

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