

Members of C-TPAT (the Customs-Trade Partnership Against Terrorism) and participants in the FAST (Free And Secure Trade) system should be exempted from having to present advance electronic cargo data for their shipments; and the Department of Defense (DoD) should have exemptions based on the nature of their shipments (descriptions for sensitive military cargo should be general).

CBP Response

Generally speaking, it is the view of CBP that a straightforward and streamlined regulation, unencumbered with multiple special exemptions, would present the most workable system especially with respect to the rail environment. Given the abbreviated time frame proposed (no later than 2 hours prior to arrival at a U.S. port of entry), CBP believes that the rail community in particular should be able to comply with the advance transmission of needed cargo data, with no measurable disruption in the flow of cross-border commerce; this should render moot most of the special requests for exemptions from the proposed advance filing requirements.

Nevertheless, CBP is proposing to exempt one category of cargo from the advance automated notification rule: Domestic cargo that would arrive by train at one port from another in the United States after transiting a foreign country would not be subject to the advance electronic information filing requirement for incoming cargo; but advance information for such domestic cargo may be electronically presented to CBP, if desired.

Required Data Elements

Comment

Required data elements to be transmitted to CBP should be clearly set forth; and CBP should give clear instructions as to what level of data would be sought.

CBP Response

The proposed data elements for incoming rail cargo are contained in proposed § 123.91(d). A number of the data elements contained in this proposed regulation are accompanied by explanations. The CBP will include additional definitions for those elements about which the importing rail community may desire greater elucidation. To assist in making this determination, CBP requests comments especially concerning those data elements for which the importing rail community seeks further guidance.

Information Technology; High Risk Cargo

Comment

The CBP would need to automate any ports that were not already automated in order to enable the port to transmit or receive electronic data as part of the advance information filing program.

CBP Response

The CBP will automate any remaining port that is not now operational on the existing CBP-approved electronic data interchange system (Rail AMS).

Comment

Mandatory automation under section 343(a), as amended, would place additional pressure on trade participants. The CBP should take steps to ensure that its offices would be fully staffed around-the-clock at all rail crossings in order to handle any eventualities resulting from the implementation of the final advance cargo information filing regulations.

CBP Response

The CBP will make every effort to ensure that there will be sufficient staff to assist the trade in effectively complying with the regulations. The CBP is aware that effectively administering the advance cargo information program will undoubtedly place upon it additional burdens, especially on some of the smaller ports along the border.

Comment

Railroads rely extensively on Automated Line Release. The CBP should retain the C-4 Line Release Program (19 CFR part 142, subpart D) for the rail industry; eliminating Line Release would negatively affect carriers participating in Rail AMS as it would delay the time required for rail release.

CBP Response

For the present, CBP intends to keep some type of Line Release, which might necessitate only some slight changes in names and terms.

Comment

The CBP should establish procedures to be followed if Rail AMS were not functioning properly when a carrier attempted to file information through the system. Specific backup systems should be designated in the event of unplanned outages of either CBP's system or the rail carriers' systems.

CBP Response

The CBP contemplates that the existing procedures of presenting a

paper copy of the electronic data elements would still be used, with some adjustments as appropriate.

Comment

Should an examination of any cargo aboard the incoming train be found warranted, the train should be allowed to proceed to the first inland port where the examination would be conducted.

CBP Response

Absent special circumstances, all security-related examinations under section 343(a), as amended, would occur at or near the border.

Transition Period for Complying with Advance Cargo Information Filing

Comment

A number of commenters advocated that they be afforded a transition period for complying with the regulations, without specifying what the period should be. One commenter asked for a period of 180 days; another suggested that different periods be allowed for different types of affected parties; and another requested that there be a period similar to the 90-day transition period granted for incoming vessel cargo under the "24-hour rule" (T.D. 02-62, 67 FR 66318; October 31, 2002).

CBP Response

The CBP, as noted, seeks uniformity and simplicity in its advance cargo reporting rule for rail traffic, and agrees with the recommendation that a 90-day transition period would be adequate under the circumstances, particularly given that the rail industry is highly automated. Hence, a rail carrier would need to begin the electronic transmission to CBP of the required cargo information 90 days from the date that the port of arrival becomes automated.

Overview; Rail Cargo Destined to the United States

Rail Carrier Transmittal of Required Information for Incoming Cargo

For any train requiring a train sheet under 19 CFR 123.6, that would have commercial cargo aboard, the rail carrier would be required to electronically present to CBP certain information concerning the incoming cargo no later than 2 hours prior to arrival at a United States port of entry. Specifically, based upon the transition/timetable as discussed below under "Transition Period," to effect the advance electronic transmission of the required rail cargo information to CBP, the rail carrier would have to use a CBP-approved electronic data interchange system.