

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