

Additional information for outward cargo is not readily available in advance of departure because exporting carriers, who have direct knowledge of this information, generally do not now have the electronic capability to furnish cargo data through AES. Specifically, there are no carrier manifest modules in AES, except for the vessel carrier module which is voluntary and does not yet include the capability to receive cargo data directly from Non Vessel Operating Common Carriers (NVOCCs). Therefore, implementation of mandatory automated cargo data processes for vessel operators in the absence of other such modules would create uneven requirements within and across modes of transportation.

Conversely, to presently obligate USPPIs or their authorized agents to transmit transportation data additional to that which is collected in the AES Commodity Module would be impracticable because such information would not necessarily otherwise be obtainable in a timely enough manner to meet the proposed advance electronic reporting procedures; this would inevitably delay and disrupt the movement of cross-border traffic.

Against this overall backdrop, therefore, CBP has concluded that its proposal to require pre-existing data elements for outward cargo represents a sound and sensible initial step in establishing a solid informational bulwark against threats to cargo safety and security, and one which would not adversely impact or impinge upon the flow of cross-border commerce.

To this end, and pursuant to Bureau of Census regulations that are due to be issued next year, the current AES system is to be upgraded and reprogrammed so as to enable, and require, that USPPIs or their authorized agents transmit, verify acceptance and annotate an ITN (unless otherwise exempt from pre-departure filing) on export documents presented to the exporting carrier in accordance with the time frames and procedures outlined in this rule. Nevertheless, CBP and the exporting trade agree with the advisability of creating carrier manifest modules in AES or a successor system that would facilitate the reporting of additional cargo information for outbound cargo.

Complete transportation data from exporting carriers would be collected for every export shipment when CBP has the system capabilities set up to receive this data directly from carriers. Once this requisite technology is approved and incorporated into an automated system, CBP will then review these new capabilities to determine additional

compliance with the Trade Act of 2002. The CBP would then propose its own regulations in the **Federal Register** calling for exporting carriers, in advance of departure, to electronically file their outward cargo information with CBP through the approved system.

#### *Proof of Electronic Filing; System Verification of Data Acceptance*

For each export shipment to be laden, the participating USPPi, or its authorized agent, must furnish to the outbound carrier a proof of electronic filing citation covering the cargo to be laden, for annotation on the outward manifest, waybill, or other export documentation when cargo information is reported electronically; in the alternative, the USPPi, or authorized agent, would be responsible for providing to the exporting carrier an appropriate low-risk exporter citation (currently Option 4) or an exemption statement for the cargo. The carrier may not load cargo without the related electronic filing citation (e.g., the ITN), low-risk exporter citation, or an appropriate exemption statement.

The proof of electronic filing citation, low-risk exporter citation, or exemption statement, will conform to the approved formats found in the Bureau of Census Foreign Trade Statistics Regulations (FTSR) (15 CFR part 30), or on the Census Web site (<http://www.census.gov/foreign-trade/regulations/index.html>).

When successfully transmitting cargo data for a shipment through the system, the USPPi or its authorized agent will receive a system-generated confirmation number, known as an Internal Transaction Number (ITN), which constitutes verification that the data transmitted has been accepted by the system. For transmitted data that passes system edits, the current approved electronic data interchange (AES) returns this confirmation number routinely in less than one minute. This enables CBP to base the monitoring and enforcement of the time frames on the actual time of receipt (of the data) rather than on its transmission, which cannot be quantified. When the redesign of the AES commodity module is in place, the proof of export filing citation will need to include the ITN.

#### *Exemptions From Reporting Requirements*

Exemptions from reporting requirements for certain cargo are under the authority of the Bureau of Census (15 CFR 30.50 through 30.58). The proposed CBP regulations under section 343(a), as amended, would likewise encompass these exemptions.

#### *Transition Period; Implementation*

For successfully targeting potentially high-risk export commodity shipments, CBP supports the employment of current AES systems that are already heavily in use and widely available to USPPIs. With Internet connections, as noted, AES allows new USPPIs that are relatively small businesses, to be brought into the system fairly easily and inexpensively. To this end, the proposed regulations for the specified pre-departure reporting of cargo commodity and transportation information for outbound shipments, together with the requirement of the ITN, would be implemented concurrent with the completion of the redesign of the AES commodity module and the implementation of mandatory filing regulations by the Department of Commerce pursuant to Public Law 107-228.

#### **Future Rulemaking Regarding Related Laws**

##### *Waterborne Cargo; Section 343(b), Trade Act of 2002*

Section 343(b), Trade Act of 2002, as amended (codified at 19 U.S.C. 1431a), requiring proper documentation for all cargo to be exported by vessel, will be the subject of a separate publication in the **Federal Register**.

##### *Transportation Security Administration—Cargo Security Programs*

It is also stressed that the final regulations that will be issued to implement section 343(a), as amended, may, in the foreseeable future, be subject to modification as necessary to accommodate a cargo security program that may be developed by the Transportation Security Administration (TSA) in accordance with the Aviation and Transportation Security Act (Public Law 107-71, 115 Stat. 597; November 19, 2001) (49 U.S.C. 114(d), (f)(10); 44901(a), (f)).

#### **Comments**

Before adopting these proposed amendments, consideration will be given to any written comments that are timely submitted to Customs and Border Protection (CBP). The CBP specifically requests comments on the clarity of the proposed rule and how it may be made easier to understand. Comments are especially requested as to the sufficiency of the explanations that accompany the proposed data elements, as well as the impact on small business entities under the Regulatory Flexibility Act. Comments submitted will be available for public inspection in