

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