

carrier. Therefore, in the final economic analysis, CBP has not estimated the costs of the proposed rule on NVOCCs.

*Comment:* Although a large percentage of manifests presently submitted to Customs are submitted electronically, this does not mean that a large percentage of the organizations presently submitting manifests are presently doing so via AMS or are capable of doing so.

One company stated that it submits approximately 100 single page manifests for vessels that import over 5 million tons of bulk commodities in a year. Due to this insignificant number of manifests, which cover a large amount of cargo, the company stated that it is not equipped to submit cargo manifests electronically and to do so would represent a substantial financial penalty.

At the present time pre-arrival manifests are submitted by fax at basically no cost even though they are sent to several branches of the Federal government. An investigation into obtaining a "provider" via whom manifests could be submitted electronically had indicated a set up cost of \$1,000 and a monthly minimum for one SCAC code of \$200.

Therefore, strong disagreement was noted with the initial analysis that the proposed rule would not have a significant economic impact upon a substantial number of small entities.

*CBP Response:* Virtually all shipping companies that are owned by U.S. citizens or are U.S. flagged are currently filing manifests electronically. The CBP has been able to identify only 24 shipping companies that carry cargo into U.S. ports from the Caribbean that do not use AMS. The CBP does not believe that any of these companies are U.S. owned nor are any of the ships U.S. flag. Consequently, the proposed rule on vessels is not expected to have any economic impact on U.S. companies.

*Comment:* It is estimated that 25 million bills of lading are issued annually for container cargo from Japan to the United States. Shipping companies are charged a \$25 fee for transforming and inputting a shipper's cargo data to the AMS. This means that the cost of trade between Japan and the United States will increase \$625 million per year through the introduction of the 24-hour rule. Contrary to the CBP's claim that much of the trade already uses electronic transmission systems and therefore would not incur significant compliance costs, this fact indicates that substantial costs would be imposed on the trade when the requirements of advance electronic cargo information are implemented.

*CBP Response:* The CBP believes that virtually all shipping companies that are owned by U.S. citizens or are U.S. flagged are currently filing manifests electronically. Further, even if none of the non-U.S. trade participants were automated, the estimated annual cost of trade of \$625 million would represent less than one percent of a total value of U.S. imports from Japan (this calculation is based on the 2001 import values; Source: Bureau of Transportation Statistics).

### Summary of Significant Changes

As referenced in the Discussion of Comments, *supra*, this final rule document makes three significant changes from the proposed rule. These changes consist of: (1) Removing the provision concerning advance cargo data for air shipments listed as letters and documents and making it the subject of a separate **Federal Register** publication (proposed § 122.48a(d)(3) as such is removed from this final rule); (2) requiring certain additional data elements from the incoming air carrier in the case of split shipments (a new § 122.48a(d)(3) is thus added in this final rule); and (3) decreasing the rail outbound time frame from "4 hours prior to the attachment of the locomotive before going foreign" to "2 hours prior to arrival at the border" (§ 192.14(b)(1)(iv)).

### Adoption of Proposal

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, CBP has concluded that the proposed regulations with the modifications discussed above should be adopted as a final rule.

### Additional Changes

For greater editorial accuracy, the reference in proposed § 113.64(a) and (c) to "§ 122.48a(c)(2)" is changed in this final rule to "§ 122.48a(c)(1)(ii)–(c)(1)(iv)". Also, proposed § 122.48a(a)(2) is revised in this final rule to distinguish between Diplomatic Pouches and Diplomatic Cargo, the latter of which is subject to the full advance cargo data reporting requirements of § 122.48a. In addition, proposed § 123.8 is amended consistent with § 122.38(g) in this final rule. Lastly, proposed §§ 123.91(a) and 123.92(a) are changed to make clear that cargo data must be received within the relevant time frame before the subject cargo reaches the first port of arrival in the United States.

### Transportation Security Administration—Cargo Security Programs

It is also stressed that these final regulations to implement section 343(a), as amended, may, in the foreseeable future, be subject to modification as necessary to accommodate a cargo security program that may be developed by the Transportation Security Administration (TSA) in accordance with the Aviation and Transportation Security Act (Pub. L. 107–71, 115 Stat. 597; November 19, 2001 (49 U.S.C. 114(d), (f)(10); 44901(a), (f))).

### Regulatory Analyses

#### Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), CBP must determine whether a regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal government or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The CBP has determined that the rule will have an annual effect on the economy of more than \$100 million and is, therefore, an economically significant regulatory action. Accordingly, it has prepared a regulatory impact analysis for the rule, which is available on the CBP Web site, <http://www.cbp.gov>.

#### Costs

The analysis examined each of the modes and identified changes that are likely to impose new costs on U.S. carriers. Because virtually all vessels and railroads are already filing electronically, costs were estimated for these sectors to be insignificant. Exports to Canada by truck are generally exempted from regulation. For exports by air, shippers complete the shipper's export declaration prior to presenting the shipment to a carrier; therefore, the