

participate in the Vessel AMS electronic data interchange system would at this time be neither advisable nor practicable.

Comment: It was stated that the Shipper field in Vessel AMS could not accommodate more than 3 or 4 lines of information. This could prove inadequate in the case of consolidated shipments where there could be multiple shippers.

CBP Response: This inability of the Shipper field in Vessel AMS to capture multiple shipper data is academic inasmuch as CBP requires that for each shipper/consignee relationship a separate bill of lading be issued. This mandate for a separate house bill of lading for each shipper/consignee relationship constitutes a critical component for automated targeting purposes in identifying high-risk shipments.

Comment: With respect to proposed § 4.7(b)(5), which provided that carriers, and participating NVOCCs, would need to become automated at all ports of entry where their cargo would initially arrive, it was asked whether it would be the Vessel AMS computer mainframe's problem to forward the carrier's transmission to the appropriate Customs port of entry.

CBP Response: Ocean carriers and NVOCCs currently operational on Vessel AMS, although not at all ports of entry, will now be required to become operational at all such ports. Any carrier or NVOCC that hereafter becomes automated on Vessel AMS will thereby be automated at all ports. Since the automation of electronic filers through Vessel AMS will per se encompass all ports of entry, proposed § 4.7(b)(5) is revised in this final rule by removing the phrase, "where their cargo will initially arrive". However, carriers must indicate in their respective electronic transmissions each port of arrival where their incoming cargo will be discharged.

Comment: Non Vessel Operating Common Carriers (NVOCCs) should be required to electronically present advance cargo information directly to CBP.

CBP Response: The CBP disagrees. As discussed in the proposed rule (68 FR at 43576–43577), certain segments of the trade in fact urged that advance cargo information filing by NVOCCs be eliminated due to operational problems with Vessel AMS, that resulted when NVOCCs, as opposed to the incoming carriers, filed cargo data directly with CBP. Nevertheless, in consideration of the competitive relationships that exist in the international freight forwarding field, CBP continues to believe that NVOCCs who wish to do so may

become automated on Vessel AMS, but that they should not be compelled to do so.

Comment: It was observed that a large number of NVOCCs operational on Vessel AMS seemed to opt out of the system at various ports, for apparently no authorized reason. Vessel carriers were said to be unable to audit or police this.

CBP Response: Those NVOCCs who choose to become automated on Vessel AMS must be automated in all ports. While NVOCCs do have the ability to decertify in AMS, they would then be required to submit detailed information to carriers for transmission to CBP for all ports of discharge. If a question should arise as to whether or not an NVOCC is automated, the vessel carrier may contact its CBP client representative for verification.

Comment: It was asked whether there was a maximum reporting window for transmitting cargo data in advance through Vessel AMS.

CBP Response: Vessel AMS has the capacity to retain electronic transmission information up to a maximum of nine months prior to the cargo's Estimated Date of Arrival (EDA).

Confidentiality

Comment: It was unclear whether the shipper specific information would be publicly disclosed, and whether such information from both master and house bills of lading would be involved. It was remarked that disclosing this information would defeat the purpose of direct filing by NVOCCs.

CBP Response: Information collected pursuant to 19 U.S.C. 1431, including information from both master and house bills, is available for public disclosure in accordance with section 1431(c). However, under the authority of section 1431(c)(1)(A), information relating to the identity of a foreign shipper to an importer or consignee in the United States will not be disclosed if a claim for confidential treatment for such information is made by using the procedure prescribed in 19 CFR 103.31(d)(1).

Implementation Period for Rule

Comment: It was thought that 90 days was too short a period from the date of publication of the final rule within which a non-automated carrier would need to develop software and programming in Vessel AMS. A period of 120 days was requested.

CBP Response: The CBP believes that 90 days is an adequate and reasonable time frame within which to permit a non-automated vessel carrier to become automated on Vessel AMS. The CBP

will continue to work with the trade to achieve compliance with these advance cargo reporting provisions.

In selecting 90 days following publication as an implementation period for mandatory vessel AMS participation, CBP sought to strike a proper balance between the needs of the affected public in adjusting to the new requirements, and meeting the needs of the United States in implementing anti-terrorism measures without undue delay. Ninety days strikes that balance.

Procedure for Amending Cargo Declarations

Comment: The proposed rule did not mention the procedures for amending electronic cargo declarations following their transmission. This would also apply for goods that were sold while in transit.

CBP Response: Complete and accurate information would need to be presented to CBP for cargo to be laden aboard the vessel no later than 24 hours prior to lading the cargo aboard the vessel at the foreign port. As for any changes in the cargo information already transmitted, the procedures for amending the cargo declaration including discrepancy reporting regarding vessels as well as all other modes will be the subject of a separate rulemaking. Prior to the promulgation of new rules concerning discrepancy reporting, the procedures for phased-in compliance as explained above will be employed to address changes that must be made to the transmitted cargo declaration. It should be recognized that each time a bill of lading is amended, it may be subject to increased targeting and at risk for examination.

Enforcement

Comment: Procedures should be outlined for cargo that arrived without pre-notification or with incomplete information.

CBP Response: In all modes of transportation discussed in this rulemaking, the carrier must notify CBP immediately upon arrival or as soon as it realizes that it did not submit the proper information. The carrier should then present or transmit the cargo declaration information. Upon arrival in the U.S. port, the cargo declaration will be placed on hold until CBP has had the opportunity to review the documentation, and conduct any necessary examinations. Appropriate penalties may also be issued. If CBP determines that this has become a common occurrence for a carrier, this could eventually lead to denial of a permit to unlade. Additionally, CBP will notify the United States Coast