

automated systems that support each mode and the degree to which the necessary technology is available to particular modes of transportation. This fully comports with the mandate of section 343(a)(3)(D) and (E), as amended.

Bond Issues

Comment: A question was presented as to whether electronic filers of advance cargo data through the Automated Manifest System (AMS) would need to possess an international carrier bond.

CBP Response: Other than Automated Broker Interface (ABI) filers in the air environment (consisting of importers and brokers) (see § 122.48a(c)(2) in this final rule), electronic filers through AMS (whether Vessel, Air or Rail AMS) must possess an international carrier bond under 19 CFR 113.64. By contrast, an ABI filer of advance cargo data, that is an importer, would need to possess an amended basic importation and entry bond, as described in § 113.62(j)(2) in this final rule; and an ABI broker who files advance cargo data would be obligated under 19 U.S.C. 1641 and 19 CFR part 111 to do so in the manner and in the time period prescribed in § 122.48a in this final rule.

Comment: A Customs bond could be written as a single transaction bond or as a continuous bond. It was recommended that CBP provide in the regulations that any bond needed for reporting cargo information prior to arrival be a continuous bond.

CBP Response: The CBP does not agree with the commenter. The commenter suggests that the rule be amended to state that all bonds required in support of presentation of advanced manifest information must be continuous bonds. Continuous bonds are bonds taken out by principals that are in effect for a period of time (usually 1 year, with automatic renewal unless terminated) and insure all relevant transactions occurring in that period of time. In contrast, single transaction bonds are bonds that are taken out one at a time and are presented to insure only a single transaction or arrival. The rule only requires that a bond be posted. It does not matter whether that bond is continuous or single transaction and there is no need to provide for a bond type restriction.

Liability Concerns

Comment: Where the party presenting information to CBP had acquired this information from another, and the information was determined to be false, clarification was requested as to how

this would play a role in the penalty/liiquidated damage process.

CBP Response: Mindful of the requirements of section 343(a)(3)(B), as amended (19 U.S.C. 2071 note, section (a)(3)(B)), CBP will take the facts and circumstances of any such situation into account in determining whether a penalty/liiquidated damages claim should be initiated and whether and/or to what extent such a claim should be mitigated. The CBP intends to issue mitigation guidelines in this matter.

Submission of Cargo Data in Advance of Arrival or Departure

Comment: Having to present cargo information in advance for both exports and imports would add severely to port congestion in the U.S., and thus raise the costs and burdens of both types of trade.

CBP Response: The CBP disagrees. The receipt of advance electronic information will reduce port congestion because CBP can make enforcement decisions before conveyances arrive in the United States. This has been true in the vessel environment for some time, and has been improved upon under the 24-hour rule because CBP can perform examinations overseas via the Container Security Initiative (CSI). Furthermore, CBP will use in implementing this final rule a phased-in compliance program, similar to that described above for the 24-Hour Rule, in order to make sure that technical violations do not unnecessarily disrupt the flow of goods across the U.S. border. Therefore, there is no compelling reason to conclude that congestion at U.S. ports will result.

Comment: Further explanation was sought as to the basis for the differences among the time-frame reporting requirements for inbound and outbound shipments in all modes of transportation.

CBP Response: Generally speaking, and as further discussed for each individual mode, *infra*, in determining the timing for transmittal of advance cargo data, CBP, as directed by the statute, took into account the differences existing among the different modes of transportation, both inbound and outbound, including differences in commercial practices, operational characteristics, and the technological capacity to collect and transmit information electronically; and, as the law also directed for each mode, CBP undertook to balance the likely impact on the flow of commerce with the impact on cargo safety and security.

Miscellaneous Issues

Comment: Concern was expressed about information security requirements

associated with advance notifications for shipments of radioactive material.

CBP Response: Advance cargo information is transmitted to and received by CBP on a secure and encrypted data line. As for cargo arriving by vessel, manifest information for such cargo is not available for public disclosure until after the vessel has arrived; and, as previously indicated, in accordance with 19 U.S.C. 1431(c)(2)(A) & (B), such information may be exempted from disclosure in the interest of national defense pursuant to 5 U.S.C. 552(b)(1), or where the disclosure would pose a threat of personal injury or property damage.

Comment: In the future, CBP should allow the electronic submission of comments.

CBP Response: Requiring written comments in response to a notice of proposed rulemaking is a matter of agency policy that is beyond the scope of this particular rulemaking. However, it is observed that comments via e-mail were invited and accepted regarding the development of the proposed rulemaking in this case (68 FR at 43575).

Comment: A format for Frequently Asked Questions (FAQs) should be established for each mode of transportation on the CBP Web site, which should be regularly updated with new or revised questions.

CBP Response: CBP intends to post FAQs for each mode of transportation on the CBP Web site (<http://www.cbp.gov>), which will be updated as necessary.

Comment: One commenter offered to provide, at no cost to the Government, cargo inspections at the point of origin and then transmit the results of the inspections by way of a CBP-approved electronic data interchange system. The commenter requested only that CBP accept such inspected shipments as "low risk" and thus eligible for expedited clearance upon arrival.

CBP Response: In effect, CBP believes that the same results would be achievable by joining the C-TPAT program (The Customs-Trade Partnership Against Terrorism). As already explained, participation in C-TPAT is considered as a positive factor in targeting shipments to determine whether cargo needs to be held at the port of arrival for examination or receipt of further information.

Comment: Additional instruction was sought as to what terms would satisfy the requirement for a precise description for incoming cargo (§ 4.7a(c)(4)(vii); and proposed §§ 122.48a(d)(1)(ix) and (d)(2)(iii), 123.91(d)(5), and 123.92(d)(9)). In