

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

19 CFR Parts 4, 103, 113, 122, 123, 178 and 192

[CBP Dec. 03–32]

RIN 1651–AA49

### Required Advance Electronic Presentation of Cargo Information

**AGENCY:** Customs and Border Protection, Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations to provide that the Bureau of Customs and Border Protection (CBP) must receive, by way of a CBP-approved electronic data interchange system, information pertaining to cargo before the cargo is either brought into or sent from the United States by any mode of commercial transportation (sea, air, rail or truck). The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP. These regulations are specifically intended to effectuate the provisions of section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002.

**DATES:** Effective Date: This rule is effective January 5, 2004.

**Compliance Dates:** The various compliance dates for these regulations are set forth, as applicable, in §§ 4.7(b)(5), 122.48a(e), 123.91(e), 123.92(e), and 192.14(e).

**FOR FURTHER INFORMATION CONTACT:** Legal matters: Glen E. Vereb, Office of Regulations and Rulings, 202–572–8724; Trade compliance issues:

Inbound vessel cargo: Kimberly Nott, Field Operations, 202–927–0042;  
Inbound air cargo: David M. King, Field Operations, 202–927–1133;  
Inbound truck cargo: Enrique Tamayo, Field Operations, 202–927–3112;  
Inbound rail cargo: Juan Cancio-Bello, Field Operations, 202–927–3459;  
Outbound cargo, all modes: Robert Rawls, Field Operations, 202–927–5301.

### SUPPLEMENTARY INFORMATION:

#### Background

Section 343(a) of the Trade Act of 2002 (Pub. L. 107–210, 116 Stat. 933,

enacted on August 6, 2002), as amended by section 108 of the Maritime Transportation Security Act of 2002 (Pub. L. 107–295, 116 Stat. 2064, enacted on November 25, 2002), required that the Secretary endeavor to promulgate final regulations not later than October 1, 2003, providing for the mandatory collection of electronic cargo information by the Customs Service (now the Bureau of Customs and Border Protection (CBP)), either prior to the arrival of the cargo in the United States or its departure from the United States by any mode of commercial transportation (sea, air, rail or truck). Under section 343(a), as amended (codified at 19 U.S.C. 2071 note), the information required must consist of that information about the cargo which is determined to be reasonably necessary to enable CBP to identify high-risk shipments so as to ensure cargo safety and security and prevent smuggling pursuant to the laws that are enforced and administered by CBP.

#### Proposed Rulemaking

Consequently, in accordance with the parameters set forth in section 343(a), as amended, a document was published in the **Federal Register** (68 FR 43574) on July 23, 2003, proposing to amend the Customs Regulations in order to require the advance electronic transmission of information pertaining to cargo prior to its being brought into, or sent from, the United States by sea, air, rail or truck.

In part, section 343(a), as amended, required that a broad range of parties likely to be affected by the regulations be consulted and their comments be taken into consideration in developing these regulations. For this reason, separate public meetings were held in January 2003 to address specific issues, and to obtain public input, related to the advance electronic presentation of information, respectively, for sea, air, rail or truck cargo. The CBP also received numerous public comments via e-mail. In addition, extensive meetings were held with workgroups of the subcommittee on advance cargo information requirements of the Treasury Advisory Committee on the Commercial Operations of the U.S. Customs Service (COAC). For a detailed discussion of the development of the proposed rule, and the evaluation of the comments received as the result of the consultation process, see 68 FR 43574–43592.

#### Discussion of Comments

A total of 128 commenters responded in timely manner to the July 23, 2003, notice of proposed rulemaking. What follows is a review of, and CBP's

response to, the issues and questions that were presented by these commenters concerning the proposed regulations. The CBP also received comments pertaining to the preliminary regulatory impact analysis which was published as an appendix to the proposed rule. Those comments, and the corresponding CBP response, have been addressed separately immediately following this section under the heading, "Comments on Economic Analysis". In addition, a summary of the findings contained in the regulatory impact analysis for this rule can be found in the "REGULATORY ANALYSES" section of this document. For more detailed information, the complete regulatory impact analysis is available on the following Web site, <http://www.cbp.gov>

#### General; Issues Affecting Multiple Modes; Issuance of Separate House Bills of Lading

*Comment:* The requirement that a separate house bill of lading be issued for each shipper/consignee relationship imposed significant costs upon commerce. Carriers would now have to issue multiple bills of lading for each container of consolidated cargo, and they would charge a fee for each additional bill of lading, where the consolidated goods were tendered for shipment by a single freight forwarder and were destined to a single consignee in the United States. It was stated that CBP should modify AMS (the Automated Manifest System) so that it could receive vendor information for consolidated shipments without requiring the entry of entirely separate bills of lading.

*CBP Response:* The CBP reasonably needs detailed shipper information on the house bill of lading because this information is critical for targeting purposes under section 343(a)(2) of the Trade Act of 2002, as amended (19 U.S.C. 2071 note, section (a)(2)). Thus, where a freight forwarder or other consolidator receives goods from several foreign vendors (shippers) for consolidation and shipment to a single consignee in the United States, listing the freight forwarder or other consolidator, instead of the foreign vendor, as the shipper on the house bill of lading would be at odds with the intent of section 343(a). It is, of course, a business decision as to whether a forwarder or consolidator would choose to charge for any additional bill(s) of lading issued.

However, at the present time, the AMS system generally lacks the capability to process data for multiple shippers/consignees from a single house