

as part of CBP's Rail AMS port automation efforts.

Automated Line Release in rail is what is known as the Border Release Advanced Screening and Selectivity program (BRASS) in the Truck environment. The difference is that the information is all electronic and supplied in advance of arrival.

Implementation Date(s) for Rule

Comment: Further guidance was sought as to the implementation date(s) for the proposed regulation.

CBP Response: Quite plainly, under § 123.91(e), rail carriers must commence the advance electronic transmission of required cargo information 90 days from the date that CBP publishes a notice in the **Federal Register** informing affected carriers that the data interchange system is in place and operational at the port of entry where the train would first arrive in the United States. As such, before the rule can become operational at any port, including any port(s) where Rail AMS is now operational, the initial publication of a **Federal Register** notice naming such port(s) would be a mandatory prerequisite. At present, there are 35 CBP ports that have rail crossings, 8 of which are not rail AMS. The CBP will require all ports that handle rail cargo to become automated.

Exemption for Cargo Transiting Contiguous Foreign Country

Comment: The proposed rule (§ 123.91(b)) would expressly exempt from advance electronic information filing requirements domestic cargo transported by train from one port to another in the United States by way of a foreign country. However, the proposed rule did not deal with whether such an exception applied when the shipment partly involved transportation by sea or air.

CBP Response: Only a land-based conveyance, such as rail or truck, would be involved with carrying goods on a continuous movement from one port to another in the United States by way of a contiguous foreign country, whether Canada or Mexico. This is the specific situation addressed in § 123.91(b); such a situation would simply not arise in the vessel or air mode. Proposed §§ 123.91(b) and 123.92(b)(1) (for trucks) are revised in this final rule to explicitly reference Canada and Mexico in this respect.

Truck Cargo Destined to the United States

Implementation Issues

Comment: As was done in the 24-hour rule, one commenter wanted a grace

period between the implementation date of the final rule and its enforcement date (no penalties assessed for non-fraudulent violations).

CBP Response: Similar to that which was done in the context of the 24-hour rule (67 FR 66318), as previously detailed, *supra*, CBP will follow a phased-in enforcement/compliance program, after § 123.92 becomes effective at a specific port of arrival. As such, during the phased-in period, CBP would not customarily initiate enforcement actions such as assessing penalties for non-fraudulent violations of § 123.92. And, under § 123.92(e), the effective date for advance data filing for incoming truck cargo is itself initially delayed until 90 days from the date that CBP publishes a notice in the **Federal Register** informing affected carriers at the given port that the approved data interchange is operational there and that carriers must commence the filing of the required data.

Comment: Two commenters sought to delay the implementation of proposed § 123.92 until carriers, brokers, and importers had direct communication links electronically with CBP.

CBP Response: The CBP disagrees. The advance notification requirement is largely intended to collect advance cargo information via two outstanding methods—the Automated Broker Interface (ABI), or the fully electronic version of the Free And Secure Trade (FAST) System. Delaying the implementation of § 123.92 until all parties related to the reporting of the data for incoming cargo are fully electronically interfaced with CBP, such as through FAST, or the Automated Commercial Environment (ACE), once it is deployed, would be incompatible with the expeditious implementation of section 343(a), as amended, as a national security necessity.

Comment: It was suggested that CBP implement separate rules for emergency importations.

CBP Response: Emergency situations will be handled on a case-by-case basis, depending on the facts, in CBP's enforcement discretion.

Comment: It was recommended that an education enforcement contingency plan be devised to avoid possible chaotic situations at the border under the new rules.

CBP Response: Outreach and marketing efforts are currently being undertaken to reach out to both foreign and domestic trade participants to avoid such situations at the border.

Time Frame for Advance Filing

Comment: One commenter sought further explanation as to the actual start

time for advance notification requirements, *i.e.*, at the time of transmission, or at the time CBP received the transmission.

CBP Response: As expressly set forth in § 123.92(a), CBP must receive the cargo data no later than 30 minutes or 1 hour prior to the carrier's arrival at a United States port of entry, or such lesser time as authorized, based upon the CBP-approved system employed in presenting the information. Also, this point was directly addressed in the background of the proposed rule (see 68 FR at 43586).

Comment: Twelve commenters recommended an abbreviated advance notification time line of 30 minutes for standard shipments and 15 minutes for Free And Secure Trade (FAST) shipments, specifically for trucks loaded within a designated border zone, to support the "Just-in-Time" (JIT) shipping industry.

CBP Response: This identical comment was broached in the proposed rule (68 FR at 43586; *Summary of Principal Comments*, item "1."). At that time, CBP concluded, and continues to firmly believe, that the 30-minute or 1-hour advance time frame, in relation to the particular automated system used, is the minimum period needed to perform a targeting analysis for cargo selectivity, and, if found warranted, to arrange for an inspection or examination of the cargo following its arrival. The effect on JIT inventory practices, given these relatively brief reporting periods, should be essentially nugatory.

Against this backdrop, it is submitted that BRASS (the Border Release Advanced Screening and Selectivity program) and CAFES (the Customs Automated Forms Entry System), where the filing period would be less, will only be employed exclusively as interim, transitional systems in the truck environment prior to the development and deployment of fully electronic replacements for these systems in the new truck manifest module scheduled for delivery under the Automated Commercial Environment (ACE); the employment of BRASS and CAFES under the circumstances is thus due in large measure to the conspicuous lack of electronic information systems prevalent in the trucking industry, especially along the Southern Border.

Comment: Six commenters asked that CBP implement the 15-minute advance electronic notification period currently used under the FAST voluntary test program.

CBP Response: The FAST program is designed to enhance security and safety in processing commercial importations