

bill of lading. The AMS systems were built with a one-to-one relationship—one shipper to one consignee. To alter this would require a complete redesign of the system for all modes of transportation. In addition, it would also force the entire bill of lading to be placed on hold rather than one specific shipment. This is not a programming process that CBP can undertake at this time and, more specifically, detailed communication with the trade community would be required.

#### Confidentiality

*Comment:* Proposed § 103.31a should be revised to indicate that advance cargo information which contained classified or sensitive unclassified information would be released only in accordance with applicable regulations, statutes, and orders. Also, it was believed that the vessel cargo declaration information required to be reported in advance could be different from the manifest information envisioned in 19 U.S.C. 1431.

*CBP Response:* Section 103.31a, as proposed pursuant to section 343(a)(3)(G), as amended (19 U.S.C. 2071 note, section (a)(3)(G)), exempts from disclosure advance cargo data for all inbound and outbound air, rail, or truck cargo unless the owner of the information expressly agrees in writing to its release. In addition, as far as vessel cargo data collected under 19 U.S.C. 1431 is concerned, section 1431 already adequately addresses the conditions under which such information may not be disclosed, including where the information is authorized to be kept secret in the interest of national defense, as provided in 5 U.S.C. 552(b)(1); or where disclosure of the information would pose a threat of personal injury or property damage (see 19 U.S.C. 1431(c)(2)(A) & (B)).

*Comment:* One commenter discussed the matter of public disclosure of outbound cargo information which would be required to be submitted to CBP electronically. It was stated that since cargo information on outbound ocean shipments would rely upon Automated Export System (AES) submissions and not upon vessel cargo manifests, such information should not be subject to the public disclosure provisions of 19 U.S.C. 1431. Another commenter, however, fully supported the release of cargo data from outward vessel cargo manifests pursuant to the disclosure provisions of section 1431.

*CBP Response:* The underlying cargo manifest statute in question, 19 U.S.C. 1431, applies to both inbound and outbound cargoes. Although manifests are actually comprised of numerous

documents, including the Shipper's Export Declaration (SED), the SED document itself is exempt from public disclosure pursuant to 13 U.S.C. 301(g) unless the Secretary of Commerce determines that such exemption would be contrary to the national interest.

Also appearing in existing Customs Regulations (19 CFR 103.31) is a provision making available for copying and publication certain information and data appearing on outward manifests. The scope of that information is described and limited in § 103.31. As in the case of inward vessel cargo manifest information, § 103.31 also provides that certain parties may file certifications with CBP to request confidentiality for outward vessel cargo manifest information (19 CFR 103.31(d)(2)).

#### Automated Manifest System (AMS)

*Comment:* The CBP did not provide an updated response to the question of what carriers should do when the Automated Manifest System (AMS) was not functioning.

*CBP Response:* The CBP currently has procedures in place for the processing of cargo when automated systems have experienced a level of failure. The CBP offices routinely accept voluntary submissions of paper documents during this time from trade members looking for immediate release. The CBP's automated systems are designed to queue transmissions sent from the trade during downtime, and the system automatically begins to issue status and release messages when service is restored.

For the purposes of the 24-Hour rule, the trade has been instructed to present paper manifests to CBP in either the appropriate Container Security Initiative (CSI) port of departure, or at the Domestic port of arrival in order to allow for advance targeting. The CBP anticipates instructing the trade the same for the purposes of section 343(a) of the Trade Act of 2002. It will admittedly be difficult and not all submissions will be made promptly. The CBP will then use informed, considered judgement in the issuance of penalties, the mitigation of penalties and other possible action against particular shipments.

If downtime is identified as severe and anticipated to last a significant period, the trade is notified and instructed to present papers entries, in-bond transportation documents and other release paperwork to the CBP offices. Carriers are instructed to present paper manifests for their arriving conveyances. As CBP manually processes the release and other paperwork, determining risk and

satisfaction of all requirements to the best of the inspector's ability, copies of those documents are presented to the carriers to gain release of the cargo, or to demonstrate authorization for it to move in-bond or within the port.

When the automated system resumes service, CBP policy is to enter the information about paper processing into the system to generate corresponding electronic release messages and to also ensure that historical records are updated, and the clocks for duties, taxes and fees are correctly started.

Over the last years, the Automated Commercial System (ACS) has been very reliable in its processing and suffered very little unscheduled downtime. The CBP has made downtime requirements available on its Web site for the enforcement of the 24-Hour rule and will also do the same for the purposes of section 343(a) of the Trade Act of 2002.

*Comment:* For ABI (Automated Broker Interface) filers (importer or brokers) that transmitted advance air or truck cargo data, it was asked whether their ABI Filer Codes would qualify as their unique identification code, or whether CBP would require that they obtain another code, such as an IATA (International Air Transport Association) code or a SCAC code (Standard Carrier Alpha Code).

*CBP Response:* The ABI filer that transmits advance cargo data would be identified by its 3-digit ABI Filer Code. However, in the air environment, since the Air Automated Manifest System (Air AMS) requires a 7-character code to identify parties transmitting house air waybill level information, ABI filers electing to transmit such advance cargo data will be assigned codes in the format "BCBPXXX", where, in place of the "XXX", the ABI filer would insert its own unique 3-digit ABI filer code.

*Comment:* Under the 24-hour rule for incoming vessel cargo, Non Vessel Operating Common Carriers (NVOCCs) had to apply for approval to become a Vessel AMS filer. The question was raised, in the context of other modes of inbound transportation (air and truck), as to whether an ABI filer of information would have to go through the same approval process, including some form of application and qualification testing, before being allowed to file advance cargo data with CBP for incoming shipments.

*CBP Response:* ABI transmission capabilities are available to all entry filers who handle truck entries and that have been authorized to participate in ABI under the procedures prescribed in part 143, subpart A, Customs Regulations (19 CFR part 143, subpart