

Comment: Five commenters sought additional explanation concerning the use of BRASS as a cargo reporting system under proposed § 123.92.

CBP Response: As a strictly interim, transitional procedure, CBP intends to allow the continuation of BRASS for trucks, but anticipates instituting some additional measures that would otherwise modify BRASS to enhance the security of BRASS transactions. To this end, CBP will take those measures deemed necessary to safeguard the integrity of the BRASS program, which could include program requirements such as FAST Driver registration and participation in the Customs-Trade Partnership Against Terrorism (C-TPAT). However, with the incorporation of a fully electronic version of BRASS planned in the new truck manifest module in ACE, CBP does not propose making any changes to the method in which the current paper-based BRASS operates.

Comment: One commenter advocated that CBP restrict the use of BRASS to C-TPAT approved importers.

CBP Response: The CBP will consider adding this type of security enhancement to the BRASS system. However, for the present, CBP will use C-TPAT membership in targeting incoming cargo for examination, including cargo that is subject to reporting through the BRASS system.

In-Bond Systems; Bar Codes

Comment: Five commenters desired further guidance under the proposed rule concerning in-bond entries for immediate transportation to another port of entry, and the use of the 2-D bar code label under in-bond provisions.

CBP Response: As explained in the proposed rule (68 FR at 43587), CBP will continue to employ CAFES or ABI in-bond reporting systems where available. The CAFES system handles in-bond shipments utilizing 2-D bar codes that are printed on the Customs Form (CF) 7512 in-bond entry document. Because the use of bar codes is required for CAFES, BRASS, PAPS, and other functions, CBP will continue to support the use of such bar codes in accordance with these systems.

Required Data Elements

Comment: Two commenters pointed out that proposed § 123.92(c)(2) allowed for dual party presentation of the required data, but did not indicate which data elements were required from the carrier, importer or broker.

CBP Response: Where there is dual-party presentation of the data elements listed for incoming cargo in § 123.92(d), the parties to the transaction should

decide which data elements each will submit. It is, of course, presumed that if an importer or its broker elected to file advance cargo information with CBP, such data would typically encompass any required commodity and other related information that it possessed with respect to the cargo, as such information would likely be better known to the importer or its broker; and, for the same reason, the carrier would present the required data pertaining to the carriage of the cargo (see 68 FR at 43587). However, CBP will not parse the data elements in § 123.92(d), and rigidly mandate their respective assignment between the carrier and importer or broker.

Comment: In proposed § 123.92(d)(2), one commenter desired the elimination of the Standard Carrier Alpha (SCAC) code, because carriers along the U.S.-Mexican border did not have SCAC codes.

CBP Response: The CBP disagrees. The ability to identify the carrier is critical to target and assess the risk posed by shipments crossing the border. In this regard, the SCAC code is a unique four-letter code used to identify transportation companies; this unique carrier identifier supports the electronic data interchange for all motor carriers. A carrier may obtain a SCAC code by contacting the National Motor Freight Traffic Association, Inc., 2200 Mill Rd., Alexandria, VA 22314-4654.

Comment: One commenter mentioned that the proposed rule did not deal with a possible variation between the scheduled date of arrival and the actual date of arrival, and whether a difference in these times would result in a breach of the importer's entry bond.

CBP Response: In § 123.92(d)(6), the specific information required is the scheduled date and time of the carrier's arrival at the first port of entry in the United States. However, should there be a delay in the carrier's arrival following its data transmission, this may raise targeting concerns and prompt further inquiry/inspection. In any event, notwithstanding the scheduled arrival of the truck, the presentation of the required cargo data is related to the carrier's actual time of arrival in § 123.92(a).

Comment: Four commenters wanted the data elements for inbound truck cargo aligned with those data elements that would be required under the Automated Commercial Environment (ACE) once it is developed.

CBP Response: As the ACE is under development and its precise features have not as yet been determined, this comment falls outside the scope of this document.

Exemptions

Comment: The proposed rule should exempt informal entries from advance cargo reporting.

CBP Response: Section 123.92(b)(2) does exempt informal entries from the advance cargo information notification provisions.

Comment: All radioactive materials entering the United States should be subject to prior notification, even if the shipment only transited a contiguous foreign country while en route from one port to another in the United States.

CBP Response: Upon arrival in the United States, all shipments, including those merely in-transit through a contiguous foreign country, will be scanned for radiation in primary truck lanes, and in-transit manifests, if applicable, must be tendered at that time.

Examination/Inspection; Penalties/Liquidated Damages; Refusal of Admission

Comment: One commenter suggested processing trucks away from the border, prior to reaching the bridge, especially for Detroit and Buffalo.

CBP Response: The concept of examining and processing trucks prior to their entry into the United States is currently being explored with Canada. It is a complex and sensitive issue involving matters of national sovereignty and the authority to enforce laws outside the United States.

Comment: One commenter inquired as to whether it would be acceptable for a carrier to arrive physically and wait in a holding area while the driver/carrier coordinated with the broker to ensure that proper advance information had been provided.

CBP Response: Because secondary examination areas are limited in space, CBP will not allow the shipment to be staged at a designated waiting area in the port of arrival either while the entry documentation is being processed or while the carrier consults with a broker to determine if the information has been presented in the manner prescribed.

Comment: Thirteen commenters expressed alarm over the prospect that the admission of cargo to the United States could be refused if the advance notice was not received.

CBP Response: Once implemented at a port, the advance cargo reporting provisions would be obligatory for all required cargo. For any inward carrier for which advance electronic commodity and transportation information was not presented to CBP, as otherwise required in the regulations, the transporting carrier, depending on