the *initial* analysis conducted, that this proposed rule would not have a significant economic impact upon a substantial number of small entities as required by the RFA. This economic analysis is attached as an Appendix to this document. For the reasons set forth in the analysis, the agency does not make a certification at this time with regard to the regulatory requirements of 5 U.S.C. 603 and 604. Also, this rule is a "significant regulatory action" under Executive Order (E.O.) 12866 and has been reviewed by the Office of Management and Budget in accordance with that E.O. However, it is our preliminary determination that the proposed rule would not result in an "economically significant regulatory action" under E.O. 12866, as regards the impact on the national economy.

#### **Paperwork Reduction Act**

The collection of information in this document is contained in §§ 4.7a, 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 collection of information encompassed within this proposed rule has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). 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.

*Estimated annual reporting and/or recordkeeping burden:* 2,299,640 hours.

*Estimated average annual burden per respondent/recordkeeper:* 52.3 hours.

*Estimated number of respondents and/or recordkeepers:* 43,960.

*Estimated annual frequency of responses:* 14,297,259.

Comments on this collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments should be submitted within the time frame that comments are due on the substance of the proposal.

Comments are invited on: (a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, would be revised to add appropriate references to the above-cited regulatory sections, upon the adoption of the proposal as a final rule.

#### **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 192**

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

#### **Proposed Amendments to the Regulations**

It is proposed to amend parts 4, 103, 113, 122, 123, and 192, Customs Regulations (19 CFR parts 4, 103, 113, 122, 123, and 192), as set forth below.

#### **PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES**

1. The general authority citation for part 4 would be revised, and the relevant specific authority citations would 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 4.7 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 § 4.7 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 would 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 vessel exclusively carrying 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) \* \* \*

(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 [the publication of this paragraph as a final rule 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 where their cargo will initially arrive.

\* \* \* \* \*

3. Amend § 4.7a by:

a. Revising paragraphs (c)(4)(viii) and (c)(4)(ix);

b. Removing the word “and” after paragraph (c)(4)(xiii); and

c. Adding new paragraphs (c)(4)(xv) and (c)(4)(xvi).

The revisions and additions would 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 actual shipper (the owner and exporter) of the cargo from the foreign country is required; 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”. 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/phone number) 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; and

(xvi) Time of departure from foreign, as reflected in the vessel log.

\* \* \* \* \*

4. 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 would continue, and a specific authority citation would be 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 would continue 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. Revising 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)(2) 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)(2) 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 would be 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 would 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 would 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 § 122.48 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 for any aircraft required to enter under § 122.41. However, an air cargo manifest for all cargo on board together with the general declaration must be kept aboard any aircraft required to enter under § 122.41, for production upon demand.

\* \* \* \* \*

7. 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.* When goods comprising a diplomatic or consular bag (including cargo shipments, containers, and the like) 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 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 (no later than the time that wheels are up on the aircraft, and it 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 identity of the actual shipper (who is the owner and exporter) of the merchandise from the foreign country is required);

(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 “AFROB” (Foreign Cargo Remaining On Board));

(xii) Consolidation identifier (C);

(xiii) Split shipment indicator (C) (this data element includes information indicating the particular portion of the split shipment that will arrive; the boarded quantity of that portion of the split shipment (based on the smallest external packing unit); and the boarded weight of that portion of the split shipment (expressed in either pounds or kilograms));

(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).

(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 and address of the actual shipper (who is the owner and exporter) of the cargo from the foreign country);

(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)); 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) *Letters and documents.* For purposes of advance electronic cargo information filing under this section, letters and documents being shipped to the United States are handled under the same procedures as all other types of cargo. Such shipments are subject to the same detailed data elements that are otherwise required for incoming air cargo under paragraphs (d)(1) and (d)(2) of this section. The term “letters and documents” as used in this paragraph means:

(i) The data (for example, records, diagrams, other business data) as described in General Note 19(c), Harmonized Tariff Schedule of the United States (HTSUS);

(ii) Securities and similar evidence of value described in subheading 4907,

HTSUS, other than monetary instruments covered under 31 U.S.C. 5301–5322; and

(iii) Personal correspondence, whether on paper, cards, photographs, tapes, or other media.

(e) *Effective 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 90 days from the date that this section is published as a final rule in the **Federal Register**.

(2) *Delay in effective date of section.* The CBP may delay the general effective date 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 effective 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**.

8. 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 would be revised, and the relevant specific sectional authority citation would 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 a sentence after the second sentence in paragraph (a); and
- b. Adding a sentence at the end of paragraph (d).

The additions would 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 may 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. \* \* \*

\* \* \* \* \*

(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 arrival of the cargo at the United States port of entry. 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 a foreign country 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 prerequisite 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 (this means the actual owner (exporter) of the cargo from the foreign country; listing a freight forwarder or broker under this category 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/phone number) 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) *Effective 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 arrival at a United States port of entry, 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 a foreign country (§ 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 (the identity of the actual shipper (the owner and exporter) of the cargo from the foreign country is required; 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) *Effective date for compliance with this section.* The incoming truck carrier and, if electing to do so, the United States importer, or its Customs broker,

must present the necessary cargo data to CBP at the particular port of entry where the truck will arrive in the United States on and after 90 days from the date that CBP has published a notice in the **Federal Register** informing affected carriers that:

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

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

## PART 192—EXPORT CONTROL

1. The authority citation for part 192 would be 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 the departure of the vessel;

(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;

(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 4 hours prior to the time at which the engine is attached to the train to go foreign.

(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 effective 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 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 for pre-filing requirements of other Government agencies.

(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 electronic system has received and accepted this data, the system will generate and transmit to the USPPI 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 USPPIs or their authorized agents for outbound cargo is already contained in the Bureau of Census electronic Shipper's Export Declaration (SED) that the USPPI 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 the vessel, air, truck, and rail modes (see also paragraph (c)(3) of this section):

(i) Mode of transportation (the mode 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 USPPI 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 USPPI 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 USPPI 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 actually 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)).

(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).

(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 will exercise its authority to 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) *Effective 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 (Pub. L. 107-228). This date will be announced in the **Federal Register**.

**Robert C. Bonner,**  
*Commissioner, Customs and Border Protection.*

Approved: July 17, 2003.

**Tom Ridge,**  
*Secretary, Department of Homeland Security.*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

#### **Appendix—Regulatory Flexibility Act and Executive Order 12866**

The Bureau of Customs and Border Protection (CBP) conducted the analysis below to concurrently address the requirements of the Regulatory Flexibility Act (RFA) of 1980 and Executive Order 12866. Those provisions require, respectively, that CBP (1) assess the impact of proposed rules on small business entities via an initial regulatory flexibility analysis and (2) determine if the proposed rule is a significant regulatory action, defined as having annual impact on the United States economy of \$100 million or more. Critical to recognize is the RFA's focus of the proposed rule's effect on small, United States-based entities, as established by the standards identified in Panel 1 below.

**PANEL 1.—INDUSTRY SIZE STANDARDS FOR SMALL ENTITIES<sup>1</sup>**

Mode	Industry grouping	NAICS sector identifier	Standard of measure—less than
Air .....	Scheduled and Non-Scheduled Freight .....	#48112	1500 employees.
Rail .....	Short Haul .....	#481212	
Vessel .....	Deep Sea .....	#482112	500 employees.
Truck .....	(a) General Freight, Local .....	#483111	500 employees.
	(b) General Freight, Long Distance .....	#484110	\$21.5 million gross annual revenues.
	(b) General Freight, Long Distance & Less Than Truckload .....	#484121	
	(c) Specialized Freight, Local .....	#484122	
	(e) Specialized Freight, Long Distance .....	#484220	
		#484230	

<sup>1</sup> Source: Small Business Size Standards Matched to North American Industry Classification Systems (NAICS), Small Business Administration, October 1, 2002.

#### **A. Need for and Objective of the Proposed Rule**

The proposed rule responds to the requirements of section 343(a) of the Trade Act of 2002, as amended (19 U.S.C. 2071 note). That Act requires that CBP implement procedures which require the advanced electronic submission of cargo information for both imports into and exports from the United States while not unduly impeding the flow of lawful trade. The fundamental objective of the proposed rule centers on

providing CBP with sufficient detailed information on trade flows within a sufficient advanced timeframe such that CBP may exercise review, targeting and inspection of those shipments with the purpose of identifying and subsequently inspecting those high risk shipments with potential application to terrorist activities.

#### **B. Description and Estimates of Small Entities Affected by the Proposed Rule**

The proposed rule centers on two key features: (a) electronic submission of cargo

information and (b) that information's submission prior to arrival into/departure from the United States. The advanced submission requirements vary by mode of transport, reflecting operational requirements and conditions for those modes. The advanced submission timeframes by mode are summarized in Panel 2 below:

## PANEL 2.—SUMMARY OF ELECTRONIC SUBMISSION TIMEFRAMES BY MODE

Mode	Inbound	Inbound baseline time-frame for advanced electronic submission	Outbound	Outbound baseline time-frame for advanced electronic submission
Vessel .....	All cargo requiring reporting for CBP purposes.	24 hours prior to lading at foreign port of departure.	All cargo requiring reporting under current Census regulations. <sup>1</sup>	24 hours prior to departure.
Air .....	All cargo requiring reporting for CBP purposes.	4 hours prior to arrival in US. <sup>2</sup>	All cargo requiring reporting under current Census regulations. <sup>1</sup>	2 hours prior to scheduled departure.
Rail .....	All cargo requiring reporting for CBP purposes.	2 hours prior to arrival at 1st US port.	All cargo requiring reporting under current Census regulations. <sup>1</sup>	4 hours prior to attachment of engine to train to go foreign.
Truck .....	All cargo requiring reporting for CBP purposes.	30 minutes or 1 hour prior to arrival at 1st US port.	All cargo requiring reporting under current Census regulations. <sup>1</sup>	1 hour prior to scheduled border crossing.

<sup>1</sup> **Note:** As a matter of clarification and definition of the proposal's coverage, United States exports to Canada are not subject to advanced electronic cargo information submission under this proposal unless (a) the merchandise is licensable by Department of State or Department of Defense regulations or (b) the merchandise is transiting Canada with a 3rd country destination.

<sup>2</sup> **Note:** However, in the case of cargo requiring reporting for CBP purposes that departs 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, the cargo information must be received no later than the time of the departure of the aircraft for the United States (no later than the time that wheels are up on the aircraft, and it is en route directly to the United States.)

### The General Theory

In classical economic theory, the value and volume of the supply and demand for goods and services in a national economy exist under conditions of an equilibrium price for those goods and services, both domestically, through national income accounting components, and internationally, through the net trade component. Disruptions, or changes, in that state of equilibrium occur regularly and frequently, with concomitant changes in supply and demand. Sources of such changes can be of a cyclical, secular or random noise variety, ranging in gravity and comprehensiveness in effect from major, as in large sustained increases in international energy prices, to small, as in damage to a large retailer's distribution center, to negligible, as in the brief closure for periodic maintenance of a single manufacturing plant. Each such significant change results in the economic model's initial equilibrium adjusting and readjusting via the mechanism of elasticities of price with respect to demand until all multiplier effects are exhausted and a new state of equilibrium is achieved, both nationally and internationally via competing goods and services. The significance of change to a new equilibrium will depend on the gravity of that initial change.

### The Specific Regulatory Case

In the case of the current considered proposed rule on advanced electronic submission of cargo information, such a proposed rule represents, to one degree or

another, a change in the national and international economic system's equilibrium. To the extent that the rule requires substantive process adjustments by producers, carriers, brokers, importers and exporters, then the proposed rule would represent an effective change in system equilibrium, resulting in subsequent substantial changes in supply, demand and price. To the extent that the rule's effect on trade participants is slight to negligible, then the rule's effect would not measurably alter system equilibrium.

In the sections below, CBP will identify, isolate, explore, explain and estimate the extent of the proposed rule's impact on the national United States economy pursuant to E.O. 12866 and net trade component by means of identifying the process adjustments expected for small business entities under the RFA. The CBP intends to supplement this initial regulatory impact analysis under E.O. 12866, and this initial regulatory flexibility analysis under the RFA with an expanded, more comprehensive follow-up assessment conducted by a private source under contract. The summary of operational change, presented in Panel 2 above, serves as a map to the estimation of the rule's impact.

### Commonalities of Proposed Rule

The proposed rule offers certain conditions in common for all trade participants regardless of mode:

(1) Advanced information submission, albeit with different timeframes for different modes;

(2) Mandatory electronic filing;

(3) Costs to be incurred for compliance include those which are recurring and those which are one-time only;

(4) Mandatory use of already existing government approved electronic data interchange systems, notably the Automated Export System (AES) for all export transactions; Automated Manifest System (AMS) with applications for inbound rail, air, and vessel shipments; and other modules, such as the NCAP (National Customs Automation Program) prototype, with special application for truck modal operations;

(5) Internet access to CBP data interchanges for information submission and message transaction;

(6) Submitter's choice to exercise preference to employ third parties for information submission; and

(7) "Just-in-time" manufacturing considerations, common in CBP's prior "Strawman" proposals, are eliminated as a result of substantive reductions in timeframes for prior data submission.

### Air Mode Inbound

The proposed rule establishes timeframes of 4 hours for electronic submission of information prior to the aircraft's arrival in the United States, or no later than the time of "wheels-up" in the case of certain nearby foreign areas. Panel 3 below summarizes the volume of inbound air cargo by principal air carrier segment.

## PANEL 3.—INBOUND AIR CARGO ACTIVITY, JANUARY 2003

Air carrier segment	Airway bill volume (in thousands)	Median number of U.S. ports served
Total Volume (355 Active Air Carriers) .....	3,270	.....
(A) Volume of Express Consignment Carriers: Major carriers .....	2,410 (73.7%)	14
(B) Other Air Cargo .....	860 (26.3%)	.....
Top 14 Carriers .....	460 (14.1%)	9



## PANEL 3.—INBOUND AIR CARGO ACTIVITY, JANUARY 2003—Continued

Air carrier segment	Airway bill volume (in thousands)	Median number of U.S. ports served
Remaining 338 Carriers .....	400 (12.3%)	3

Source: Automated Commercial System.

In addition to requiring information submission four hours prior to arrival in the United States, or no later than the time of "wheels-up" in the case of certain nearby foreign areas, air carriers will be required to provide their own interface capability with the government approved electronic interchange at each U.S. Port of Arrival served by that carrier. The current government approved interchange is the Automated Manifest System—Air (AAMS). Those carriers will no longer be required to present a hard copy of their manifest upon arrival. Only in the event that the data interchange system is temporarily unavailable by malfunction would carriers be required to present a hard copy of their cargo manifest.

The data in Panel 3 establishes several relevant considerations in assessing the proposed rule's impact. The large majority of air inbound shipments (73.7%), as measured by airway bills, is accounted for by a relatively small number of large express consignment carriers. Those carriers currently are highly automated and currently have the capacity at virtually no cost to comply with the data submission provisions of the proposed rule. Measured by median, those carriers import shipments into 13 U.S. ports of arrival and long ago equipped those sites for AAMS transmissions.

These express consignment carriers would likely not be affected by the proposed rule even in the case of short haul flights, largely originating in Mexico and Canada, inasmuch as they would only be required to submit AAMS information no later than the time of departure from the foreign area (no later than the time of "wheels-up"). As a result, there would be no delay in departure from the foreign source necessitated in order to meet a pre-arrival reporting requirement. In any event, in operational practice, those carriers often engage more economical land shipment instead of higher cost air movement for short haul moves.

As a result of the above data and operational considerations, CBP concludes that these large carriers are substantially unaffected by the proposed rule.

The CBP estimates that these same factors and conclusion above hold for the second tier of air carriers, comprising 14.1% of airway bill volume. Those 14 carriers arrive at a median 9 U.S. Ports of Arrival.

The CBP data establish that a remaining 338 small carriers account for 12.3% of inbound air volume, serving a median 3 Ports of Arrival. Operating on a manual hard copy basis upon arrival, a majority of those 338 entities are foreign owned and fall out of the scope of the RFA. For those U.S. based small air carriers, CBP estimates that one time costs would be incurred to establish data transmission capability at the median three

arrival ports. To a significant degree, those one time costs would be mitigated by recurring operational efficiencies related to standard business operations and more rapid CBP processing and release of shipments, allowing more rapid turnaround of the aircraft and crew for increased revenue generation activities.

International inbound mail shipments are included in the cargo volumes cited above. However, advanced data submission for mail shipments through the United States Postal Service (USPS) is excluded from consideration in the proposed rule. To this end, reflecting the restrictive condition of involvement of sovereign foreign governments and pre-existing international treaties governing the movement of international inbound mail shipments, CBP contemplates that such shipments will not at this time be subject to the terms and conditions of the proposed rule.

#### Truck Mode Inbound; Rail Mode Inbound

Panel 4 below illustrates the volume of truck and rail traffic reported on the Northern and Southern borders:

#### PANEL 4.—CONVEYANCE ARRIVALS

Mode	FY 2002 volume (in thousands)
Total Commercial Aircraft	574.3.
Total Trucks .....	12,258.0.
At Southern Border ...	349.8 (2.9%).
At Northern Border ...	11,908.2 (97.2%).
Total Trains .....	44.3.
At Southern Border ...	8.4 (19%).
At Northern Border ...	35.9 (81%).
Total Vessels .....	226.2.

Source: Automated Commercial System.

#### Truck Mode Inbound; Explanation and Analysis of Data

The proposed rule requires cargo information submission either 30 minutes or 1 hour prior to arrival at the first U.S. Port of Arrival. As noted in Panel 4 above, the large majority of truck arrivals (97.2%) occurs at Northern Border ports. The CBP estimates that 60% of this inbound mode arrives with manually presented hard copy cargo information and, therefore, would be subject to changed operations to comply with the proposed rule. Further, consultations with industry sources suggest that the Northern Border supports an estimated 22,000 individual truck entities, of which 15,000 meet Small Business Administration standards as small entities (see Panel 1 above). A substantial portion of the 15,000 small trucking firms are Canada-based and, therefore, beyond the scope of the RFA's

consideration. The portion of this segment which is U.S. based will be required to incur one time costs for hardware and software for data transmission.

While hardware requirements and software cost relatively little and while Internet transmission is distinctly low cost, those firms will be required to expend time for data entry. Compared to normal, pre-proposal operation standards, that factor could represent a significant cost.

On the other hand, CBP estimates that recurring annual costs of data transmission are low. Further, certain other benefits representing lower operating costs will be realized. Electronic transmission will represent a lower cost burden on record keeping for those entities as well as speed cargo information submission and physical border release of the conveyance at the U.S. port of arrival for those shipments. Such electronic efficiencies could be expected to translate directly into lower daily operational costs for entities. Also, the likelihood is substantial that U.S. based small truck entities will develop cooperative and commercial arrangements with exporters. Such arrangements would likely involve provision to the truck entity of data in readily transmittable format, thus reducing the data entry burden of this segment.

As yet another mitigating factor, small truck entities may choose to engage the data services of port authorities or commercial service providers. Further still, there is a social good to be considered in that faster conveyance release at the port of arrival will translate directly into less local traffic congestion at the port and lower diesel emissions for residents of the locality. While complex to quantify, such commercial and health benefits cannot responsibly be neglected because tangible social welfare and commercial benefits will result.

Less than 3% of truck activity takes place at Southern Border sites (see Panel 4 above). An unestablished number of trucking entities operate in that geographic environment. However, long-term operational observation establishes that much of that border's truck volume centers on servicing the maquiladora industry based in the local Mexican border area. These Mexican-based plants are owned and operated in the large majority for the assembly function by large U.S. and multinational corporations (Chapter 98, Subchapter II, Harmonized Tariff Schedule of the United States (HTSUS) (Articles Exported and Returned, Advanced or Improved Abroad)). Such U.S. and multinational corporations are highly automated in their record keeping and cargo information transmission capabilities.

Further, a substantial majority of that north bound traffic relies on lower cost Mexican-based trucking entities operating in a shuttle

fashion to supply finished products to distribution facilities located on U.S. territory. Such foreign owned trucking entities are beyond the scope of the RFA's consideration.

If small U.S. based truck companies engage data transmitting aids at a commercially negotiated cost, one would reasonably expect that truck companies would pass those costs downstream. Such a cost increase may encourage a change in competitive relationships with comparable transportation services offered by rail carriers. Further consideration, however, mitigates the likelihood and significance of any competitive modal shift in that such shifts depend highly on the (1) nature of the merchandise to be transported, (2) elasticities of price with respect to demand for those commodities for trade participants and (3) the inherent established time and location-of-service flexibility of trucking versus rail transport.

In summary for this inbound mode, a certain substantial number of U.S. based small truck entities operating on the Northern Border may experience measurable cost of operation impact from the proposed rule. However, CBP estimates that many of those costs would be offset by concomitant operational efficiencies directly resulting from an operational shift from pre-proposal manual hard copy practices to electronic filing and expedited border release, freeing

up resources for expanded revenue generation opportunities.

#### *Rail Mode Inbound; Explanation and Analysis of Data*

The proposed rule establishes that cargo information will be electronically submitted 2 hours prior to arrival at the first U.S. port of arrival. As noted in Panel 4 above, 81% of rail volume occurs at Northern Border ports. The CBP estimates that all but 6 rail carriers already submit cargo information electronically. Only those 6 carriers would be affected by the proposed rule, and of those 6, some may not qualify as a small entity according to Panel 1 SBA standards. The operational effect of the proposal would be mitigated to a substantial degree by operational efficiencies attributable to electronic filing. Further mitigation is identified by the proposal's provision that the filing requirement will become mandatory within 90 days of CBP port automation to allow Rail AMS. The CBP establishes that 12 border ports still remain to be made operational for Rail AMS operation.

#### *Vessel Mode Inbound*

The proposed rule establishes that cargo information will be transmitted to CBP 24 hours prior to lading at the foreign port of departure, a standard which is consistent and exactly compatible with the earlier

implemented Container Security Initiative (CSI). An estimated 50% of inbound vessel volume is accounted for by the previously implemented CSI program. The CBP estimates that a further 45% of inbound vessel cargo volume already participates in AMS electronic transmission, leaving only 5% of this vessel volume to be affected by the proposed rule. Also, because of the transportation timeframes inherent in long haul vessel transport, the filing time requirement is not expected to impose a measurable operational burden on carriers. And based on capital and labor requirements and practices in this segment, it is highly unlikely that these carriers would meet SBA small entity standards (*see* Panel 1 above). Further still, few carriers are U.S. based and thus properly considered under provisions of the RFA.

#### *All Modes Outbound*

Panel 5, below, illustrates the increasing volume of export shipments, from 1995 through 2002, that have been reported electronically through the Automated Export System (AES); and Panel 6, below, reflects, as of February 2003, the vastly increased number of export shipments being reported through AES as a percentage of the total number of export shipments reported, both electronically and on paper.

### PANEL 5.—VOLUME OF AES SHIPMENTS

[External transaction numbers, in thousands]

Year	Total	Air	Rail/Truck	Vessel
1995 .....	0.4	0	0	0.4
1996 .....	21.4	0	0	21.4
1997 .....	60.7	0.2	3.6	56.9
1998 .....	221.0	30.3	81.1	109.6
1999 .....	1038.5	486.4	262.7	289.5
2000 .....	7140.9	4053.3	1407.0	1676.2
2001 .....	8819.0	4424.3	1586.3	2800.7
2002 .....	9424.0	4788.8	1832.9	2785.0

Source: Bureau of the Census.

### PANEL 6.—EXPORT RECORDS, FEBRUARY 2003

[In thousands]

Mode	Via AES	Via paper SED	Total records	AES as per cent of total
Air .....	421.3	80.7	502.1	83.9
Vessel .....	286.3	11.7	298.0	96.1
Truck/Rail .....	261.3	52.7	314.0	83.3
Total .....	968.9	145.2	1114.1	87.0

Source: Bureau of the Census.

#### *All Modes Outbound; Explanation and Analysis of Data*

The participation of outbound shipments in the proposed rule's reporting requirements will be concurrent with the completion of the redesign of the AES commodity module and mandatory, effective with a future regulatory publication by the Department of Commerce. For purposes of this proposed rule, the treatment below of outbound regulatory

flexibility and E.O. 12866 impact is presented for information purposes solely.

The proposed rule states that exporters (U.S. Principal Parties in Interest—USPPI's) or their authorized agents will file commodity export information via the existing government approved data interchange, AES, within certain time frames prior to departure from the U.S. (*see* Panel 2 for time frames).

The use of AES has risen dramatically since its inception in 1995 (*see* Panel 5), such

that currently AES transactions account for 87% of all export records (*see* Panel 6). Because of the large majority already participating in AES filing, only 13% of export records will be affected by the proposed rule.

Because of modal travel and preparation times, CBP does not identify notable operational hardship in meeting border

crossing filing times for any mode. In fact, the air express consignment burden is decreased compared to imports by a 1 hour timeframe prior to departure. Filings may take place via low cost Internet transmission. In filing, the USPPI will submit electronically to CBP a self generated external transaction number (XTN), receiving from CBP an internal transaction number (ITN), which is a system verification and approval (confirmation) number for cargo shipment information. Actual performance establishes that the ITN turnaround is routinely less than 1 minute. Only in the case that the USPPI chooses to engage in a third party commercial data transmission agent would the ITN/XTN turnaround require greater time, an estimated 15–30 minutes.

As in the *Truck Mode Inbound* section above, a potential impact may be experienced by small truck entities serving Northern border export transactions. However, as detailed in the Note to Panel 2, United States exports to Canada are not subject to advanced electronic cargo information submission under this proposal unless (a) the merchandise is licensable by Department of State or Department of Defense regulations or (b) the merchandise is transiting Canada with a 3rd country destination. Such a reporting factor may reasonably be expected to mitigate any burden on small trucking entities in providing a significant portion of the remaining 13% of outbound AES data.

Further with respect to outbound small truck entities, as also noted in the *Truck Mode Inbound* section above, certain cost lowering operational efficiencies will flow from the proposal's obligation to employ electronic filing, namely: (a) Electronic transmission will represent a lower cost burden on record keeping for those entities; (b) more rapid cargo information submission; and (c) more rapid physical border release of the conveyance at the U.S. port of arrival for those shipments. Such electronic efficiencies could be expected to translate directly into lower daily operational costs for entities, either partially or entirely offsetting one-time data transmission costs.

#### Executive Order 12866 and Significant Regulatory Action

##### Sector of Impact Identified

Outbound merchandise shipments generated by the United States Postal Service (USPS) may or may not be included within the scope of the proposed rule. In the event of inclusion, as a hybrid-type "publicly owned private corporation", the USPS would be responsible for data entry and transmission of an estimated 30 million outbound merchandise transactions (*i.e.*, parcel shipments) per year. While not included in the framework of the small entity oriented RFA, this organization and the proposal's effects become relevant in E.O. 12866 considerations which relate to impacts on the national economy. The CBP estimates that USPS would incur costs of \$4–\$6 per outbound transaction in order to perform data entry or purchase data entry services for each export transaction, yielding a total impact of \$120–\$180 million annually. Reasonably expected is that the USPS would request and be permitted to pass that cost to

exporters (U.S.-based consumers) through some mechanism of, effectively, a user fee.

In the case that outbound international mail shipments are indeed included in the proposed rule, then such an impact readily qualifies this proposal as a significant regulatory action, surpassing the \$100 million economic impact threshold established by the Executive Order. In the case that such shipments are removed or waived from the proposal at a later time, then the proposed rule's categorization as a significant regulatory action would no longer hold.

##### Competitive Relationship Effect

In the event of the USPS being obliged to provide outbound shipment data, then CBP estimates that the proposed rule would increase the degree of commercial competition between USPS and express consignment carriers. The U.S. Customs Service (now merged into CBP) prepared a detailed report to Congress in late 1997 identifying a series of factors of preferential Customs treatment available to USPS and not available to express consignment carriers. One of those identified factors focused on the Customs requirement for express carriers to provide detailed export transaction data with no equivalent requirement for USPS export shipments. By requiring USPS to provide the same data elements as express carriers in the same timeframe, the proposed rule would eliminate one key element of disparate treatment, effectively leveling the playing field between these two exporting entities and bringing both parties into more equal business operating practices.

#### C. Automation Costs of Participation in Advance Electronic Cargo Information Submission

CBP estimates below the following costs of shipper/carrier/importer/exporter compliance with electronic transmission requirements within the proposed rule's time frame for submission. The data were gathered from discussions with software providers and trade participants active in electronic data transmission with CBP.

##### Air Mode

Air mode is estimated to incur the greater of the costs for all modes. In order to purchase software, a large air carrier would incur costs of \$5,000–\$25,000 as a one-time license fee and \$6,000/year in maintenance costs, plus an estimated \$20,000/yr. in operating costs, primarily labor. If the air carrier chose to develop the transmission software independently, the carrier would incur development costs of an estimated \$100,000, plus annual operating costs of \$400,000, primarily labor. If the air carrier were to seek transmission services from a service provider, the carrier would incur costs of \$500–\$2,000 in one time subscription fees, plus an annual minimum \$6,000 cost.

In estimating air industry total costs of compliance with the proposed rule, CBP established that 260 of the total 355 air carriers are American-based. The CBP estimates that these 260 carriers will choose information transmission compliance options in the following distribution: (a) 5 to develop

software, maintain system and transmit at their own initiative; (b) 50 to purchase software, maintain and transmit; and (c) 205 to employ service providers for software, maintenance and transmission. Employing that distribution, CBP estimates the following transmission costs of compliance, broken down by both one-time and recurring annual costs:

#### ESTIMATED AIR MODE COSTS OF TRANSMISSION [Thousands of dollars]

Transmission option selected	One time costs	Recurring annual costs
I. Develop .....	\$500	\$2,000
II. Purchase .....	750	1,300
III. Service Providers	205	1,230
Total .....	1,455	4,530

##### Truck Mode

In consideration of the truck mode, the primary cost for a shipper/carrier would involve complying with the Automated Broker Interface (ABI) Selectivity practices.

Specifically, there are approximately 13,400 trucking firms that will eventually have to move from a paper-based system to an electronic system.\* Compliance with the Automated Broker Interface Selectivity practices would require, at a minimum, a facsimile transmission within the proposed rule's time frame for advance information.

Therefore, this rule would impose a small capital cost (a fax machine for firms that do not already own a fax machine), and a per-transmission cost. Firms could also avail themselves of a commercial transmission service; however, the per-transmission cost may be less cost-effective than a personal fax machine for a firm involved in many shipments. The per-transmission cost should be minimal, since the information that firms would need to send already must be gathered and presented at the time of arrival under current procedures. The CBP also assumes that most trucking firms will already own a fax machine. If 50% of firms must invest in a fax machine (a likely overestimate) at approximately \$150 per machine, the total cost of this rule for the trucking industry would be a one-time cost of approximately \$1 million. The CBP also makes a preliminary determination that this rulemaking would not result in any other changes in business practices that would impose additional costs to trucking firms. We request comments on these assumptions.

(\*CBP estimates the following already in the analysis: (22,000 Truck firms at the Canada border + 350 Truck firms at Mexico border) \* (.60 that are currently paper based) = 13,410.)

##### Vessel and Rail Modes

Vessel and rail carriers are the least affected in terms of cost of transmission because of those carriers' already high participation rate in electronic transmission meeting the proposed rule's requirements. In practical terms, costs of data submission for

these segments of the trade are adjudged near negligible.

#### **D. Recordkeeping and Reporting Requirements**

The proposed rule does not include additional, new recordkeeping requirements. Instead, because of the reliance of the proposal on electronic transmissions, the proposal may well simplify and reduce existing recordkeeping obligations of the trade participants. In terms of reporting requirements, the proposal carefully relies on using existing government approved electronic data interchange tools already in widespread use by trade participants.

#### **E. Alternatives Considered**

The CBP considered and incorporated alternative methodologies into the proposed rule's data submission requirements on trade community participants. In developing the proposed rule, CBP sought to balance the operational needs of legitimate commercial cargo flows with a meaningful and effective timeframe for identifying, targeting and inspecting potentially high risk merchandise shipments. In order to identify that balance, CBP proposed requirements for advance electronic submission by mode in "Strawman" proposals. Those initial standards proposed submission timetables ranging from 24 hours prior to departure to 4–24 hours prior to lading and subsequent cargo movement.

Substantial public comment and public hearings followed the "Strawman" Proposals, offering multiple alternatives. With a high degree of uniformity and consistency, those alternatives focused on several common

issues: (1) Using already existing automated systems, such as AES and AMS for data submission; (2) different, more compact timeframes for provision of advanced information, oriented primarily around the objective of non-disruption of standard business transportation practices and commercially critical "just-in-time" delivery systems; and (3) re-focus of advanced data submission from a pre-lading basis to, respectively, a pre-arrival-into or pre-departure-from U.S. basis.

In response to public expressions and explanations, CBP, subsequent to the "Strawman" Proposals, effectively re-focused the time and transportation scheduling basis for the advanced electronic data submissions (see Panel 2 above vs. original Strawman framework) such that the proposed rule fairly closely reflects the philosophy and principles of the publicly expressed alternatives.

#### **F. Conclusion**

##### *Regulatory Flexibility Act (RFA)*

With respect to RFA considerations, CBP concludes that the proposed rule will result in no significant economic impact on a substantial number of small U.S. entities because:

(1) The proposed rule's reporting timeframes are reasonably compatible with modern shipping practices and capabilities and fundamentally reflect the alternative approaches presented by those commercial interests;

(2) The high volume of inbound and outbound transactions already currently reported on an electronic basis;

(3) Low cost of electronic transmission of the required data;

(4) Accessibility to and use of already existing government approved electronic data interchange mechanisms;

(5) Subsequent operating efficiencies resulting from electronic filing, resulting in enhanced revenue generating activities of small carriers;

(6) Exclusion of most exports to Canada from Bureau of the Census reporting;

(7) The RFA's exclusion from consideration of non-U.S. entities;

(8) Availability of existing Discrepancy Reporting authority for carriers to update/correct previously submitted cargo data; and

(9) Reporting timeframes which do not interfere with critical "just-in-time" delivery systems.

##### *Executive Order 12866*

With respect to Executive Order 12866, CBP concludes that, should USPS export transactions be included within the scope of the proposal's reporting requirements, the proposal qualifies as a significant regulatory action, with annual national economic cost greater than \$100 million because USPS costs incurred would likely be recouped as user fees charged to U.S. exporters. The reverse conclusion would hold in the event that USPS export transactions are not included within the proposed rule. Further, in the case that USPS exports are included, the USPS—express consignment commercial competitive relationship would be more equalized.

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