

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.