

the specific circumstances involved, could be refused permission to unlade until all security screening and necessary examination was initiated and concluded, in addition to being subject to applicable statutory penalties. In the alternative, the carrier could be refused admission to the United States depending, once again, upon the particular circumstances involved.

#### **Type of Carrier; Carriage of Instruments of International Traffic**

*Comment:* Two commenters sought the creation of procedures for the movement of instruments of international traffic, including the movement of empty containers aboard trucks.

*CBP Response:* With the exception of FAST, CBP will not require any advance notification if the shipment consists solely of empty articles (pallets, tanks, cores, containers, and the like) that have been designated as instruments of international traffic (IITs). However, if the IITs are commingled with other commercial cargo, CBP will, of course, require the requisite arrival notification for such commercial cargo via the authorized CBP-approved electronic data interchange system; and any empty IITs carried aboard the conveyance must be identified as such and listed on the carrier's paper manifest.

*Comment:* Three commenters questioned whether there was a distinction between an inward truck carrier as opposed to a drayage carrier. Also, they wanted to know whether there would be any differences in treatment between carriers on the Northern and Southern Borders.

*CBP Response:* The CBP defines a drayage carrier as one that only moves cargo locally (such as a cartman who only moves cargo within the limits of a port), as opposed to an incoming truck carrier which is understood to be engaged in the international movement of cargo coming from Canada or Mexico. Also, as previously assured, until the development of the truck manifest module in ACE, CBP will employ existing data systems on both the Northern and Southern Borders to receive and evaluate cargo information for incoming truck shipments.

#### **Cargo Departing From the United States; All Modes**

##### *Time Frames for Transmitting Required Data for Outbound Cargo*

*Comment:* One commenter wanted to know whether there could be a pre-departure report for cargo that did not have an export license.

*CBP Response:* There may be pre-departure reporting for shipments

without an export license. General export reporting requirements may be found in the Bureau of Census Regulations (15 CFR 30.1–30.2).

*Comment:* The proposed twenty-four hour advance notification for outgoing vessel cargo in proposed § 192.14(b)(1)(i) would considerably add to transit time, with adverse impact especially upon perishable goods.

*CBP Response:* Since the responsibility rests with the USPPPI, and not the ocean carrier, to provide the advance data to CBP, there should be no undue burden placed upon the carrier. The Option 4 post-departure filing program will remain and will be available to exporters of perishables that meet requirements for volume, low-risk commodity, and compliance with export regulations.

*Comment:* The phrase, “no later than 24 hours prior to the departure of the vessel”, in proposed § 192.14(b)(1)(i), should be further explained.

*CBP Response:* For greater clarity, this phrase in § 192.14(b)(1)(i) is changed to read: “no later than 24 hours prior to departure from the U.S. port where the vessel cargo is to be laden”.

*Comment:* In proposed § 192.14(b)(1)(ii), one commenter suggested a longer time frame for submitting air cargo data, while two commenters wanted the proposed 2-hour advance time frame reduced.

*CBP Response:* The CBP finds that the 2-hour advance time frame in § 192.14(b)(1)(ii) is necessary for CBP targeting purposes, and should not unduly disrupt the flow of outbound air commerce. The CBP will continue to work with the express consignment industry to explore interim use of the External Transaction Number (XTN) by those companies that are able to provide CBP access to existing automated export manifest systems with targeting capabilities.

However, for further clarification, § 192.14(b)(1)(ii) is amended in this final rule to state that for air cargo, including cargo being transported by Air Express Couriers, the USPPPI or its authorized agent must transmit and verify system acceptance of export air cargo information no later than 2 hours prior to the scheduled departure time of the aircraft from the last U.S. port.

*Comment:* Two commenters recommended that information be submitted prior to the export shipment being delivered to the outgoing carrier, but no less than 2 hours prior to departure of the flight for foreign. The concern was expressed that an air carrier would be penalized for shipments which were tendered for movement before the electronic

information filing through the Automated Export System (AES) had been completed.

*CBP Response:* The USPPPI or its authorized agent must have the Internal Transaction Number (ITN) available to provide to the carrier when the cargo is tendered for export. The ITN verifies that the cargo data filing has already been completed. Carriers are only responsible for collecting the proof of electronic filing (ITN) for annotation on the carrier's outward manifest, waybill, or other export documentation covering the cargo to be shipped.

*Comment:* Three commenters proposed that data be submitted for outbound Shippers Export Declaration (SED) shipments at the time of departure for air cargo and upon arrival at the border for truck cargo.

*CBP Response:* This would not be permissible. The CBP simply cannot perform its necessary targeting and selectivity responsibilities if the information is received at the time of departure or arrival at the border.

*Comment:* It was stated that the 4-hour notification for rail as initially proposed by CBP would directly impact operations and result in delayed shipments. On this ground, it was recommended that the time frame for reporting outbound rail cargo be consistent with the 2-hour pre-arrival time frame for incoming rail cargo.

Also, it was stated that U.S. Principal Parties in Interest (USPPPIs) who would be obligated to transmit the required cargo information at least 4 hours prior to the engine being attached to the train generally had little knowledge of rail operations. Therefore, it was urged that a mechanism should be put in place whereby a problem container could be held at a Canadian port until reporting issues were resolved.

*CBP Response:* The CBP will adopt the recommendation for outbound rail that was put forth by COAC (the Treasury Advisory Committee on the Commercial Operations of the U.S. Customs Service). Thus, export cargo information must be transmitted no later than two hours prior to the arrival of the train at the border, thereby creating symmetry with the advance time frame for inbound rail cargo coming from Canada or Mexico.

The CBP observes that this two-hour time frame is established as a minimum guideline. All parties involved in export transactions are encouraged to file export cargo information as far in advance as is practicable to reduce the need for CBP to delay the export of cargo because of the need for screening, examinations, and the resolution of incomplete or incorrect records. It