

EXECUTIVE SUMMARY

ADVANCE ELECTRONIC CARGO INFORMATION

Section 343 of the Trade Act of 2002

Background

Section 343 of the Trade Act of 2002, as amended by section 108 of the Maritime Transportation Security Act, states that regulations shall be promulgated providing for the transmission to U.S. Customs and Border Protection (CBP) through an electronic data interchange system of information pertaining to cargo that is to be brought into or taken out of the United States, prior to the arrival or departure of the cargo.

Discussion

CBP drafted a Notice of Proposed Rulemaking (NPRM) taking into consideration the transcripts of four public meetings, 299 comments that were received as a response to the meetings and a Commercial Operations Advisory Committee of the Customs Service (COAC) Subcommittee Report. After DHS approval, the NPRM was published in the Federal Register on July 23, 2003 (68 FR 43574), with a 30-day comment period.

CBP received 126 timely comments in response to the NPRM, which underwent thorough review and analysis. Also, a detailed regulatory impact analysis (RIA) of the proposed rule was conducted. A final draft was completed after careful consideration of the comments and of the economic impacts of the proposal.

Significant changes from NPRM

- We have carefully reviewed and analyzed the information relating to documents and letters in the air mode. While recognizing that requiring full manifesting of these shipments would have a significant impact on the trade community, the Department could not entirely exempt these shipments, which after a certain weight, become a piece of cargo. Therefore, in trying to address the concerns of the trade community while ensuring national security, we determined that flat documents and letters not exceeding sixteen ounces could be exempted from full manifesting requirements. The Department feels confident that proper targeting and increased security can still be achieved despite easing the requirement. This treatment of letters and documents is not set forth in this final rule, but is addressed in a separate Federal Register document so that CBP can receive comments on this change from the proposal.
- In addition, the transmittal timeframe on rail outbound was shortened to 2 hours without compromising targeting goals.
- Also, the regulation clarifies that while goods comprising a diplomatic or consular bag being shipped under an air waybill are subject to the advance reporting requirements, the description of any such shipment as a diplomatic pouch will be sufficient as a description.

Attached at the back of this Executive Summary is a chart (*Table 2*) that illustrates the rule details by mode, including data transmittal time frames (highlighting the changes made in the final rule from the NPRM), approved data interchange systems, and respective implementation periods.

Cargo Safety and Security

The volume of trade that flows in and out of the United States requires CBP to use the principles of risk management to align finite resources and personnel with cargo that poses the greatest risk to the United States. Given that trade volume will only continue to increase, and given that much of the information needed to perform comprehensive risk management is stored in CBP and other government databases, it is not only essential that the information pertaining to cargo be electronic, it is also essential that CBP receive this information in advance of arrival and departure.

Advance cargo information allows CBP personnel to screen cargo information on a fluid basis through the Automated Targeting System (ATS). This tool allows CBP to review shipment data against information stored in our law enforcement and commercial databases and in light of strategic intelligence in order to identify potentially high-risk shipments. Receiving advance electronic cargo information from all modes of transportation will allow CBP to identify and intercede with high-risk cargo before the cargo enters the commerce of the U.S. (or departs and cannot be recovered). By identifying high-risk cargo at an early stage, the movement of low risk imports and exports will be facilitated.

CBP already requires advance cargo information for incoming vessel movements and has had many successful enforcement actions based on receiving this advance information. Screening of cargo now occurs for vessels both in domestic and Container Security Initiative (CSI) ports.

This rule will allow CBP to build on its successes with receiving advance cargo information on incoming vessels by expanding the requirement to all modes of transportation for both incoming and outbound shipments and by requiring electronic transmission.

Some examples of successes ATS has had when CBP receives advance cargo information follow:

- On July 9, 2003, Customs and Border Protection Officers in Portland, Oregon, seized a shipment of weapons destined to El Salvador. Using ATS, CBP Officers were able to efficiently review data associated with the shipment and isolate risk factors in itinerary and anomalies in cargo description that merited further action.

- On January 29, 2003, CBP personnel assigned to the CSI in Rotterdam assisted Dutch Customs in the seizure of 121 Dutch military tank periscopes being exported without an export license, in violation of Dutch law. The shipment also contained chemical protective (gas) masks. The gas masks were allowed to proceed as they did not require licenses under Dutch regulations. ATS research revealed that the shipment was in a container destined to the Port of Long Beach. The description of the cargo was listed as crates and cartons of textiles. ATS was critical in the research of the companies involved in this shipment.

The successes detailed above can be duplicated when automated, accurate, and timely (advance) receipt of cargo information converge as is the intent of the regulations drafted by DHS pursuant to the Trade Act of 2002. Advance electronic cargo information on cargo transported on all modes of transportation, arriving in and departing from the United States will allow CBP to appropriately manage the flow of trade while protecting our nation's borders.

Time Frames and Economic Impact

Generally, the earlier the information is required, the more costly it will be for the industry to change its business practices and provide that data. There were two driving factors behind the decisions made in setting timeframes for advance electronic data.

First, CBP needed to ensure that it had enough time for the Automated Targeting System (ATS) to analyze the data, and for our targeting experts to review the ATS results and take appropriate enforcement action. Second, consistent with our smarter border philosophy, we sought to minimize disrupting international trade, changing business practices, and increasing costs on the trade community.

The economic analysis was conducted on all modes. It identified reporting changes that are likely to impose new costs on U.S. carriers, in terms of the time prior to arrival or departure that information would have to be filed. *Table 1* presents the modes examined and indicates whether the mode would be affected by the rule.

TABLE 1—SUMMARY OF IMPACTS ON MODES

| Mode | Inbound | Outbound |
|---|----------------|-----------------|
| Air – Western hemisphere north of the equator | Impacts | No impacts |
| Air – Other | Impacts | No impacts |
| Truck – Canada | Impacts | No impacts |
| Truck – Mexico | Impacts | Impacts |
| Rail | No impacts | No impacts |
| Ocean vessels | No impacts | No impacts |
| Postal | Not covered | Impacts |

Where the table indicates that there are no impacts it is generally because carriers (virtually all vessels and railroads) are already filing electronically and the timing of the filings is unlikely to cause problems for carriers. For exports by air, shippers complete the Shipper's Export Declaration prior to presenting the shipment to a carrier; therefore, the new time requirements for filing will be met. Exports to Canada are generally exempt from regulation.

The rule would impose substantial new costs for imports by air, mandating electronic data entry at a level of detail not currently required prior to arrival and causing operational changes to meet the filing requirements for short-haul flights into the U.S. It is noted, however, that advance reporting requirements for letters and documents which would have a major impact on costs, is not included in this final rule; advance reporting requirements for letters and documents is addressed in a separate Federal Register document. For trucking, the costs are offset by the time savings gained by faster clearance across the border. The faster movement across the border also provides benefits to other traffic at the border, which our analysis quantified.

The examination of other benefits is largely qualitative in nature because of the complexity and difficulty of assessing the rule's primary benefit: the improvement of national security.