

data to CBP, as discussed above, at the particular port of entry where the truck will arrive in the United States on and after 90 days from the date that CBP has published a notice in the **Federal Register** informing affected carriers that:

(1) The approved data interchange is in place and fully operational at that port; and

(2) The carrier must commence the presentation of the required advance cargo information through the approved system.

#### **Comments; Cargo Departing From the United States; All Modes**

The following comments were received regarding the electronic submission of cargo data for outbound shipments.

#### *Setting Transmittal Times for Electronically Presenting Information*

##### **Comment**

The time frames proposed by Customs were too long, would significantly impede or eliminate Just-in-Time ("JIT") business practices, and impede or eliminate express shipping services.

##### **CBP Response**

The pre-departure filing time frames set forth in this proposed rule for export cargo information reporting are far shorter than the 24-hour period prior to lading that was included in the "strawman" proposals. As previously indicated, the time frames set forth in the "strawman" proposals were only intended to stimulate feedback from the trade, for consideration by CBP in formulating time frames for presenting the required cargo data under this proposed rule. The time frames proposed in this rule, discussed in further detail below, range from 24 hours prior to departure for vessels to not later than 1 hour prior to departure for trucks.

In determining the time frames for the advance reporting of information for outbound cargo in this proposed rule, CBP considered existing commercial practices. The CBP also took into account the minimum amount of time necessary to perform automated targeting and analysis and to request further information about the cargo or to schedule its examination, in the event that a shipment were identified as being potentially high-risk. The CBP also considered the different threats to the United States and others posed by outbound shipments. It is anticipated that these time frames are sufficiently abbreviated that there will be no palpable impact on "JIT" business/inventory practices.

##### **Comment**

The reporting time frames should be based on when the electronic filer transmits the information, as opposed to when the Government-administered automated system verifies the receipt of the transmitted information.

##### **CBP Response**

There is no mechanism in the approved electronic data interchange system (currently, the Automated Export System (AES)) for capturing the date and time of submission by the filer. The time of receipt is quantified by the time that an Internal Transaction Number (ITN) is generated, and the system records this date and time.

The AES has an Office of Management and Budget (OMB) performance measure for 2003 which sets the goal of monitoring and tuning trade processing to maintain the average monthly percent of filer transmissions with a turnaround time below one minute at 95%. The AES consistently meets this new performance measure. The CBP cannot monitor compliance and/or perform enforcement based on the date and time of submission by the filer.

#### *Load/No Load Messages*

##### **Comment**

The trade expressed the need for both a "No Load" message, and an "OK to Load" message for both imports and exports.

##### **CBP Response**

The CBP sees "No Load" situations for exports as an extremely infrequent occurrence. Therefore, a constant stream of "OK to Load" messages would not be useful to the export process.

The AES Commodity module, which will be used to meet the Trade Act mandate, currently does not have the capability to provide an automated "No Load" or "Hold" message to the carrier. The AES Commodity module does provide feedback to the United States Principal Party in Interest (USPPI) or its authorized filing agent in the form of warning messages for data inconsistencies as well as for data errors in cases where the system cannot accept the data as transmitted. (The CBP will use the term "USPPI," as defined in 15 CFR part 30; the term "Exporter" will not be used again in this document.) A "No Load" message transmitted to the USPPI or its filing agent is not the most efficient notification path for denying lading to a specific shipment. A "No Load" message will be feasible when export manifest modules for all modes are in place in AES.

At the time of promulgation of a final rule in this matter, automated manifest options will not be available for air, truck, and rail modes in AES. For the purposes of this rulemaking, pursuant to the Trade Act of 2002, CBP has determined that the option of waiting for the availability of automated export manifest systems in AES does not meet the intent of the Trade Act to improve cargo safety and security in the near term. Accordingly, should export manifest modules not be available upon the effective date of a final rule in this matter, CBP proposes to collect the following 6 transportation data elements for outbound cargo, which should otherwise be readily known to the USPPI or its authorized agent, as further discussed, *infra*: Mode of transportation; Carrier identification; Conveyance name; Country of ultimate destination; Estimated date of exportation; and Port of exportation.

#### *Exemptions; Retention of Post-Departure Filing*

##### **Comment**

The trade strongly supported retaining the Option 4 Post-Departure filing privilege.

##### **CBP Response**

The CBP supports a structured system of exemptions and/or pre-approval programs that recognize the varying degrees of risk associated with export shipments and the different threats posed to the United States and others by such shipments. Given the differences in in-bond and export shipments, a limited post-departure filing option may be appropriate for certain types of export shipments. The CBP will work with the Bureau of Census and the trade in designing these programs, building upon current initiatives such as AES Option 4, the Customs-Trade Partnership Against Terrorism (C-TPAT), and the Transportation Security Administration's (TSA's) "Known Shipper" Program. The C-TPAT is a joint government-business initiative designed to enhance security procedures over the entire supply chain of incoming cargo while improving the flow of trade. In return for tightening the security of their supply chains, C-TPAT participants can get their cargo processed through CBP faster.

At the present time, while not exempting any USPPI from the advance pre-departure cargo information reporting requirements, this rulemaking supports post-departure reporting by highly compliant exporters. The CBP and Census will develop and implement