

Guard of a vessel with unmanifested cargo that is scheduled to arrive. If the arriving cargo is food, CBP and FDA are working closely together to ensure they coordinate policies and procedures for dealing with movement of the cargo.

Miscellaneous Matters

Comment: The view was expressed that the ocean carrier would be reluctant to accept an NVOCC's shipment due to liability concerns, and/or would react, to protect itself from CBP enforcement, by imposing extraordinary and erroneous evidentiary or indemnity obligations on the NVOCC.

CBP Response: The CBP is currently programming Vessel AMS to accept additional bill of lading types that will allow NVOCCs to submit commodity information to CBP that will protect proprietary information from the carrier, and that will enable the vessel carrier to submit master bills of lading to CBP pertaining to the transportation information for the cargo.

Comment: In proposed § 4.7(b)(1), it was stated that the original and one copy of the manifest must be ready for production on demand. It was asserted that the only original manifest carried on board the vessel upon arrival would be the dangerous goods manifest.

CBP Response: Under § 4.7(b)(1), there is no requirement that the original vessel cargo declaration be carried aboard the vessel in those cases where the cargo declaration has already been filed in advance electronically. The CBP decided not to enforce the paper cargo declaration (Customs Form (CF) 1302) rule for formal entrance if a carrier or NVOCC has successfully automated. However, where the cargo declaration has been filed in advance electronically, and a paper copy is not aboard the vessel, the carrier will be afforded a reasonable time within which to generate a paper cargo declaration, should a paper copy be requested by CBP. The CBP will periodically assess this policy to ensure that it is not having an adverse effect on operations.

Comment: The proposed rules, especially those related to ocean imports, did not address the status of shippers' associations as shippers and transportation intermediaries and apparently did not give them the right to file the required manifest information directly to CBP.

CBP Response: The CBP has determined that shippers associations are not licensed or registered with the Federal Maritime Commission (FMC). Moreover, such associations cannot be construed to be carriers of cargo in the same sense as ocean carriers or NVOCCS. Therefore, shippers

associations will not be permitted to participate in Vessel AMS.

Air Cargo Destined to the United States

Time Frame Requirements for Transmitting Advance Cargo Data

Comment: Several commenters requested that the time frames in proposed § 122.48a(b) in which the electronic cargo information was transmitted be reduced and that exceptions for certain points of origin be included.

CBP Response: The CBP recognizes the business practices of the air cargo industry and the necessity of adequate time to properly analyze the electronic cargo information and to deploy inspectional resources when required. These issues were carefully considered when establishing the time frames specified in these regulations.

Specifically, CBP weighed the question of an appropriate time frame for air from many angles. To better gauge industry requirements, CBP conducted public meetings (one for each modality), and set up an email address to facilitate the submission of comments by carriers, importers, exporters, freight forwarders, customs brokers, other U.S. Government agencies, foreign governments, as well as local, national and international trade organizations, and private citizens, etc. It should be noted that this elective comment period was in addition to the formal comment period required for the Notice of Proposed Rule Making. The CBP also met intensively with the Treasury Advisory Committee on the Commercial Operations of the U.S. Customs Service (COAC), which resulted in additional unified recommendations for each modality. The CBP assessed internal operational considerations such as the speed at which the various electronic data interchanges are able to process information, the time required for CBP personnel to review the output and determine the appropriate action, and the time needed to deploy personnel to respond.

Comment: Further explanation was requested on whether the time frames for flights from nearby foreign areas in proposed § 122.48a(b)(1) included such flights to the territories of the United States, such as Guam and Puerto Rico.

CBP Response: The time frame for nearby flights would include such flights to Puerto Rico because it is part of the Customs territory of the United States. However, flights to Guam are not included in the advance cargo reporting requirements, as Guam is not part of the Customs territory. The CBP finds that a distinction in the time frames for

advance filing based upon geographical considerations, as opposed to the duration of the flight, is more administratively feasible.

Air Freight Forwarder Issues

Comment: It was asked whether CBP would permit foreign indirect air carriers (non-U.S.-based freight forwarders that issue their house bills of lading for air freight shipments) to qualify as one of the authorized filers of information through the Air Automated Manifest System (Air AMS).

CBP Response: Other than the incoming air carrier, parties eligible to transmit inbound electronic air cargo information are enumerated in § 122.48a(c)(1) in this final rule. Any foreign indirect air carrier that is not one of the parties specified in § 122.48a(c)(1) would have to fully disclose and present the required data for the inbound air cargo to the incoming air carrier or other eligible electronic filer, as applicable, which would then present such data to CBP.

Comment: It was advocated that CBP require freight forwarders, Customs brokers and consolidators to participate in Air AMS.

CBP Response: The CBP disagrees. Such parties may elect to provide the data directly to CBP if they are one of the parties specified in § 122.48a(c)(1), or they may provide the data to the incoming air carrier which will transmit such data directly to CBP.

Comment: Two commenters wanted to know whether it was CBP's intention that freight forwarders filing advance cargo data obtain two bonds—an international carrier bond and a custodial bond.

CBP Response: A freight forwarder filing advance air cargo data would be required to have an international carrier's bond under § 122.48a(c)(2). In addition, if the freight forwarder or any other eligible party were responsible for supplying in-bond information and for transporting cargo in-bond under the provisions of part 18 of the Customs Regulations (19 CFR part 18), such party would also need a Customs custodial bond.

The international carrier bond is required of carriers arriving from foreign locations. That bond exists to guarantee performance with regard to (among other things) conveyance arrival, entry and clearance, cargo manifesting and disposition, and passenger and crew control. The conditions of the international carrier bond appear at 19 CFR 113.64. A custodial bond is required of any party that transports merchandise domestically, either between ports of entry or within a single