

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