



## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### 19 CFR Parts 4, 103, and 113

[Docket No. USCBP-2025-0911]

RIN 1651-AB59

### Electronic Export Manifest for Vessel Cargo

**AGENCY:** U.S. Customs and Border Protection, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** U.S. Customs and Border Protection (CBP) proposes to amend its regulations to require the advance submission of electronic export manifest (EEM) information to CBP for cargo transported by vessel departing the United States. The proposed rule identifies the parties that would be eligible to transmit vessel EEM information and their responsibilities, and the time frames for transmission of the information prior to cargo loading or conveyance departure. Requiring advance transmission of EEM data would significantly improve cargo safety and security while minimizing disruption to the flow of commerce for exports in the sea environment.

**DATES:** Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Please submit comments, identified by docket number [USCBP-2025-0911], by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.

Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. In accordance with 5 U.S.C. 553(b)(4), a summary of this rulemaking may also be found at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** David Garcia, Program Manager, Outbound Enforcement and Policy Branch, Office of Field Operations, CBP, via email at [cbpexportmanifest@cbp.dhs.gov](mailto:cbpexportmanifest@cbp.dhs.gov), or by telephone, 202-344-3277.

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##### **I. Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the notice of proposed rulemaking.

U.S. Customs and Border Protection (CBP) also invites comments that relate to any economic, environmental, or federalism effects that might result from this proposal.

Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

##### **II. Executive Summary**

*A. Purpose of the Electronic Export Manifest for Vessel Cargo.*

1. Need for the regulatory action.

CBP's mission includes ensuring cargo security and preventing smuggling while enforcing U.S. trade laws and regulations. Obtaining data in a timely and sufficient manner prior to cargo arriving or departing the United States allows CBP to review,

conduct risk assessment, and effectively inspect cargo. Pursuant to section 343(a) of the Trade Act of 2002, as amended (19 U.S.C. 1415), CBP seeks to mandate the electronic transmission of export manifest information and eliminate reliance on paper. CBP proposes to identify and clarify the responsibilities of different parties to transmit information, describe the time frames for transmission of information prior to cargo loading or conveyance departure, identify enforcement actions available while outlining consequences of default, and limit post-departure filing for cargo transported by vessel to assess cargo security concerns.

The requirement to submit manifest data electronically under specific time frames will facilitate a more efficient trade process for all parties involved. The submission of electronic manifest data will significantly increase CBP's ability to identify high-risk cargo, to ensure cargo security, and to prevent smuggling, as the earlier electronic submission allows CBP to use its Automated Targeting System (ATS) to assess all export manifest data transmitted. Trade members would also experience efficiencies with quicker CBP examination decisions, ability to resolve CBP requests, earlier mitigation of enforcement actions, and improved communication between CBP and trade members.

## 2. Statement of legal authority.

CBP is authorized to promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-authorized electronic data interchange (EDI) system of information before the cargo arrives or departs the United States by any mode of commercial transportation (sea, air, rail, or truck). Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 1415). Pursuant to 19 U.S.C. 1415(a)(3)(F), the required vessel cargo information being sought is reasonably necessary to enable CBP to identify high-risk shipments for purposes of ensuring cargo safety and security, preventing smuggling, and commercial risk assessment targeting, pursuant to the laws enforced and administered by CBP. CBP needs to obtain timely and

sufficient data prior to cargo arriving or departing the United States via any mode of commercial transportation to review and conduct risk assessments to identify high-risk shipments and inspect cargo effectively.

*B. Summary of the Major Provisions of EEM for Vessel Cargo.*

This proposed rule would mandate the transmission of EEM data for all cargo prior to departing the United States by vessel. CBP is proposing to revise 19 CFR 4.63 to mandate the electronic transmission of vessel export manifest information, identify the parties eligible to transmit information, describe the time frames prior to departure of the vessel in which the information is due, and identify an initial filing as early as practicable but no later than 24 hours prior to loading of cargo on the outbound conveyance from the port of export while requiring the remaining data to be transmitted at least two hours prior to such departure. Proposed 19 CFR 4.63 would designate information as either transportation data, cargo data, or empty container data, and list the data elements to be transmitted while identifying them as mandatory, conditional, or optional. The data elements identified as mandatory must be submitted, while elements identified as conditional would be submitted if applicable, and optional elements may be provided at the discretion of the filers. These elements would allow for CBP to inspect cargo effectively, ensure compliance with U.S. export control laws and regulations, and identify high-risk shipments for purposes of ensuring cargo safety and security.

Proposed 19 CFR 4.63(d) would require the mandatory initial filing of eight data elements, identified below, be submitted as early as practicable but no later than 24 hours prior to the loading of cargo on the outbound conveyance from port of export, by either the carrier, U.S. Principal Party in Interest (USPPI), or other qualified parties or their authorized agents. The results of the test, described in Section III.C., have shown that some outbound vessel carriers have the export manifest data days before departure and therefore would have all the necessary information to submit the initial filing data to CBP

and all other export manifest data well in advance of the 24-hour prior to departure deadlines. Except for the initial data elements, this rule would require the electronic export manifest information in proposed 19 CFR 4.63(e) and (f) to be transmitted two hours prior to vessel departure to a foreign port.

Proposed 19 CFR 4.63(g) would provide two types of holds, documentation and enforcement, that CBP may issue after a risk assessment of an outbound export manifest data transmission. Should any vessel cargo be identified by CBP as requiring review, the cargo would be held until required additional information related to the shipment is submitted or some other appropriate action is taken, as specified by CBP. These examinations allow CBP to secure the cargo, conduct risk assessment, and inspect cargo effectively. Once the cargo is cleared for loading, a release message would be generated and transmitted to the filer.

In addition to holds, proposed 19 CFR 4.63(h) would provide procedures for when a combination of risk assessment and intelligence point to a threat or terrorist plot in progress, and cargo or vessel container may contain an immediate threat to the vessel and its vicinity, and CBP issues a Do-Not-Load (DNL) instruction. Any cargo that is issued a DNL instruction must not be loaded onto a vessel and would require immediate adherence to the protocols and directions from law enforcement authorities.

CBP proposes to amend 19 CFR 4.75, which identifies a complete electronic export manifest and electronic export information requirements and the exceptions for post departure filing, in order to limit the situations where post departure filing would be permissible.

As an enforcement tool, CBP also proposes changes to the relevant bond provisions in 19 CFR 113.62 (basic importation and entry bond), 19 CFR 113.63 (basic custodial bond), and 19 CFR 113.64 (international carrier bond) to provide for the imposition of damages on parties that do not provide the mandatory EEM data in the

required manner and time frame. Specifically, CBP proposes to amend 19 CFR 113.62, 19 CFR 113.63, and 19 CFR 113.64 to address compliance with the proposed requirements regarding timely electronically provided outbound information in addition to the current provisions regarding timely electronic transmissions for merchandise or cargo which is inbound. With each of these provisions, CBP may assess damages if a violation occurs. CBP's primary goal is compliance and CBP seeks to work alongside outbound vessel carriers and other parties to ensure that the proper data is provided in a timely manner for CBP to properly review the data, conduct risk assessment of high-risk shipments, and enforce U.S. export laws and regulations on U.S. exports in the sea environment.

*C. Costs and Benefits.*

CBP anticipates that during the time period of analysis (2015–2030), this proposed rule would result in costs, cost savings, and benefits to CBP and trade members who export merchandise out of the United States by vessel. CBP estimates present value total costs to CBP and trade members would range from \$172 million in 2023 U.S. dollars using a three percent discount rate to \$102 million using a seven percent discount rate. Annualized total costs are expected to be \$13.7 million using a three percent discount rate and \$10.8 million using a seven percent discount rate. CBP identified other potential costs from this proposed rule but was unable to monetize them. These costs include time burdens to CBP officers if the proposed rule results in additional cargo examinations and trade members participating in the vessel EEM would also need to adjust business practices, be required to hold or obtain a qualifying bond, be required to have staff available to respond to CBP questions, and pay damages for any violations. Present value total cost savings to CBP and trade members are expected to be around \$195 million in 2023 U.S. dollars using a three percent discount rate, or \$15.5 million annualized, and \$119 million in 2023 U.S. dollars using a seven percent discount rate, or

\$12.6 million annualized. CBP expects that there would be additional cost savings to trade members that CBP was unable to monetize, including reduced paper, printing, and storage costs related to the elimination of paper forms. CBP anticipates that benefits from this proposed rule would include improving CBP's security efforts by using ATS to conduct risk assessment on all sea exports, improving communication between Federal agencies with export jurisdiction, and improving efficiencies to participating trade members from transitioning from a paper to an electronic process. However, CBP was unable to monetize the expected benefits from this proposed rule. Present value total net cost savings from the implementation of this final rule would be around \$17.2 million in 2023 U.S. dollars using a three percent discount rate, or approximately \$1.4 million annualized, and \$9.3 million in 2023 U.S. dollars using a seven percent discount rate, or around \$0.98 million annualized.<sup>1</sup> Table 1 displays CBP's estimates for annualized costs, costs savings, benefits, and net costs from this proposed rule using a three and seven percent discount rate over the period of analysis (2015-2030). Additionally, based on CBP's perpetual time horizon calculations the present value of net cost savings from this proposed rule would be \$99.54 million and the annualized value of net cost savings will be \$6.97 million using a seven percent discount. Therefore, this proposed rule is considered by CBP to be a deregulatory action for the purposes of meeting Executive Order 14192 requirements.

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<sup>1</sup> In the economic analysis for this proposed rule, CBP used a 3% and 7% discount rate for estimated future quantified and monetized costs, costs savings, and benefits based on guidance from OMB Circular A-4.

Table 1. Estimated Annualized Cost, Cost Savings, Benefits using 3% and 7% Discount Rate (2015-2030) (discounted 2023 U.S. dollars)

3% Discount Rate	7% Discount Rate	
<b>Costs</b>		
Annualized monetized costs	\$13,690,847	\$10,804,868
Annualized quantified, but non-monetized costs	None	None
Qualitative (non-quantified) costs	If additional cargo examinations occur estimated cost to CBP would be around \$101.44 per additional exam.	If additional cargo examinations occur estimated cost to CBP would be around \$101.44 per additional exam.
	Vessel carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process.*	Vessel carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process.*
	Securing a Bond required to participate.	Securing a Bond required to participate.
	Vessel carriers and voluntary participants must have someone available to respond to CBP questions about data transmitted.	Vessel carriers and voluntary participants must have someone available to respond to CBP questions about data transmitted.
	Liquidated damages, \$5,000 for each violation up to maximum of \$100,000 per departure.	Liquidated damages, \$5,000 for each violation up to maximum of \$100,000 per departure.
<b>Cost Savings</b>		
Annualized monetized cost savings	\$15,515,444	\$12,611,355
Annualized quantified, but non-monetized cost savings	None	None
Qualitative (non-quantified) cost savings	paper, printing and storage costs related to paper forms.	paper, printing and storage costs related to paper forms.
<b>Benefits</b>		
Annualized monetized benefits	None	None
Annualized quantified, but non-monetized benefits	None	None
Qualitative (non-quantified) benefits	Improve CBP's security efforts on sea exports, electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all sea exports.**	Improve CBP's security efforts on sea exports, electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all sea exports.**
	Gained efficiencies from trade by switching from paper to electronic data transmission.	Gained efficiencies from trade by switching from paper to electronic data transmission.
	Improved communication among Federal Agencies with export jurisdiction.	Improved communication among Federal Agencies with export jurisdiction.
<b>Net Costs Savings</b>		
	\$1,372,691	\$981,445

\* These costs are discussed in further detail in the Regulatory Period Costs section in the Regulatory Impact Analysis below.

\*\* Details on how CBP conducts targeting and risk assessment prior to this proposed rule using paper forms is discussed in the 'Baseline' section of the regulatory impact analysis for this proposed rule.

### III. Background

#### A. Legal Authority.

Section 343(a) of the Trade Act of 2002, Public Law 107-210, 116 Stat. 933, 981, as amended (Trade Act) (19 U.S.C. 1415(a)), authorizes CBP to promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-authorized electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail, or

truck). The required cargo information is that which is reasonably necessary to enable CBP to identify high-risk shipments for purposes of ensuring cargo safety and security, preventing smuggling, and commercial risk assessment targeting, pursuant to the laws enforced and administered by CBP. 19 U.S.C. 1415(a)(2), (a)(3)(F). In developing such regulations, CBP must adhere to the parameters set forth in section 343(a)(3) of the Trade Act (19 U.S.C. 1415(a)(3)) to balance the impact on the flow of commerce with the impact on cargo safety and security.

In accordance with these parameters, CBP consulted with carriers throughout the process of developing the proposed regulation and during the course of the ACE Export Manifest for Vessel Cargo Test (see Section III.C. below) that has been administered since 2015. *See* Trade Act, sec. 343(a)(3)(A), 19 U.S.C. 1415(a)(3)(A). As section 343(a)(3)(B) of the Trade Act (19 U.S.C. 1415(a)(3)(B)) requires, the proposed regulation would impose requirements on the party most likely to have direct knowledge of information to be provided. When requiring information from the party with direct knowledge of that information is not practicable, the proposed regulation takes into account how, under ordinary commercial practices, information is acquired by the party on which the requirement would be imposed, and whether and how such party is able to verify the information. Where information is not reasonably verifiable by the party on which a requirement would be imposed, the proposed regulation would permit that party to transmit information on the basis of what it reasonably believes to be true. The proposed regulation would require the submission of the export manifest data electronically in ACE for cargo transported by vessel, requiring certain elements that would only be available for a vessel and not for other modes of transportation, pursuant to section 343(a)(3)(D), of the Trade Act (19 U.S.C. 1415(a)(3)(D)). The information that would be collected under the proposed regulation would be used exclusively for ensuring cargo safety and security, preventing smuggling, and commercial risk assessment

targeting. *See* Trade Act, sec. 343(a)(3)(F), 19 U.S.C. 1415(a)(3)(F). The proposed regulation specifically avoids imposing requirements that are redundant with one another or that are redundant with requirements in other provisions of law, as seen below in Section IV.C. *See* Trade Act, sec. 343(a)(3)(I), 19 U.S.C. 1415(a)(3)(I).

*B. Current Regulations and Processes.*

Under current CBP regulations in title 19 of the Code of Federal Regulations (CFR), certain information must be submitted to CBP for vessels with export cargo leaving the United States for any foreign area, whether directly or by way of other domestic ports. First, 19 CFR 4.61 requires the vessel master or other proper officer to execute a Vessel Entrance or Clearance Statement on CBP Form 1300 filed with CBP pertaining to the outbound vessel or that the necessary information be transmitted electronically pursuant to a system authorized by CBP. Then, 19 CFR 4.63 requires the filing of a Cargo Declaration Outward With Commercial Form (CBP Form 1302A) with the appropriate CBP officer at the port from which clearance is being sought. This section requires that “copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest must be attached in such manner as to constitute one document, together with a Vessel Entrance or Clearance Statement, CBP Form 1300, and Electronic Export Information (EEI) as are required by pertinent regulations of the Bureau of the Census, Department of Commerce” (Census) (that is, the Foreign Trade Regulations (FTR), provided in 15 CFR part 30). 19 CFR 4.63(a). Currently, 19 CFR 4.63 also allows for the filing of an incomplete Cargo Declaration in certain cases pursuant to 19 CFR 4.75. Under 19 CFR 4.75, the vessel master, or the vessel’s agent on behalf of the master, is required to file the complete vessel cargo manifest generally within four business days after clearance from each port in the vessel’s itinerary.

Additionally, 19 CFR 4.76 sets forth procedures and responsibilities of carriers

filing outbound vessel manifest information via the Automated Export System (AES) in lieu of paper CBP Form 1302A. Approved carriers submitting outbound vessel manifest information electronically in AES under 19 CFR 4.76 must, with limited exceptions, submit the complete manifest data within ten calendar days after departure. Finally, 19 CFR 192.14 requires the U.S. Principal Party in Interest (USPPI), the USPPI's authorized agent, or the authorized filing agent of the Foreign Principal Party in Interest (FPPI), to file any required EEI for the cargo on the vessel.<sup>2</sup> More details regarding the manifest requirements, the subject of this proposed rule, are provided in the next section.

#### 1. Current Vessel Cargo Export Manifest Data Requirements.

As indicated in the previous section, generally the vessel master or agent must file paper copies of the vessel cargo manifest on CBP Form 1302A. CBP Form 1302A consists of the following data elements:

- (1) Name of ship
- (2) Port where report is made (not required by United States)
- (3) Nationality of ship
- (4) Name of master
- (5) Port of loading
- (6) Port of discharge
- (7) Bill of Lading number
- (8) Marks and Numbers, Container Numbers, Seal Numbers
- (9) Number and kind of packages; Description of goods
- (10) Gross Weight (lb. or kg.)

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<sup>2</sup> USPPI is defined in the FTR as the person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. Generally, that person or entity is the U.S. seller, manufacturer, or order party, or the foreign entity while in the United States when purchasing or obtaining the goods for export. 15 CFR 30.1(c). FPPI is defined in the FTR as the party abroad who purchases the goods for export or to whom final delivery or end-use of the goods will be made. This party may be the Ultimate Consignee. 15 CFR 30.1(c).

(11) Measurements (per HTS).

Though not a data element on CBP Form 1302A itself, the Internal Transaction Number (ITN) or AES Exemption Statement must be included on the outward manifest pursuant to 19 CFR 4.63(b) and 192.14(c)(3).<sup>3</sup>

As mentioned above, 19 CFR 4.76 provides that approved carriers may submit outbound vessel manifest information electronically in AES in lieu of submitting a paper CBP Form 1302A. The Sea Carriers Module was CBP's early method of modernizing the submission of vessel manifest information. Sea carriers are required to apply for participation. However, few carriers in fact sought to participate and instead opted to use DIS. In this case, the carrier had ten calendar days after the departure of the vessel from each port to submit the manifest information to CBP. CBP also allows some qualifying outbound vessel carriers to participate in the Vessel Transportation Module (VTM) which provides the carriers the ability to transmit this export manifest data to CBP electronically via the Automated Commercial Environment (ACE) in lieu of the paper CBP Form 1302A, but very few outbound vessel carriers actively provide this information electronically. Also, participants in the ACE Export Manifest for Vessel Cargo Test may opt to submit EEM via ACE as detailed in Section III.C. below.

1. Current Vessel Cargo Export Information Transmission Time Frames

As noted above, under current regulations, information regarding vessel export cargo may be transmitted post-departure. Generally, the vessel cargo manifest may be filed in complete form or incomplete form (pro forma). However, the complete manifest must be filed with CBP before a vessel will be cleared to depart to a foreign country

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<sup>3</sup> Specifically, 19 CFR 4.63(b) requires that the ITN of the EEI covering each shipment for which EEI is required must be shown on the Cargo Declaration Outward with Commercial Form (CBP Form 1302A) in the marginal column headed "B/L No." If EEI is not required for a shipment, 19 CFR 4.63(b) requires that a notation must be made on the Cargo Declaration Outward With Commercial Form (CBP Form 1302A) describing the basis for the exemption or exclusion using the reference number found in the Census Bureau's FTR (see 15 CFR part 30, appendix B) where the particular exemption or exclusion is provided, that is, the AES Exemption Statement.

listed in 19 CFR 4.75(c). Otherwise, for shipments to a foreign country, an incomplete manifest may be filed with CBP at the departure port when accompanied by the proper bond pursuant to 19 CFR 4.75(a). For shipments from any State or the District of Columbia to Puerto Rico, a complete manifest or proper bond shall be filed with CBP within one business day of arrival in Puerto Rico as provided in 19 CFR 4.84(c)(2). For shipments from any State or the District of Columbia to noncontiguous territories of the United States other than Puerto Rico, or from Puerto Rico to any State or the District of Columbia to any other noncontiguous territory, a complete manifest or proper bond must be filed with CBP before departure as provided in 19 CFR 4.84(c)(1).

When filing an incomplete manifest under the terms of the required bond, the complete manifest must be filed timely with CBP by the master, or the vessel's agent on behalf of the master. For shipments to foreign countries, the complete manifest must be filed no later than four business days post-departure. 19 CFR 4.75(b). For shipments from the United States to Puerto Rico, the complete manifest must be filed no later than one business day after arrival in Puerto Rico. 19 CFR 4.84(c)(2).

As mentioned above, carriers submitting outbound vessel manifest information electronically in AES under 19 CFR 4.76 must submit the complete manifest data within ten calendar days after departure of the vessel from each port. However, if the destination of the vessel is a foreign port listed in 19 CFR 4.75(c), the carrier must transmit complete manifest information before vessel departure. The time requirements for electronic transmission of complete manifest information for carriers destined to Puerto Rico are the same as the requirements found in 19 CFR 4.84 and described above.

During the vessel EEM test, participants would transmit completed vessel export cargo manifest data electronically to CBP via ACE, at least 24 hours prior to the loading of that cargo or container onto a vessel. CBP expected that the deadline of 24 hours prior to loading the cargo onto vessels would provide CBP adequate time to conduct a

proper review of export manifest data to enhance cargo safety and security measures prior to cargo being loaded and a vessel's departure. Identifying any high-risk cargo and containers prior to the loading of cargo onto vessels improves security measures while ensuring compliance with U.S. export laws and minimizes the disruption of the trade process at the U.S. port of export. Additionally, the deadlines for export manifest data transmission provide CBP the time to compare the export manifest data with any EEI submitted by USPPI to further enhance security measures on cargo departing the United States in the sea environment.

During this initial phase of the vessel EEM test, CBP worked with outbound vessel carriers who agreed to participate and submit export manifest data electronically to CBP via ACE. CBP requested that vessel participants continue to submit CBP Form 1302A as they did before participating in the test so that CBP can capture any inconsistencies or issues with the electronic transmission of vessel EEM data to CBP. If an outbound vessel carrier was already providing data to CBP via VTM, those outbound vessel carriers do not provide the paper CBP Form 1302A to CBP. Additionally, if an outbound vessel carrier provides data through VTM and then participates in the vessel EEM, CBP did not require the carrier to submit both VTM and vessel EEM data.

Regarding the submission of EEI, the provisions of the Census FTR, 15 CFR 30.5(c), authorize an approved USPPI or its authorized agent to transmit EEI up to five calendar days after the date of export. This allows the presentation of manifest data and EEI after the departure of the vessel. *See* 19 CFR 4.75, 4.76, 4.84, and 15 CFR 30.4.

This post-departure process engenders security gaps.

## 2. Streamlining the Submission of Export Information for Vessel Cargo and Closing Enforcement Gaps.

Under the current regulatory requirements, paper and electronic processes co-exist for the presentation of cargo and transportation information for outbound vessels. The

FTR set forth in 15 CFR part 30, and the CBP regulations at 19 CFR 192.14(b)(1)(i), generally require the transmission of EEI for outbound vessel cargo no later than 24 hours prior to loading of the cargo on the vessel at the U.S. port of lading. Under CBP regulations at 19 CFR 4.63(a)(1), no vessel can clear directly for a foreign port or for a foreign port by way of another domestic port or ports unless a Cargo Declaration Outward with Commercial Form (CBP Form 1302A) is filed along with bills of lading relating to cargo encompassed by the manifest, together with a Vessel Entrance or Clearance Statement, CBP Form 1300. The Cargo Declaration Outward with Commercial Form (CBP Form 1302A) is generally submitted on paper, unless the carrier is eligible to submit electronically. Requiring the electronic submission of the export manifest information in lieu of a paper Cargo Declaration Outward with Commercial Form (CBP Form 1302A) would streamline the submission of this information.

As noted above, much export manifest information and EEI is not required to be provided until after departure of the vessel. Additionally, with a few exceptions, EEI is only transmitted when the value of merchandise in a shipment exceeds \$2500.00. 15 CFR 30.37 (y)(2). These regulatory gaps leave many shipments unavailable for CBP to review before they have already left the United States. The lack of pre-departure information, which includes commodity information submitted into CBP targeting systems, hinders CBP's ability to target and inspect cargo effectively to ensure cargo and conveyance safety and compliance with U.S. export control laws and regulations.

### *C. The ACE Export Manifest for Vessel Cargo Test.*

#### **1. The National Customs Automation Program**

In recognition of the shortfalls of the current regulations described above, on August 20, 2015, CBP published a general notice in the *Federal Register* announcing a

National Customs Automation Program (NCAP) Test<sup>4</sup> to gauge the feasibility of requiring certain export manifest information to be filed electronically in ACE for vessel cargo. 80 FR 50644. Participants in the voluntary test agree to submit the export manifest data to CBP at least 24 hours before the cargo is loaded on the vessel, consistent with EEI transmission requirements. Participation in the test was initially limited to nine stakeholders composed of a mix of a certain number of outbound vessel carriers and freight forwarders or Non-Vessel Operating Common Carriers (NVOCCs) who met the eligibility requirements.

## 2. Data Elements in the Test

The ACE Export Manifest for Vessel Cargo Test data elements are similar, but not identical to the data elements required on CBP Form 1302A. The data elements are mandatory unless otherwise indicated. Data elements that are indicated as “conditional” must be transmitted to CBP only if the particular information pertains to the cargo. The ACE Export Manifest for Vessel Cargo data elements are to be submitted at the lowest bill level.

The data elements consist of:

- (1) Mode of transportation (containerized vessel cargo or non-containerized vessel cargo)
- (2) Name of ship or vessel
- (3) Nationality of ship
- (4) Name of master
- (5) Port of loading
- (6) Port of discharge
- (7) Bill of Lading number (Master and House)

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<sup>4</sup> The NCAP was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2188 (1993), as amended (19 U.S.C. 1411-15). *See also* 19 CFR 101.9(b) (regarding NCAP testing).

- (8) Bill of Lading type (Master, House, Simple or Sub)
- (9) Number of house Bills of Lading
- (10) Marks and Numbers (conditional)
- (11) Container Numbers (conditional)
- (12) Seal Numbers (conditional)
- (13) Number and kind of packages
- (14) Description of goods
- (15) Gross Weight (lb. or kg.) or Measurements (per HTS)
- (16) Shipper name and address
- (17) Consignee name and address
- (18) Notify Party name and address (conditional)
- (19) Country of Ultimate Destination
- (20) In-bond Number (conditional)
- (21) Internal Transaction Number (ITN) or AES Exemption Statement (per shipment)
- (22) Split Shipment Indicator (Yes/No)
- (23) Portion of split shipment (e.g., 1 of 10, 4 of 10, 5 of 10—Final, etc.) (conditional)
- (24) Hazmat Indicator (Yes/No)
- (25) UN Number (conditional) (If the hazmat indicator is yes, the four-digit United Nations (UN) Number assigned to the hazardous material must be provided.)
- (26) Chemical Abstract Service (CAS) Registry Number (conditional)
- (27) Vehicle Identification Number (VIN) or Product Identification Number (conditional) (For shipments of used vehicles, the VIN must be reported, or for used vehicles that do not have a VIN, the Product Identification Number must be reported.)

### 3. Test Expansion, Extension and Modification and Renewal

On August 14, 2017, the Test was extended for an additional year (82 FR 37890).

At the same time, the Test began accepting additional applications for all parties which

met the eligibility requirements in lieu of the original nine stakeholders composed of outbound vessel carriers and/or freight forwarders.

CBP consulted with the Commercial Customs Operations Advisory Committee (COAC) to address issues concerning the quality, accessibility, and timeliness of export manifest data received during the test. One issue of concern was the availability of certain data elements required under the test 24 hours prior to loading of the cargo on the vessel in preparation for departure from the United States. COAC urged CBP to change the filing condition of those data elements.

After evaluating the initial phase of the ACE Export Manifest for Vessel Cargo Test and considering COAC's comments, CBP determined that, to better test the functionality and feasibility of submitting the specified export data at least 24 hours prior to loading of the cargo on the vessel, the filing condition for four of the data elements should be changed. The modified filing conditions enabled CBP to better determine the appropriate reporting requirements for each data element. (Data elements which are "mandatory" must be provided to CBP for every shipment. Data elements which are "conditional" must be provided to CBP only if the particular information pertains to the cargo. Data elements which are "optional" may be provided to CBP but are not required.)

CBP modified the ACE Export Manifest for Vessel Cargo Test to change the following four mandatory or conditional data elements to optional:

- Name of the master (Data Element #4)
- Number of house Bills of Lading (Data Element #9)
- Split Shipment Indicator (Data Element #22)
- Portion of Split Shipment (Data Element #23)

The remaining data elements under the ACE Export Manifest for Vessel Cargo Test continue to be mandatory, conditional, or optional as provided in the August 20,

2015, notice and as detailed in Section III.B.2. above.

It was noted in the expansion/modification that upon the conclusion of the ACE Export Manifest for Vessel Cargo Test, should CBP decide to conduct rulemaking to amend the regulations concerning the filing of the manifest for vessel cargo, CBP would reevaluate the filing conditions for each data element to determine the feasibility of requiring that data element to be filed electronically in ACE within a specified time before the cargo is loaded on the vessel.

On April 27, 2022, CBP renewed the ACE Export Manifest for Vessel Cargo Test for an additional two years. (87 FR 25036.)

#### 4. Results of the Test, Modification, Expansion, Extension and Renewal

The ACE Export Manifest for Vessel Cargo Test assesses the functionality regarding the filing of export manifest data for vessel cargo electronically to ACE in furtherance of the ITDS initiatives described above. CBP re-engineered AES to move it to an ACE system platform. The re-engineering and incorporation of AES into ACE resulted in the creation of a single automated export processing platform for certain export manifest, commodity, licensing, export control, and export targeting transactions. This reduced costs for CBP, partner government agencies, and the trade community and improve facilitation of export shipments through the supply chain.

The ACE Export Manifest for Vessel Cargo Test also examines the feasibility of requiring the manifest information to be filed electronically in ACE within a specified time before the cargo is loaded on the vessel. (Under the current regulatory requirements, in most cases the complete manifest is not required to be submitted until after the departure of the vessel.) As described in the paragraph below, in the test, participants submit export manifest data electronically to ACE at least 24 hours prior to loading of the cargo on the vessel. This enables CBP to link the EEI submitted by the USPPi with the export manifest information earlier in the process. This capability better enables CBP to

assess risk and effectively target and inspect shipments prior to the loading of cargo to ensure compliance with all U.S. export laws.

Participants in the ACE Export Manifest for Vessel Cargo Test agreed to provide export manifest data electronically at least 24 hours prior to loading of the cargo onto the vessel in preparation for departure from the United States. If the outbound vessel carrier files this ACE Export Manifest data, the electronic filing is in lieu of the paper filing of CBP Form 1302A and copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest. If a freight forwarder or NVOCC files the ACE Export Manifest data, the carrier is still required to file one of the following: the CBP Form 1302A with copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest attached in such manner as to constitute one document; the 19 CFR 4.76 electronic equivalent, if the outbound vessel carrier is approved for this procedure; or the ACE Export Manifest data, if the outbound vessel carrier is a test participant.

The ACE Export Manifest data submission is used to target high-risk vessel cargo. The data should be available to test participants early in the planning stages of an export vessel cargo transaction. Data provided 24 hours prior to loading permits adequate time for proper risk assessment and identification of shipments to be inspected early enough in the supply chain to enhance security while minimizing disruption to the flow of goods.

Any vessel cargo identified as potentially high-risk receives a hold until required additional information related to the shipment is submitted to clarify non-descriptive, inaccurate, or insufficient information, a physical inspection is performed, or some other appropriate action is taken, as specified by CBP. Once the cargo is cleared for loading, a release message is generated and transmitted to the filer.

The success of the test allowed CBP to determine that the electronic submission

of manifests provides improvements in capabilities at the departure level. As a result of these improvements, CBP is now seeking to end the test and codify this program by proposing new regulations in this document.

The Vessel Export Manifest Test described 27 data elements to be included in the vessel electronic export environment. The following data elements (with numbering corresponding to the list of data elements published in the General Notice published in 2015 (80 FR 50644)) are being carried forward from the test to the regulations unchanged:

- (1) Mode of transportation (containerized vessel cargo or non-containerized vessel cargo.)
- (7) Bill of Lading number

- (9) Number of house Bills of Lading (optional)
- (10) Marks and Numbers
- (12) Seal Numbers (conditional)
- (18) Notify Party name and address (conditional)
- (19) Country of Ultimate Destination
- (21) AES Internal Transaction Number (ITN) or AES Exemption Statement (per shipment)
- (26) Chemical Abstract Service (CAS) Registry Number (conditional)
- (27) Vehicle Identification Number (noting that Product Identification Number has not been included) (conditional)

The following data elements were found to be problematic or superfluous and will not be carried forward in the proposed rule:

- (4) Name of master (optional)
- (22) Split Shipment Indicator (Yes/No)
- (23) (i.e., 1 of 4, 4 of 10, 5 of 10 – Final, etc.)
- (24) Hazmat Indicator (conditional)
- (27) Product Identification Number (noting that Vehicle Identification Number has been included.)

The following data elements have been re-named or reconfigured for clarity:

- (2) Name of ship or vessel is separated into two elements  
Vessel Name and Voyage Number
- (3) Nationality of ship is now described as Vessel Country Code  
(International Organization for Standardization (ISO) country code)
- (5) Port of lading is now described as Port of departure
- (6) Port of discharge is now described as Port of Unlading
- (8) Bill of Lading type (Master, House, Simple or Sub) is now  
described as Bill of Lading (Master, House, or Simple)
- (11) Container Numbers (conditional) is split and reconfigured as two data  
elements, Container Information (mandatory), and Load Status (Empty or  
Loaded) indicator (yes/no)

(13) “Numbers and kind of packages” is now described as “The numbers and quantities of the cargo laden aboard the vessel as contained in the carrier’s bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons)”

(14) “Description of goods” is now described as “A precise cargo description (or the Harmonized Tariff Schedule (HTS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper); or, for a sealed container, the shipper’s declared description (generic descriptions, specifically those such as “FAK” (“freight of all kinds”), “general cargo,” and “STC” (“said to contain”) are not acceptable)”

(15) Gross Weight (lb. or kg.) or Measurements (per HTS) is now described in the initial filing as “Total weight of cargo expressed in pounds or kilograms”.

(16) Shipper name and address is now described in the initial data filing as “The shipper’s complete name and address, or identification number, from the bill(s) of lading (for each house bill in a consolidated shipment). For mandatory export manifest cargo data due prior to departure but after the initial filing, the data element is described as “Shipper name and address (For empty containers, the shipper may be the carrier from whom the outbound vessel carrier received the empty to transport).”

(17) Consignee name and address is now described in the initial data filing as “The complete name and address of the consignee, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo will be delivered to in the foreign country. However, in the case of cargo shipped ‘to order of a [named party],’ the ‘to order’ party must be named as the consignee; and if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party’s identity and contact information including address in the ‘Notify Party’ field).” For mandatory export manifest cargo data due prior to departure but after the initial filing, the data element is described as “Consignee name and address (For empty containers, the consignee may be the carrier to whom the outbound vessel carrier is transporting the empty container).”

(20) In-bond number (conditional) is now described as “In-bond type and or in- bond house bill number”.

(25) 6-character Hazmat Code (UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided.) (conditional)

The following data element did not appear as a data element in the test and has been added as mandatory initial filing data to provide more accuracy:

- Estimated Scheduled Departure Date and Departure Port.

The following data elements did not appear as data elements in the test and have been added as mandatory transportation data elements to more accurately describe the transporting vessel and to describe where the carrier takes possession of the merchandise in order to more accurately describe the transportation chain:

- The vessel carrier identification SCAC Code (the unique standard Carrier Alpha Code assigned for each carrier in the National Motor Freight Traffic Association).
- Place carrier took possession of merchandise or empty container.

The following data element has been added as a conditional data element:

- Mexican Pedimento for cargo exported to Mexico.

The following data element has been added as an optional data element to provide CBP with a second party to notify if the original notify party cannot be reached:

- Secondary Notify Party SCAC.

*D. Purpose and Need of the Rule.*

CBP's primary impetus for this regulatory initiative results from the fact that CBP seeks to mandate the electronic transmission of EEM, in addition to the EEI data required under 15 CFR part 30, clarify the responsibilities of different parties to transmit information, identify enforcement actions available while outlining consequences of default, eliminate any reliance of paper, and limit post-departure filing for cargo transported by vessel to assess cargo security concerns.

CBP proposes to amend the current regulations to require the submission of export manifest data electronically in ACE as an export requirement for cargo transported by vessel, under the authority of section 343(a) of the Trade Act of 2002, as amended (19 U.S.C. 1415). Proposed 19 CFR 4.63 would mandate the electronic transmission of export manifest information in the vessel environment, identify the parties eligible to transmit information, describe the time frames for transmission of information prior to

cargo loading or conveyance departure, and prescribe an initial filing that must occur as early as practicable but no later than 24 hours prior to loading of cargo at each port on the outbound conveyance.

Proposed 19 CFR 4.63 would designate information as transportation data, cargo data, electronic export information, or empty container data, and list the data elements to be transmitted while calling them out as mandatory, conditional, or optional. In addition, proposed 19 CFR 4.63 would provide direction regarding Hold and Do-Not-Load messages.

Furthermore, proposed 19 CFR 4.63 would require the electronic transmission of EEM information by outbound vessel carriers, and would permit non-vessel operating common carriers (NVOCCs), freight forwarders, customs brokers (CHB) or anyone with direct knowledge of the export manifest data to submit EEM. These actors may use the services of a shipping agent to transmit the data. The transmission would be required 24 hours prior to loading at each port except for a limited set of data that may be transmitted two hours prior to loading or, in some limited instances, post-departure. Parties other than EEI filers transmitting the information to CBP would be required to obtain a bond to guarantee timely, accurate performance. The rule would also remove obsolete references in Part 4 of the CBP Regulations, references to FTR provisions that no longer exist, and paper processes that are being eliminated.

The proposed regulations standardize data element requirements and electronic data transmission formats and processes and identify actors eligible to transmit information in the time frames required for completion of EEM transmissions. They also narrow the scope of information that can be presented post-departure of the outbound conveyance. The advance data can also allow for earlier mitigation of enforcement actions, such as examinations or information review.

#### **IV. Proposed Regulatory Changes**

CBP proposes to amend its regulations to require the submission of the export manifest data electronically in ACE as an export requirement for cargo transported by vessel, pursuant to section 343(a), of the Trade Act of 2002, as amended (19 U.S.C. 1415(a)). This proposed rule would require the transmission of EEM data for all cargo prior to loading onto vessels departing the United States and require outbound vessel carriers or their agents to present data related to the Vessel Entrance or Clearance Statement, CBP Form 1300 no later than two hours prior to departure of the vessel from the United States. By mandating the transmission of EEM, this proposed rule would also eliminate the use of the paper CBP Form 1302A and encourage the transition to the electronic equivalent of the paper Vessel Entrance or Clearance Statement, CBP Form 1300 for vessel clearance, and prohibit submission of the vessel export manifest data post-departure. CBP anticipates that requiring the transmission of EEM data prior to loading of cargo onto a vessel would significantly improve CBP's ability to conduct proper cargo security enforcement and prevent smuggling while minimizing the disruption to the flow of goods during the export process in the sea environment. This proposed rule would use ACE to obtain, conduct risk assessment on, and screen EEM data for cargo being loaded onto vessels preparing to depart the United States and allow for the party which most likely has the direct information on cargo to provide the export manifest data to CBP.

For CBP, the proposed requirement to submit EEM would enhance cargo security because it would allow for improvements in targeting capabilities at the port level through the use of CBP's automatic targeting system (ATS). Port operations would enjoy considerable efficiencies through the elimination of paper manifests. Storage space currently reserved for manifest documents would be freed. Coordination and information exchange between CBP and other Government agencies with export jurisdiction would improve. Carriers, USPPs, NVOCCs, and other interested parties

who transmit information would receive better and more rapid examination decisions from CBP.

CBP is proposing to amend 19 CFR 4.61 the application for clearance of a vessel departing for a foreign port requiring submission of the Vessel Entrance or Clearance Statement either electronically or by filing CBP Form 1300 prior to the conveyance.

CBP proposes to amend 19 CFR 4.62 to allow for electronic manifest corrections. In order to implement this requirement, CBP is primarily proposing to substantially revise 19 CFR 4.63 to add EEM to the required advance vessel and cargo departure information. CBP is also proposing to amend the last sentence of 19 CFR 4.72 to address potential failure to submit the required export certificate from the Department of Agriculture and resulting request for redelivery or penalties for failure to file the certificate.

CBP is also proposing to amend 19 CFR 4.75 to substantially limit post-departure manifest filing. Under this proposed rule, the Vessel Entrance or Clearance Statement, CBP Form 1300, would continue to be required, but regulatory changes throughout 19 CFR part 4 would authorize use of its electronic equivalent. Additional proposed technical corrections to 19 CFR part 4 would remove references to sections of the FTR that have been removed from 15 CFR part 30 by Census, as well as remove references to “Customs” and replace them with references to “CBP” where applicable. CBP further proposes to remove 19 CFR 4.76, the sea carrier’s module, which was the original version of electronic filing which has not been used by the carriers and is no longer necessary. Proposed 19 CFR 4.81 would allow for electronic equivalents of paper forms. Proposed 19 CFR 4.82 would require a carrier to electronically transmit cargo information for merchandise to be transported via a foreign port or ports to subsequent ports in the United States to include information consistent with the initial filing of EEM data. Proposed 19 CFR 4.84 removes references to Census regulation 15 CFR 30.47

which has been removed.

Proposed 19 CFR 4.85 would revise and update the language to reflect the submission of bonds. Proposed 19 CFR 4.88 seeks to revise references to Cargo Declaration Form 1302A and replace it with Electronic Export Manifest or EEM data transmission.

Finally, CBP is proposing to revise the relevant bond conditions in 19 CFR part 113 to incorporate the EEM requirements.

This proposed rule, through the creation of single integrated pre-departure EEM, would limit post-departure filings to EEI submitted in accordance with the provisions of the FTR, agriculture certificates, and shipments between the United States and Puerto Rico. Post-departure filings are permitted for agricultural certificates where the certificate has been obtained but is unavailable at the scheduled time of a vessel's departure. In that circumstance, the vessel may be cleared on the basis of the receipt of a statement, under the shipper's or shipper's agent's letterhead, certifying the number of boxes, the number of pounds, the product name and the U.S. Department of Agriculture export certificate number that covers the shipment of the product. 19 CFR 4.72(a). Post-departure filings are permitted for shipments between the United States and Puerto Rico when a vessel which is not required to clear is transporting merchandise from a port in any State or the District of Columbia to Puerto Rico. The master must file a complete manifest, when required by the FTR (15 CFR part 30), and all required EEI within one business day after arrival, as defined in 19 CFR 4.2(b), with the appropriate CBP officer in Puerto Rico. If the complete manifest and all required EEI are not filed with the appropriate CBP officer within that time frame, an appropriate bond must be filed with the CBP officer for the timely production of the required documents. 19 CFR 4.84(c)(2).

*A. Proposed EEM Requirement.*

Proposed 19 CFR 4.63 would require certain advance vessel and cargo departure

information, to include mandating the electronic transmission of export manifest information in the vessel environment, that is, EEM. Proposed 19 CFR 4.63 describes the time frames for transmission of certain advance vessel and cargo departure information prior to cargo loading or conveyance departure and identifies the parties eligible to transmit such information. Proposed 19 CFR 4.63 would prescribe an initial filing of EEM data that must occur as early as practicable but no later than 24 hours prior to loading of cargo at each port on the outbound conveyance, and designate additional EEM data as transportation data, cargo data, or empty container data, listing the mandatory, conditional, or optional data elements to be transmitted. In addition, proposed 19 CFR 4.63 would provide direction regarding Do- Not-Load messages, and Documentation and Enforcement holds. Finally, proposed 19 CFR 4.63, along with proposed 19 CFR 4.75, would substantially limit post-departure data filings.

*B. Time Frame for Transmitting Advance Vessel and Cargo Departure Information.*

Proposed 19 CFR 4.63(b) provides the time frame for transmitting certain advance vessel and cargo departure information, including the vessel clearance statement, EEM, and EEI. Specifically, proposed 19 CFR 4.63(b)(1) sets forth that Vessel Entrance or Clearance Statement, CBP Form 1300, or its electronic equivalent, must be presented to CBP by the outbound vessel carrier no later than two hours prior to departure of the vessel from the United States either directly or via another domestic port or ports.

Proposed 19 CFR 4.63(b)(2) sets forth the time frames for the submission of EEM data. An initial filing of EEM data would be required to be transmitted as early as practicable, but no later than 24 hours prior to loading of cargo on the vessel departing from the United States. EEM data other than the initial filing, that is, export manifest transportation data, export manifest cargo data, and any data related to empty containers,

would be required to be transmitted no later than two hours prior to loading of the cargo, or container as applicable, on the vessel in anticipation of departure of the vessel from the United States either directly or via another domestic port or ports. Proposed 4.63(b)(3) references the locations in the CBP regulations and FTR regarding the time frame for the transmission of EEI. Proposed 4.63(b)(4) requires the transmitted advance vessel and cargo departure information to be updated if any of the transmitted data changes or more accurate data becomes available. Proposed 19 CFR 4.63(b)(5) reiterates that only certain EEM or EEI may be filed post-departure as provided in 19 CFR 4.75, as revised and discussed below.

*C. Parties Filing Advance Vessel and Cargo Departure Information.*

Consistent with section 343(a) of the Trade Act (19 U.S.C. 1415(a)), the proposed rule aims to impose the requirement to provide advance vessel conveyance and cargo departure information on the party most likely to have direct knowledge of it. In furtherance of that goal, the proposed rule recognizes that different parties might be best situated to provide certain types of EEM data. Under the proposed rule, the export manifest transportation data and any empty container data would always and only be required of the outbound vessel carrier, while the initial filing and/or the export manifest cargo data could be provided by any eligible party with direct knowledge of that information.

Accordingly, proposed 19 CFR 4.63(c)(1) provides that the outbound vessel carrier would be responsible for submitting the vessel clearance statement or transmitting its electronic equivalent and for transmitting the export manifest transportation data and data for any empty container. Should no other eligible party elect to transmit the initial filing and/or the export manifest cargo data, the outbound vessel carrier would be required to transmit it. The outbound vessel carrier could also choose to transmit the initial filing and/or export manifest cargo data even if another eligible filer transmits the

information. Proposed 19 CFR 4.63(c)(2), consistent with the provisions of 19 CFR 192.14 and 15 CFR part 30, reiterates that the transmission of EEI is the responsibility of the USPPI, its authorized filing agent, or the authorized filing agent of the FPPI.

Proposed 19 CFR 4.63(c)(3) provides that any party with direct knowledge of the export information may elect to transmit the initial filing data and/or the export manifest cargo as well, so long as the filer meets the qualifications that require transmission of information through a CBP-approved electronic system. Such filers may include a customs broker, Automated Broker Interface (ABI) filer, non-vessel operating common carrier (NVOCC) as defined by 19 CFR 4.7(b)(3)(ii), or a freight forwarder as defined by 19 CFR part 112. If such a party does not elect to transmit EEM data, proposed 19 CFR 4.63(c)(4) would require the party that arranges for and/or delivers the cargo to the outbound vessel carrier to fully disclose and present to the outbound vessel carrier the cargo information required for the initial filing and the required export manifest cargo data. The outbound vessel carrier must transmit this information to CBP.

Any party transmitting any of the advance vessel conveyance and cargo departure information described in proposed 19 CFR 4.63 would be required by proposed 19 CFR 4.63(c)(5) to possess the appropriate bond containing all the necessary provisions of 19 CFR 113.62 (Basic Importation and Entry Bond), 19 CFR 113.63 (Basic Custodial Bond), or 19 CFR 113.64 (International Carrier Bond). CBP is proposing to amend the regulations covering certain bond conditions, as described in Section IV.H., to incorporate the advance vessel conveyance and cargo departure information requirements.

If any required information is in the possession of a third party who is not an eligible filer set forth in proposed 19 CFR 4.63(c)(1)-(3), proposed 19 CFR 4.63(c)(6) would require the third party to fully disclose and present the required data to either the outbound vessel carrier or other eligible electronic filer, as applicable, which must transmit such data to CBP. Consistent with the provisions of section 343(a)(3)(B) of the

Trade Act (19 U.S.C. 1415(a)(3)(B)), proposed 19 CFR 4.63(c)(7) provides that where the party electronically transmitting the required EEM data receives any of this information from another party, CBP would take into account how, under ordinary commercial practices, the transmitting party acquired such information, and whether and how such party would be able to verify the information. Where the transmitting party would not reasonably be able to verify the information, CBP would permit the party to electronically transmit information on the basis of what such party reasonably believes to be true.

*D. Initial Data Elements.*

For the mandatory initial filing required as early as practicable but no later than 24 hours prior to cargo loading on the outbound conveyances, CBP selected seven data elements from the vessel EEM test and added one new data element, Estimated Scheduled Departure Date and Departure Port. Additionally, seven of the initial filing data elements have their descriptions revised in this proposed rule to provide additional clarity on the data required. The carrier would have the ultimate responsibility to load, hold, or not load the merchandise. USPPIs and other parties qualified to transmit data (or their authorized agents) are eligible to submit the initial data filing, if however, no other eligible party makes such an election, then the outbound vessel carrier must transmit the initial data filing under proposed section 4.63(d) as follows:

- (1) Bill of Lading number;
- (2) The numbers and quantities of the cargo laden aboard the vessel as contained in the carrier's bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);
- (3) Total weight of cargo expressed in pounds or kilograms;

(4) A precise cargo description (or the Harmonized Tariff Schedule (HTS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper); or, for a sealed container, the shipper's declared description (generic descriptions, specifically those such as “FAK” (“freight of all kinds”), “general cargo,” “bulk cargo” and “STC” (“said to contain”) are not acceptable);

(5) The shipper's complete name and address, or identification number, from the bill(s) of lading (for each house bill in a consolidated shipment);

(6) The complete name and address of the consignee, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo would be delivered in the foreign country. However, in the case of cargo shipped “to order of [a named party],” the “to order” party must be named as the consignee; and if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party’s identity and contact information, including address, in the “Notify Party” field.);

(7) The estimated scheduled departure date and departure port; and

(8) AES Internal Transaction Number (ITN) or AES Exemption Statement (per shipment).

Under proposed 19 CFR 4.63(b), CBP would require the remainder of advance data to be transmitted two hours prior to loading the vessel for departure to a foreign port or for a foreign port by way of other domestic ports. That data, along with the initial filing data, comprises the vessel electronic export manifest data, containing all additional data elements to be described as export manifest transportation data, cargo data, electronic export information, and empty container data.

*E. Export Manifest Transportation Data.*

In proposed 19 CFR 4.63(e), the following lists of data elements display CBP’s proposed mandatory, conditional, and optional export manifest

transportation data elements.<sup>5</sup>

## 1. Mandatory Elements

Proposed 19 CFR 4.63(e)(1) sets forth the mandatory export manifest transportation data elements that would be required in all circumstances, and are as follows:

(1) Mode of transportation data (containerized vessel cargo or non-containerized vessel cargo);

(2) Vessel Country Code (International Organization for Standardization (ISO) country code);

(3) Vessel Name;

(4) Voyage Number;

(5) Port of Departure\*;

(6) Port of Unlading;

(7) Date of Departure;

(8) Bill of Lading type (Master, House or Simple);

(9) Vessel Code (International Maritime Organization (IMO) code);

(10) The vessel carrier identification SCAC code (The unique Standard Carrier Alpha Code assigned for each carrier in the National Motor Freight Traffic Association, Inc., Directory of Standard Multi-Modal Carrier and Tariff Agent Codes; *see* §4.7a(c)(2)(iii) of this chapter.);

(11) Container information\*;

(12) Load Status (Empty or Loaded); and

(13) Place carrier took possession of merchandise or empty container.

## 2. Conditional Element

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<sup>5</sup> Certain data elements identified with an asterisk require lower-level data elements to be completed per the Electronic Export Manifest Implementation Guidelines.

As provided in proposed section 4.63(e)(2), the seal number(s) constitutes conditional transportation data and must be transmitted by the outbound vessel carrier when applicable. The seal numbers must be provided for all seals affixed to containers to the extent that CBP's data system can accept this information (for example, if a container has more than two seals, and only two seal numbers can be accepted through the system per container, electronic presentation of two of these seal numbers for the container would be considered as constituting full compliance with this data element).

### 3. Optional Elements

Proposed section 4.63(e)(3) lists optional data elements that may be provided by the eligible party transmitting transportation data, and are as follows:

- (1) Marks and Numbers;
- (2) Number of house Bills of Lading; and/or
- (3) Country of Ultimate Destination.

#### *F. Export Manifest Cargo Data*

For proposed rule section 4.63(f), the following list of data elements displays CBP's proposed mandatory, conditional, and optional export manifest cargo data elements. The mandatory elements must be transmitted and may be transmitted by any eligible party described above. If the information below has already been transmitted in the initial filing, the filer does not need to transmit it again unless there are updates or changes.

#### 1. Mandatory Elements

Proposed 19 CFR 4.63(f)(1) sets forth the mandatory export manifest cargo data elements that would be required in all circumstances, and are as follows:

- (1) Shipper name and address (For empty containers, the shipper may be the carrier from whom the outbound vessel carrier received the empty container to transport.);

- (2) Consignee name and address (For empty containers, the consignee may be the carrier to whom the outbound vessel carrier is transporting the empty container.);
- (3) Port of Lading;
- (4) Bill of Lading numbers;
- (5) Bill of Lading type (Master, House, or Simple);
- (6) Cargo description;

## 2. Conditional Elements

Proposed 19 CFR 4.63(f)(2) sets forth the conditional export manifest cargo data elements that would be required when applicable, and are as follows:

- (1) In-bond number and type or in-bond house bill number;
- (2) Mexican Pedimento (only for cargo exported to Mexico);
- (3) Notify Party name and address;
- (4) Chemical Abstract Service (CAS) Registry Number;
- (5) Additional Party Details;
- (6) 6-character Hazmat Code (UN (for United Nations Number) or NA

(North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided).

## 3. Optional Elements

Proposed section 4.63(f)(3) lists optional data elements that may be provided by the eligible party transmitting cargo data, and are as follows:

- (1) Secondary Notify Party SCAC; and
- (2) Vehicle Identification Number (VIN).

### *G. Electronic Export Manifest Holds and Do-Not-Load Instructions.*

Once the outbound vessel carrier or other trade member electronically transmits the export manifest empty container, transportation, and cargo data to CBP via ACE, CBP would validate or if necessary, notify the responsible party of any holds under

proposed sections 4.63(g) and (h). The process was designed to issue two different types of holds, a 2H Documentation hold and a 1H Enforcement hold. The party that transmitted the vessel export manifest data to CBP is responsible for responding to any holds issued upon CBP review of that data. A 2H Documentation hold notifies the party that transmitted the export manifest data of missing data elements or invalid information that the party would need to revise or correct.

Electronic data transmission would allow CBP to use its ATS for all exported cargo in the sea environment and the integrated system would conduct the majority of risk assessment, screening and review of the data, limiting the time burden to CBP officers to conduct manual review of such data. The submitting party must then work with CBP to provide the appropriate information, address issues or answer questions to release any hold(s). Until the hold(s) are released, that cargo cannot be loaded onto the vessel. CBP anticipates that when export manifest data is provided within the required deadlines of this proposed rule there should be very few if any instances where CBP issues a hold after cargo is loaded onto the vessel. However, if a hold is issued after loading the cargo or container onto the vessel, the outbound vessel may not depart or transport that cargo or container until the responsible party resolves all holds or that cargo is unloaded from the vessel.

CBP officers would manually review all export manifest data transmissions for which holds are issued for additional or corrected information. A Do-Not-Load or hold may be issued where CBP officers would conduct cargo examinations if necessary prior to loading the cargo or container onto the vessel. CBP anticipates that obtaining this export manifest data through the integrated system would help CBP work with outbound vessel carriers and other parties to address almost all outstanding issues resulting from CBP review before loading the cargo onto a vessel attempting to depart the United States. This would significantly reduce the instances where issues would be addressed after the

cargo is loaded onto the vessel and would minimize requests for cargo returns or discharges at second U.S. ports and any other potential delays resulting from a CBP officer's examination of cargo in those scenarios.

CBP retains the enforcement discretion to assess penalties and/or claims for liquidated damages when a violation occurs. Any party that violates the requirements for data transmission as described above in this proposed rule is subject to pay liquidated damages of \$5,000 for each violation and up to a maximum of \$100,000 per departure. Although there is the possibility for enforcement action, compliance is CBP's goal and CBP aspires to work alongside outbound vessel carriers and other trade members to ensure that trade members provide the proper data in a timely manner, so that CBP can properly review the data, conduct risk assessment to identify high-risk shipments and enforce U.S. export laws and regulations as to U.S. exports in the sea environment.

#### *H. Technical Amendments to 19 CFR Part 4.*

CBP proposes to amend 19 CFR 4.61(a) to account for the electronic transmission of Vessel Entrance or Clearance Statement, CBP Form 1300, and CBP's response via ACE. In accordance with such an amendment, CBP further seeks to amend sections 4.61(b) and 4.61(c) to add in the electronic equivalent of Vessel Entrance or Clearance Statement, CBP Form 1300, and electronic receipt of required electronic vessel manifest information.

CBP also proposes 19 CFR 4.63 to be amended for a more inclusive heading of EEM and what is required in advance of export, specifically, "Electronic information for vessel conveyance and cargo required in advance of export; Electronic Export Manifest (EEM); Electronic Export Information (EEI)." CBP's proposed amendment includes the general requirement in section (a) to address the electronic equivalent of the Vessel Entrance or Clearance Statement, CBP Form 1300, and type of information that is required; from whom it is required; the time in which the information is required; and

whether examinations, Do-Not-Load or Hold instructions need to be addressed. No vessel would be cleared directly for a foreign port, or for a foreign port by way of another domestic port (see § 4.87(b)), unless CBP receives from the outbound vessel carrier a Vessel Entrance of Clearance Statement, CBP Form 1300, or its electronic equivalent.

CBP must also receive from the outbound vessel carrier, or other eligible filer as specified in paragraph (c), electronic information concerning the vessel and its cargo, as enumerated in paragraphs (d), (e), and (f) of this section. CBP proposes to remove 19 CFR 4.76 as the procedures and responsibilities are outdated and lack specificity and the Sea Carrier's Module is no longer being used by carriers. The timing, programming system, and message format have all been updated in the proposed new regulations and replaced with the EEM.

#### *I. Proposed Amendments to Availability of Information.*

CBP proposes to amend 19 CFR 103.31 (Information on vessel manifests and summary statistical reports, disclosure to members of the press). Section 103.31 sets forth limited access to information on outward vessel manifests to accredited members of the press and the public. Currently, "only the name and address of the shipper, general character of the cargo, number of packages and gross weight, name of vessel or carrier, port of exit, port of destination, and country of destination may be copied and published. However, if the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure of the above information is likely to pose a threat of personal injury or property damage, that information shall not be disclosed to the public." 19 CFR 103.31(a)(1). Subject to the confidentiality requirements of 19 U.S.C. 1431 and 19 U.S.C. 1415(a)(3)(G), this proposed amendment will protect the privacy of business proprietary and any other confidential cargo information provided to CBP including any personally identifiable information before access to the manifest is provided to the public. CBP seeks to expand access to additional data elements listed in 19 CFR 103.31(a)(1)

consistent with what is provided to CBP from the vessel manifests while maintaining the provisions for confidentiality should confidential treatment be requested. CBP also proposes to amend sections 103.31(d)(1)(iii) and (d)(2)(iii) to update the physical address for certification submissions. CBP also proposes to amend section 103.31(e) to address technology updates recognizing that data sought by the public will be made available via secure file transfer protocol (SFTP) in lieu of CD-ROM and that payments for such requests should be made via wire transfer.<sup>6</sup>

*J. Proposed Amendments to CBP Bond Conditions.*

As an enforcement tool, CBP also proposes changes to the relevant bond provisions in 19 CFR 113.62 (basic importation and entry bond), 19 CFR 113.63 (basic custodial bond), and 19 CFR 113.64 (International carrier bond) to provide CBP with authority to impose liquidated damages on parties that do not provide the mandatory EEM data in the manner and in the time frame required. Specifically, CBP proposes 19 CFR 113.62(k)(2) to address electronically provided outbound information. Section 113.62(k) currently addresses electronic transmissions for merchandise or cargo which is inbound via air or truck. CBP also proposes to amend 19 CFR 113.63(g) to add a descriptive heading for electronic entry and/or advance cargo information requirements and include advance outbound cargo information provided to CBP electronically in the manner and in the time period required by law and regulation. CBP further proposes to amend 19 CFR 113.64(d) to include outbound information provided electronically by international carriers in the manner and time period required under law and regulation. Additionally, CBP proposes to amend 19 CFR 113.64(e) to include all transmitting parties other than the carrier who agree to provide advance electronic information. Finally, CBP proposes to amend 19 CFR 113.64(j) to provide export information

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<sup>6</sup> Executive Order 14247.

including but not limited to certifications in the manner and time provided by law. At present, the text of 19 CFR 113.64(j) is obsolete as it refers to processes that were in existence when Shipper's Export Declarations (SEDs) were in use. However, SEDs were superseded on October 1, 2008, with the implementation of the FTR and by the EEI filed in the AES or through the AESDirect. *See* 15 CFR 30.1. *See also* 19 CFR 192.14, regarding required EEI.

## **V. Regulatory Analyses**

### *A. Executive Orders 12866, 13563 and 14192.*

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14192 (Unleashing Prosperity Through Deregulation) directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides that “any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.”

The Office of Management and Budget (OMB) has not designated this proposed rule a “significant regulatory action” under section 3(f) of Executive Order 12866.

Accordingly, OMB has not reviewed this proposed rule.

This proposed rule, if finalized as proposed, is expected to be an Executive Order 14192 deregulatory action.

In summary, CBP expects that from 2015 to 2030 this proposed rule would result in a combined net cost savings to CBP, outbound vessel carriers, and other trade members engaging in the export process of goods departing the United States in the sea

environment ranging from \$17.2 million (2023 U.S. dollars) using a three percent discount rate to \$9.3 million (2023 U.S. dollars) using a seven percent discount rate. CBP anticipates that this proposed rule would also provide added benefits from enhanced cargo safety and security measures by improving compliance and the enforcement of U.S. export laws and regulations on U.S. exports in the sea environment. The following is the economic analysis of the potential impacts from this proposed rule.

### **Purpose, Background and Baseline**

CBP's mission includes ensuring cargo security and preventing smuggling, while enforcing U.S. trade laws and regulations. CBP needs to obtain timely and sufficient data prior to cargo arriving or departing the United States via any mode of commercial transportation in order to review and conduct risk assessment to identify high-risk shipments and inspect cargo effectively. According to Section 343(a) of the Trade Act of 2002, as amended Trade Act (19 U.S.C. 1415), CBP is authorized to establish regulations that provide for the mandatory electronic transmission of data by way of a CBP-approved electronic data interchange before cargo arrives or departs the United States in all environments (sea, air, rail, and truck). The requirement to submit manifest data electronically facilitates a more efficient trade process for all parties involved. Submitting electronic manifest data (specifically pre-arrival or pre-departure) significantly increases CBP's ability to identify high-risk cargo to ensure cargo security and to prevent smuggling. Unlike export manifest data submitted on paper, export manifest data transmitted electronically to CBP allows CBP to use its Automated Targeting System (ATS) to target all export manifest data transmitted. The transmission of electronic manifest data also enhances the coordination and data exchange between Federal agencies overseeing cargo arriving and departing the United States.

Additionally, electronic manifest data improves CBP's review process, allowing CBP to make better examination decisions while also reducing the time required to make

such decisions. Trade members would also experience efficiencies through quicker CBP examination decisions and improved communication between CBP and trade members. Resolving CBP requests for additional information to clarify or correct data electronically transmitted would be more efficient in an electronic environment.

Prior to this proposed rule, CBP does not require the electronic transmission of vessel cargo manifest data for all export cargo to CBP prior to departure in the sea environment. Although outbound vessel carriers provide some export manifest data to CBP electronically, the data elements are not always provided prior to departure and CBP believes that the data elements are insufficient for CBP to conduct proper cargo safety and security review for goods departing United States in the sea environment. Current regulations<sup>7</sup> require the U.S. Principal Party in Interest (USPPI), the USPPI's agent, or the authorized filing agent of the Foreign Principal Party (FPPI) to transmit EEI to CBP through the ACE. This EEI should be provided to CBP and verified no later than 24 hours prior to the cargo departing the U.S. port of export. CBP acknowledges that, although this pre-departure data is helpful, the information provided by EEI falls short of the data CBP requires to conduct proper cargo security screening while enforcing U.S. export control laws and regulations.

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<sup>7</sup> See 19 CFR 192.14.

The required transmission of EEI is also subject to certain exemptions as established by the Census regulations,<sup>8</sup> which generally only require EEI transmission on merchandise valued greater than \$2,500 and do not require the transmission of EEI for shipments destined for Canada, unless the shipment contains certain controlled items under the Export Administration Regulations (EAR) or is being transshipped to another destination.<sup>9</sup>

Therefore, numerous cargo and shipments of merchandise of smaller value departing the United States by sea do not have EEI transmitted for CBP to review. The lack of detailed electronic manifest data for some shipments and the unavailability of electronic cargo data on lower value merchandise shipments impedes CBP's enforcement efforts on sea exports. During the export process, the outbound vessel carrier may not load cargo without first receiving from the USPPI or its authorized agent either the related EEI filing citation, covering all cargo for which the EEI is required, or exemption legends covering cargo for which EEI need not be filed. The outbound vessel carrier must then annotate the carrier's outward manifest, waybill, or other export documentation with the applicable Automated Export System proof of filing, post-departure, downtime, exclusion, or exemption citations, conforming to the approved data formats found in the FTR.<sup>10</sup>

CBP also obtains additional vessel export cargo data, mostly in paper form, as per existing CBP regulations,<sup>11</sup> which require the submission of certain manifest data to CBP for vessels shipping goods out of the United States to any foreign area, whether directly or by way of other domestic ports. CBP requires outbound vessel carriers to complete and submit to CBP a Vessel Entrance or Clearance Statement on CBP Form 1300 for the

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<sup>8</sup> See 15 CFR Part 30.

<sup>9</sup> See 15 CFR 30.36.

<sup>10</sup> See 15 CFR Part 30.

<sup>11</sup> See 19 CFR 4.61, 19 CFR 4.63, 19 CFR 4.75 & 19 CFR 4.76.

outbound vessel. Additionally, the outbound vessel carriers or agent are required to file a Cargo Declaration Outward with Commercial Form (CBP Form 1302A) and submit this paper form to CBP at each port from which clearance is being sought.<sup>12</sup> Along with the CBP Form 1302A, outbound vessel carriers or agent must provide to CBP complete vessel cargo manifest with a compilation of all bills of lading or equivalent commercial documents relating to all cargo within the manifest.<sup>13</sup> CBP allows some qualifying outbound vessel carriers to participate in the Vessel Transportation Module (VTM) which provides the carriers the ability to transmit this export manifest data to CBP electronically via the ACE in lieu of the paper CBP Form 1302A, but very few outbound vessel carriers actively provide this information electronically.

Although CBP requires the submission of some export manifest data in the sea environment, prior to this proposed rule most of this data is not provided electronically or prior to the vessel departing the United States. Current regulations allow for the CBP Form 1302A, the vessel export manifest, and supporting documents to be submitted in a complete or incomplete form at the time of departure, depending on the foreign country to which the cargo is being shipped.<sup>14</sup> Conditional on the outbound vessel carrier holding a proper bond, the outbound vessel carrier has four business days post departure to submit the completed vessel export manifest data for shipments to foreign countries,

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<sup>12</sup> CBP Form 1302A consists of the following data elements; 1) Name of Ship, (2) Port where report is made (not required by United States), (3) Nationality of ship, (4) Name of master, (5) Port of loading, (6) Port of discharge, (7) Bill of Lading number, (8) Marks and Numbers, Container Numbers, Seal Numbers, (9) Number and kind of packages; Description of goods, (10) Gross Weight (lb. or kg.) or Measurements (per HTS), (11) Internal Transaction Number (ITN), or AES Exemption Statement.

<sup>13</sup> Bills of lading are documents that essentially act as a receipt and contract for transporting cargo and goods and come from a number of sources depending on which party is privy to the information and the timing of when the information is provided. A house bill contains cargo details and is issued directly by a NVOCC, or freight forwarder. This bill acts as the receipt of goods that are going to be exported and provides export manifest data at its lowest level. Outbound vessel carriers can issue a Master bill which includes all other export manifest information such as transportation details for the vessel which could cover any number of house bills that are included on that vessel. Additionally, in the case where a NVOCC or freight forwarder is not involved in the shipment transaction and the outbound vessel carrier has the specific cargo data available the outbound vessel carrier can issue a simple bill which is similar to a house bill and contains cargo details at the lowest bill level of export manifest data.

<sup>14</sup> See 19 CFR 4.75.

seven business days post arrival for shipments to Puerto Rico, and seven business days post departure for shipments to other U.S. territories.<sup>15</sup> Additionally, if the outbound vessel carrier is approved to submit the outbound vessel manifest information electronically and participates in the VTM, then the carrier is provided ten calendar days post departure to provide the completed vessel export manifest data to CBP for shipments to foreign countries.<sup>16</sup> The provisions of 15 CFR 30.5(c) authorize USPPIs that provide EEI data for vessel exports to transmit the completed EEI up to five calendar days after the date of export. Given the existing regulations prior to this proposed rule, outbound vessel carriers do not provide export manifest data electronically for most exports before loading cargo or prior to the vessel departing the United States. This lack of detailed pre- departure electronic vessel export manifest data impedes CBP's ability to effectively conduct cargo safety, and security assessments and to prevent smuggling for cargo departing the United States in the sea environment.

Prior to this proposed rule, CBP does not typically receive export manifest data until days after a vessel and cargo depart the U.S. port of export. In the event that CBP identifies high-risk cargo or a container that has already been loaded, and the vessel has departed the U.S. port of export, CBP can issue a request that the outbound vessel carrier return the cargo or container. When a request for return is issued by CBP, outbound vessel carriers usually bring the cargo or container back to the United States after the vessel arrives at the foreign port and upon the vessel's return to the United States.

Additionally, if the vessel's itinerary stops at a second U.S. port, CBP can request

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<sup>15</sup> As per 19 CFR 4.84(c)(2), for shipments from any State or the District of Columbia to Puerto Rico, a complete manifest or proper bond shall be filed with CBP within one business day of arrival in Puerto Rico. As provided in 19 CFR 4.84 (c)(1), for shipments from any State or the District of Columbia to noncontiguous territories of the United States other than Puerto Rico, or from Puerto Rico to any State or the District of Columbia to any other noncontiguous territory, a complete manifest or proper bond must be filed with CBP before departure.

<sup>16</sup> If the destination of the vessel is a foreign port listed in 19 CFR 4.75(c), the carrier must transmit the completed vessel export manifest data before the departure of the vessel.

the outbound vessel carrier to discharge the cargo or container at that second port. In either scenario, returning a container from a foreign port or discharging at a second U.S. port results in significant additional costs to outbound vessel carriers and trade members. In some instances, when outbound vessel carriers provide export manifest data four days or more post-departure, outbound vessel carriers have already delivered the cargo to a foreign port before submitting export manifest data to CBP or before CBP has the time to review the data. Many times, CBP does not even review the export manifest data because even if CBP were to identify a high-risk cargo or container, the exported cargo is untraceable once it has been released at a foreign port and outbound vessel carriers are unable to track down the cargo or container. As a result, in the sea environment, CBP only reviews a small amount of total exported cargo data prior to departure or prior to delivery to a foreign port. Ideally, CBP officers would obtain all export manifest data pre-departure and prior to the cargo loading onto a vessel. This would allow CBP to conduct its review and risk assessment on all export cargo prior to loading that cargo or container onto a vessel or before the vessel departs the United States. If CBP conducts its review prior to loading the cargo and if it identifies a high-risk cargo, CBP can prevent the loading of cargo or containers onto a vessel until CBP can conduct a manual examination. However, because the majority of export manifest data is provided post-departure CBP is usually unable to prevent high-risk cargo from being loaded onto vessels and departing the United States in the sea environment.

CBP has defined the process described above as the baseline. The analysis of this proposed rule attempts to measure any incremental costs, costs savings or benefits compared to the baseline scenario.

### **The Vessel EEM Test**

In order to enhance CBP's efforts to ensure cargo security while also preventing smuggling and to further implement the Trade Act, CBP has been working towards

developing a new process to require the transmission of EEM data for all cargo and containers departing the United States in the sea environment. CBP expects that the transmission of pre-departure EEM data would help CBP obtain all the necessary information and data to successfully review and conduct risk assessment and screening efforts before loading cargo onto vessels at U.S. ports of export.

In September 2015, CBP introduced a two-year test program, referred to in the analysis as the Vessel Electronic Export Manifest Test (vessel EEM test), to determine the feasibility of requiring outbound vessel carriers or their agents, and non-vessel operating common carriers (NVOCCs), to provide CBP with pre-departure export manifest data for vessel exports, electronically via ACE, within a specified time before cargo departed the United States in the sea environment.<sup>17</sup> The vessel EEM test created a single automated export processing platform for export manifest, commodity, licensing, export control and export risk assessment. In order for CBP to test the functionality of this new process, CBP initially limited participation in the vessel EEM test to nine trade members. CBP limited participation in the vessel EEM test to parties that had the capability of transmitting export manifest data to CBP in the acceptable format via ACE.<sup>18</sup> During this initial phase of the vessel EEM test, CBP worked with outbound vessel carriers who agreed to participate and submit export manifest data electronically to CBP via ACE. CBP requests that vessel participants continue to submit CBP Form 1302A as they did before participating in the test so that CBP can capture any inconsistencies or issues with the electronic transmission of vessel EEM data to CBP.<sup>19</sup>

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<sup>17</sup> The deadlines and requirements for the transmission of EEI data, as per current regulations found in 19 CFR 192.14, are not affected by the vessel EEM test or this proposed rule.

<sup>18</sup> Prospective participants must have the technical capability to submit data electronically to CBP and receive response message sets via Cargo IMP, AIR CAMIR, XML, or Unified XML, and must successfully complete certification testing with their client representative. Unified XML may not be immediately available at the start of the test. However, parties wishing to utilize Unified XML may be accepted, pending its development and implementation.

<sup>19</sup> CBP notes that if an outbound vessel carrier was already providing data to CBP via VTM, those

The responsibility to provide the proper export manifest data resides with the outbound vessel carrier regardless of whether an NVOCC has also submitted manifest data electronically. During the vessel EEM test, CBP still requires outbound vessel carriers to submit a Vessel Entry or Clearance Statement on CBP Form 1300, prior to that vessel's departure from a U.S. port of export.

During the vessel EEM test, CBP requests that participants transmit completed vessel export cargo manifest data electronically to CBP via ACE, at least 24 hours prior to the loading of that cargo or container onto a vessel. CBP expected that the deadline of 24 hours prior to loading the cargo onto vessels would provide CBP adequate time to conduct a proper review of export manifest data to enhance cargo safety and security measures prior to cargo being loaded and a vessel's departure. Identifying any high-risk cargo and containers prior to the loading of cargo onto vessels improves security measures while ensuring compliance with U.S. export laws and minimizes the disruption of the trade process at the U.S. port of export. Additionally, the deadlines for export manifest data transmission provide CBP the time to compare the export manifest data with any EEI submitted by USPPI to further enhance security measures on cargo departing the United States in the sea environment.

The vessel EEM test allows participants to provide and revise export manifest data electronically on a flow basis, whenever the information becomes available during the export process, before loading the cargo onto vessels. Transmitting vessel export manifest data electronically via ACE as requested during the vessel EEM test allows for the integrated system to conduct a large portion of the review process using data validations, checks, and risk assessment measures, prior to the loading of cargo onto

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outbound vessel carriers do not provide the paper CBP Form 1302A to CBP. Additionally, if an outbound vessel carrier provides data through VTM and then participates in the vessel EEM, CBP did not require the carrier to submit both VTM and vessel EEM data.

vessels. Additionally, upon transmission of the pre-departure electronic manifest export data, CBP is able to review information on a flow basis while outbound vessel carriers or NVOCCs provide updated data throughout the export transaction process.

The integrated system implemented during the vessel EEM test improves CBP risk assessment and screening efforts of cargo and shipments. When outbound vessel carriers or NVOCC's transmit export manifest data, the integrated system automates most of the review process and generates holds to notify the outbound vessel carriers or NVOCCs of outstanding issues with the data provided. Depending on the issue identified by the integrated system, a different hold is issued and must be resolved prior to the cargo being loaded onto the vessel. CBP designed the integrated system in the vessel EEM test to issue two different types of holds, a 2H Documentation hold and a 1H Enforcement hold. The party that transmitted the vessel export manifest data to CBP is responsible for responding to any holds issued upon CBP review of that data. A 2H Documentation hold notifies the party that transmitted the export manifest data of missing data elements or invalid information that the party would need to revise or correct. In the instance of a 2H Documentation hold, the responsible party must update the missing or incorrect reference data to release the hold on the cargo or container. Until CBP releases the hold, the cargo may not be loaded onto the vessel.

If the integrated system identifies a potential high-risk cargo or container, then the system automatically generates a 1H Enforcement hold which requires a CBP officer to conduct a manual review of the export manifest data transmitted. The integrated system notifies the party that transmitted the data of the hold and if CBP needs to conduct further examination of the data transmitted or if a manual examination is necessary. These holds can also be issued and addressed even if the cargo has already been loaded onto the vessel. If a 1H Enforcement hold is issued after loading the cargo onto the vessel and CBP requests to manually examine cargo, the outbound vessel carrier must coordinate

with the appropriate parties to remove the cargo or container before departure so CBP officers can manually examine the cargo or container. If the vessel has already departed the U.S. port of export, the outbound vessel carrier can return the cargo or container from a foreign port for CBP to examine or discharge the cargo or container if the vessel is stopping at a second U.S. port. If a CBP officer determines during manual review of vessel export manifest data that cargo or a container contains a potential threat to the vessel and its vicinity, a Do Not Load (DNL) instruction is issued which prohibits any party that currently has physical possession of that cargo from moving that cargo or container.

The electronic transmission of export manifest data in advance helps CBP review and issue holds before cargo, or a container is loaded onto the vessel. This facilitates a more efficient export process by reducing the likelihood of identifying cargo after it has been loaded or departed from the United States which results in significant return or discharge costs and potentially results in delays or disruptions to the vessel's export. Additionally, CBP is able to use ATS to conduct risk assessment while reviewing more export manifest data than what is reviewed under the baseline scenario.

In the initial phase of the test, CBP asked trade members that agreed to participate in the vessel EEM test to provide information electronically to CBP via ACE for a total of 27 mandatory and conditional data elements 24 hours prior to the cargo being loaded onto vessels. CBP determined that the selected data elements would provide CBP the information necessary to conduct proper cargo safety and security enforcement. Outbound vessel carriers were already providing these data elements to CBP prior to the test but in most cases they were submitted through various paper forms, usually post departure. The data elements selected by CBP during this initial phase of the vessel EEM test consisted of the following (all data elements are mandatory unless otherwise noted):

- (1) Mode of transportation (containerized vessel cargo or non-containerized vessel cargo)
- (2) Name of ship or vessel
- (3) Nationality of ship
- (4) Name of master
- (5) Port of loading
- (6) Port of discharge
- (7) Bill of Lading number (Master and House)
- (8) Bill of Lading type (Master, House, Simple or Sub)
- (9) Number of house Bills of Lading
- (10) Marks and Numbers (conditional)
- (11) Container Numbers (conditional)
- (12) Seal Numbers (conditional)
- (13) Number and kind of packages
- (14) Description of goods
- (15) Gross Weight (lb. or kg.) or Measurements (per HTSUS)
- (16) Shipper name and address
- (17) Consignee name and address
- (18) Notify Party name and address (conditional)
- (19) Country of Ultimate Destination
- (20) In-bond number (conditional)
- (21) Internal Transaction Number (ITN) or AES Exemption Statement (per shipment)
- (22) Split Shipment Indicator (Yes/No)
- (23) Portion of split shipment (e.g., 1 of 10, 4 of 10, 5 of 10—Final. etc.) (conditional)
- (24) Hazmat Indicator (Yes/No)

(25) UN Number (conditional)<sup>20</sup>

(26) Chemical Abstract Service (CAS) Registry Number (conditional)

(27) Vehicle Identification Number or Product Identification Number (conditional)<sup>21</sup>

After an initial two-year period, CBP determined that in the initial phase of the vessel EEM test it had been feasible and functional for participating parties to provide export manifest data electronically to CBP. CBP extended the vessel EEM test and expanded the test making it available to all outbound vessel carriers and other associated parties (beyond the initial nine-party limit) meeting eligibility criteria so that CBP could continue evaluating the feasibility and functionality of requesting electronic vessel export manifest data prior to cargo being loaded.<sup>22</sup> After the first two years of the vessel EEM test, CBP consulted with the Commercial Customs Operations Advisory Committee (COAC) and it was determined that outbound vessel carriers and NVOCCs may not have access to certain export manifest data elements requested by CBP 24 hours prior to loading of cargo onto a vessel. Therefore, CBP modified the filing condition for four of the export manifest data elements for the vessel EEM test from mandatory to optional.

At the start of the vessel EEM test extension, CBP separated export manifest data elements into three categories – mandatory, conditional, and optional data – and requested that participants provide export manifest data for all cargo at least 24 hours prior to loading of the cargo. CBP also requested that the following data elements be

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<sup>20</sup> If the hazmat indicator is yes, the four-digit United Nations (UN) Number assigned to the hazardous material must be provided.

<sup>21</sup> For shipments of used vehicles, the VIN must be reported, or for used vehicles that do not have a VIN, the Product Identification Number must be reported.

<sup>22</sup> Limited to those parties able to electronically transmit manifest data in the identified acceptable format. Prospective ACE Export Manifest for Vessel Cargo Test participants must have the technical capability to electronically submit data to CBP and receive response message via Ocean CAMIR, ANSI X12, or Unified XML and must successfully complete certification testing with their client representative. Once parties have applied to participate, they must complete a test phase to determine if the data transmission is in the required readable format. Applicants will be notified once they have successfully completed testing and are permitted to participate fully in the test. In selecting participants, CBP will take into consideration the order in which the applications are received.

provided electronically via ACE for all cargo preparing for departure from the United States in the sea environment. Unless otherwise noted, data elements are mandatory.

- (1) Mode of transportation (containerized vessel cargo or non-containerized vessel cargo)
- (2) Name of ship or vessel
- (3) Nationality of ship
- (4) Name of master (optional)
- (5) Port of loading
- (6) Port of discharge
- (7) Bill of Lading number (Master and House)
- (8) Bill of Lading type (Master, House, Simple or Sub)
- (9) Number of house Bills of Lading (optional)
- (10) Marks and Numbers (conditional)
- (11) Container Numbers (conditional)
- (12) Seal Numbers (conditional)
- (13) Number and kind of packages
- (14) Description of goods
- (15) Gross Weight (lb. or kg.) or Measurements (per HTSUS)
- (16) Shipper name and address
- (17) Consignee name and address
- (18) Notify Party name and address (conditional)
- (19) Country of Ultimate Destination
- (20) In-bond number (conditional)
- (21) Internal Transaction Number (ITN) or AES Exemption Statement (per shipment)
- (22) Split Shipment Indicator (Yes/No) (optional)
- (23) Portion of split shipment (e.g., 1 of 10, 4 of 10, 5 of 10—Final, etc.)

(optional)

(24) Hazmat Indicator (Yes/No)

(25) UN Number (conditional)<sup>23</sup>

(26) Chemical Abstract Service (CAS) Registry Number (conditional)

(27) Vehicle Identification Number or Product Identification Number (conditional) <sup>24</sup>

CBP has continuously extended the vessel EEM test to gauge the functionality and feasibility of implementing the requirement of providing EEM data to CBP prior to a vessel's departure. CBP believes that the vessel EEM test has been successful and CBP is proposing to make the electronic transmission of pre-departure export manifest data mandatory for all cargo departing the United States in the sea environment.

### **The Vessel EEM Regulatory Program**

This proposed rule would require the transmission of EEM data for all cargo prior to loading onto vessels departing the United States and require that outbound vessel carriers or their agents present data related to the CBP Form 1300 no later than two hours prior to departure of the vessel from the United States. This proposed rule would also eliminate the use of the paper CBP Form 1302A, encourage the transition to electronic equivalent of the paper CBP Form 1300 for vessel clearance and prohibit the providing of vessel export manifest data post departure. CBP has been testing the electronic transmission process for vessel export manifest data by conducting the vessel EEM test since 2015 and CBP anticipates that requiring the transmission of EEM data prior to loading of cargo onto a vessel would improve CBP's ability to conduct proper cargo security enforcement and prevent smuggling while minimizing the disruption to the flow

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<sup>23</sup> If the hazmat indicator is yes, then UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided.

<sup>24</sup> For shipments of used vehicles, the VIN must be reported, or for used vehicles that do not have a VIN, the Product Identification Number must be reported.

of goods during the export process in the sea environment. This proposed rule would use ACE to obtain the data, conduct risk assessment, screen EEM data for cargo being loaded onto vessels preparing to depart the United States, and allow for the trade member which most likely has the direct information on cargo to provide the export manifest data to CBP.

In the initial vessel EEM test, CBP requested export manifest information for 27 data elements 24 hours prior to the loading of cargo or container onto the vessel. The experience CBP gained during the test helped revise deadlines for when participants should transmit data and which data elements should be mandatory, conditional, optional, and unnecessary. Of the original data elements put forth in the initial vessel EEM test CBP renamed or reconfigured twelve of these initial data elements in this proposed rule.<sup>25</sup> CBP determined that the following data elements in the vessel EEM test were not necessary and CBP did not include these vessel export manifest data elements in the vessel EEM. CBP lists the data elements below along with their original data element number during the vessel EEM test in parentheses.

- Name of master (optional) (4)
- Split Shipment Indicator (Yes/No) (22)
- Portion of split shipment (i.e., 1 of 4, 4 of 10, 5 of 10 – Final, etc.) (23)
- Product Identification Number (noting that Vehicle Identification Number has been included) (27)

Based on the experience CBP obtained from the vessel EEM test, in this proposed

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<sup>25</sup> CBP will also introduce new data elements. ‘Estimated Scheduled Departure Time and Departure Port’ will be added as a mandatory data element in the initial filing. The data element ‘Departure Date’ is added as a mandatory data element for transportation data. ‘Vessel carrier SCAC code’ and ‘Place Carrier Took Possession of Merchandise or Empty Container’ were two more data elements CBP introduced as mandatory in transportation data. CBP also introduced the ‘Mexican Pedimento’ data element for cargo exports to Mexico as a conditional cargo data. Additionally, CBP added ‘Additional Party Details’ as a cargo data element. CBP also introduced ‘Secondary Notify Party SCAC’ data element as an optional cargo data element. CBP discusses the difference between initial filing, transportation and cargo data in more detail later in this section of the analysis.

rule CBP is adjusting the data elements and deadlines for transmission. For this proposed rule, CBP grouped the vessel EEM data elements based on the deadlines for submission of data and which trade member likely has the correct information to provide to the export manifest data element. As discussed earlier, CBP expanded the vessel EEM test to any eligible party in 2017, and in this proposed rule CBP anticipates that any party with direct knowledge of the export data element can participate in the program and provide export manifest data to CBP via ACE prior to loading cargo onto the vessel. This proposed rule would allow outbound vessel carriers, or their agents, USPPs, FPPs, customs brokers, ABI filers, NVOCCs, freight forwarders, or any other party with direct knowledge of the export manifest data element to provide specific pre-departure export manifest data to CBP using CBP's ACE as a data transmission tool. This proposed rule also mandates that the party transmitting any specific export manifest data must hold or obtain a qualifying bond.<sup>26</sup> Additionally, any party that transmits data elements electronically to CBP for vessel EEM is responsible for addressing and responding to any questions, issues, instructions or holds that arise during CBP review of that specific data.

To improve CBP's risk assessment and screening efforts using pre-departure export manifest data, this proposed rule would require an initial filing of eight mandatory data elements, which must be transmitted to CBP by any eligible party as early as practicable but no later than 24 hours prior to loading cargo on the outbound conveyances attempting to depart from the U.S. port of export. Unlike in the vessel EEM test where CBP requested all 27 data elements to be transmitted 24 hours prior to the cargo being loaded, in this proposed rule CBP identified just eight data elements critical to CBP in conducting preliminary risk assessment and screening efforts. These would be

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<sup>26</sup> CBP acknowledges that any of the following bonds would be appropriate, CBP Basic Importation and Entry Bond containing the provisions found in section 113.62 of this chapter, a Basic Custodial Bond containing the provisions found in 113.63 of this chapter, or an International Carrier Bond containing the provisions found in section 113.64 of this chapter.

transmitted by any eligible party as early as practicable but no later than 24 hours prior to the cargo being loaded on the outbound conveyance departing the United States. CBP refers to these mandatory eight data elements as the initial filing. All other vessel export manifest data elements, including data on empty containers, should be transmitted to CBP no later than two hours prior to loading of cargo onto a vessel preparing to depart the United States.

CBP acknowledges that for most outbound vessel carriers the position of these time containing the provisions found in 113.63 of this chapter, or an International Carrier Bond containing the provisions found in section 113.64 of this chapter. Requirements for transmitting export manifest data are a significant change compared to the baseline where for the majority of export cargo and containers outbound vessel carriers were providing the completed export manifest data four or more days post departure.

These deadlines could impose additional time burdens and costs to outbound vessel carriers and other trade members to provide the appropriate export information earlier in the export process compared to the baseline. CBP notes that although most export manifest data is submitted post departure, CBP does require complete export manifest data prior to departure depending on the country to which the cargo is being shipped. Additionally, a number of countries have their own import manifest data requirements enforcing import manifest data to be submitted 24 hours prior to a vessel departing a U.S. port of export to a foreign port. These import manifest data elements are similar to the export manifest data elements. Therefore, most vessel departures exporting goods from the United States require either import manifest data or complete export manifest data prior to departure.

Additionally, outbound vessel carriers and other parties transmitting export manifest data can provide data and information on a flow basis whenever it becomes available to help facilitate CBP's review of the export data and the overall export process.

CBP anticipates that these deadlines would provide CBP adequate time to perform proper risk assessment and identify cargo and containers for examination prior to loading of cargo and containers onto vessels. CBP expects this would enhance security measures while minimizing the disruption to the flow of goods during the export process and reduce the number of requests for return and discharges of high-risk cargo and containers. Upon transmission of the initial filing, CBP would validate or notify the responsible trade member of any holds or DNLs. The trade member that transmits the data would be responsible for providing answers and updates on the data or information to CBP but the ultimate responsibility to load, hold, or not load merchandise falls on the outbound vessel carrier.

For the mandatory initial filing required as early as practicable but no later than 24 hours prior to cargo loading onto vessels, CBP selected seven data elements from the vessel EEM test and added one new data element, Estimated Scheduled Departure Date and Departure Port. Additionally, six of the initial filing data elements had their descriptions revised in this proposed rule to provide additional clarity on the data required. The initial filing data elements required in this proposed rule include the following:

(1) Bill of Lading number;

(2) The numbers and quantities of the cargo laden aboard the vessel as contained in the carrier's bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(3) Total Weight of cargo expressed in pounds or kilograms;

(4) A precise cargo description (or the Harmonized Tariff Schedule (HTSUS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper) and weight of the cargo; or, for a sealed container, the shipper's declared description and weight of the cargo (generic descriptions, specifically those such as "FAK" ["freight of all kinds"], "general cargo," "bulk cargo" and "STC" ["said to contain"] are not acceptable);

(5) The shipper's complete name and address, or identification number, from the

bill(s) of lading (for each house bill in a consolidated shipment);

(6) The complete name and address of the consignee, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo would be delivered in the foreign country. However, in the case of cargo shipped “to order of [a named party],” the “to order” party must be named as the consignee; and if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party’s identity and contact information including address in the “Notify Party” field.);

(7) The estimated scheduled departure date and departure port; and

(8) AES Exemption Statement (per shipment).

In this proposed rule, CBP groups the remaining vessel EEM data elements based on CBP’s understanding of which trade member may have the most direct knowledge of the export manifest data element. CBP categorized these remaining data elements as export manifest transportation data, export manifest cargo data, and empty container data.<sup>27</sup> According to this proposed rule, the outbound vessel carrier or its agent would be responsible for transmitting to CBP the data and information on any empty container data and export manifest transportation data. Outbound vessel carriers or agents must transmit these data elements electronically to CBP no later than two hours prior to the loading of the cargo or container onto the vessel. The outbound vessel carrier or its agent would also be responsible for providing the vessel clearance statement CBP Form 1300 or its electronic equivalent to CBP two hours prior to a vessel’s departure from the United States. The following list of data elements displays CBP’s proposed mandatory and conditional export manifest transportation data elements:

#### Mandatory Elements

(1) Mode of transportation data (containerized vessel cargo or non-containerized vessel cargo)

(2) Vessel Country Code International Organization for Standardization (ISO)

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<sup>27</sup> CBP would continue to require; CBP Form 1300 be submitted before a vessel can be cleared for departure from the United States, these data elements for the CBP Form 1300 are not affected by this proposed rule, but this proposed rule would authorize the use of CBP Form 1300 electronic equivalent.

- (3) Vessel Name
- (4) Voyage Number
- (5) Port of Departure
- (6) Port of Unlading
- (7) Date of Departure
- (8) Bill of Lading (Master, House or Simple)
- (9) Vessel Code (International Maritime Organization (IMO))
- (10) The vessel carrier identification SCAC code<sup>28</sup>
- (11) Container information
- (12) Load Status (Empty or Loaded)
- (13) Place carrier took possession of merchandise or empty container

#### Conditional Elements

- (1) Seal number(s)<sup>29</sup>

#### Optional Elements

- (1) Marks and Numbers
- (2) Number of house Bills of Lading
- (3) Country of Ultimate Destination

CBP provides additional flexibility in this proposed rule by allowing any eligible party with the most direct information to provide export manifest cargo data electronically to CBP two hours prior to loading that cargo or container onto a vessel preparing to depart the United States. Any other trade member (USPPIs, FPPIs, customs brokers, ABI filer, NVOCCs, freight forwarders or any other party with direct knowledge

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<sup>28</sup> The unique Standard Carrier Alpha Code assigned for each carrier in the National Motor Freight Traffic Association, Inc., Directory of Standard Multi-Modal Carrier and Tariff Agent Codes; see §4.7a(c)(2)(iii) of this chapter.

<sup>29</sup> The seal numbers must be provided for all seals affixed to containers to the extent that CBP's data system can accept this information (for example, if a container has more than two seals, and only two seal numbers can be accepted through the system per container, electronic presentation of two of these seal numbers for the container would be considered as constituting full compliance with this data element).

of the export data element) transmitting export manifest cargo data must be in possession of a bond to provide the export manifest cargo data and information to CBP. However, the outbound vessel carrier or its agent may also elect to transmit the mandatory manifest cargo data and in the case that no other party elects to provide the required manifest cargo data, it is the outbound vessel carrier's responsibility to provide this manifest cargo data to CBP. The following data elements comprise the CBP requested export manifest cargo data for vessel EEM in this proposed rule. CBP notes that if the data was already provided during the initial filing it does not need to be transmitted again unless there were updates or changes made to the data.

#### Mandatory Elements

- (1) Shipper name and address<sup>30</sup>
- (2) Consignee name and address<sup>31</sup>
- (3) Port of lading
- (4) Bill of Lading numbers
- (5) Bill of Lading type (Master, House, or Simple)
- (6) Cargo description
- (7) Hazardous Materials

#### Conditional Elements

- (1) In-bond number and type or in-bond house bill number
- (2) Mexican Pedimento (only for cargo exported to Mexico)
- (3) Notify Party name and address
- (4) Chemical Abstract Service (CAS) Registry Number
- (5) Additional Party Details

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<sup>30</sup> For empty containers, the shipper may be the carrier from whom the outbound vessel carrier received the empty container to transport.

<sup>31</sup> For empty containers, the consignee may be the carrier to whom the outbound vessel carrier is transporting the empty container.

(6) 6-character Hazmat Code<sup>32</sup>

Optional Elements

(1) Secondary Notify Party SCAC

(2) Vehicle Identification Number (VIN)

CBP provides a mapping and comparison of the vessel EEM test data elements and the data elements for the vessel EEM in Table 2 below. There were four data elements that were not carried forward from the test:

(1) Name of master

(2) Number and kind of packages

(3) Split shipment indicator (optional)

(4) Portion of split shipment

There will also be six new data elements introduced in the vessel EEM that do not map back to the test data elements:

(1) Voyage Number

(2) Mexican Pedimento

(3) Additional Party Details (conditional)

(4) Secondary Notify Party SCAC (optional)

(5) Place carrier took possession of merchandise or empty container

(6) Date of Departure

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<sup>32</sup> Including the UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided.

Table 2. Vessel EEM Test and NPRM Data Element Comparison

<b>Vessel EEM Test Elements (as revised in 2017)</b>	<b>Vessel EEM Data Elements</b>
Mode of transportation	Mode of transportation data
Name of ship or vessel	Vessel Name
	Vessel Code (IMO)
	The vessel carrier identification SCAC code
Nationality of ship	Vessel Country Code (ISO)
Name of master	
Port of loading	Port of lading
	Estimated scheduled departure date and departure port*
	Port of Departure
Port of discharge	Port of Unlading
Bill of Lading number	Bill of Lading number*
Bill of Lading type	Bill of Lading
Number of house Bills of Lading (optional)	Number of house Bills of Lading (optional)
Marks and Numbers (conditional)	Marks and Numbers (optional)
Container Numbers (conditional)	Container information
	Load Status (Empty or Loaded)
Seal Numbers (conditional)	Seal Numbers (conditional)
Number and kind of packages	
Description of goods	Precise description of cargo or HTSUS number*
Gross Weight or Measurements	Total Weight of Cargo*
Shipper name and address	Shipper's name and address or ID number*
Consignee name and address	Complete name and address of consignee or ID number*
Notify Party name and address (conditional)	Notify Party name and address (conditional)
Country of Ultimate Destination	Country of Ultimate Destination (optional)
In-bond number (conditional)	In-bond number and type (conditional)
ITN or AES Exemption Statement	AES Exemption Statement*
Split Shipment Indicator (optional)	
Portion of split shipment (optional)	
Hazmat Indicator	Hazardous Materials
	6-character Hazmat Code
UN Number (conditional)	
CAS Registry Number (conditional)	CAS Registry Number (conditional)
VIN or Product Identification Number (conditional)	VIN (optional)
	Voyage Number
	Mexican Pedimento (only for cargo exported to Mexico) (conditional)
	Additional Party Details (conditional)
	Secondary Notify Party SCAC (optional)
	Place carrier took possession of merchandise or empty container
	Date of Departure

\* Vessel EEM initial filing data elements requested as early as practicable but no later than 24 hours prior to cargo being loaded onto vessels.

Once the outbound vessel carrier or other trade member electronically transmits the export manifest empty container, transportation, and cargo data to CBP via ACE, CBP would validate, or if necessary, notify the responsible party of any holds. Transmitting this data electronically would allow CBP to use its ATS for all exported cargo in the sea environment and the integrated system would conduct the majority of risk assessment, screening, and review of the data limiting the time burden to CBP officers to conduct manual review of such data. The responsible party must then work with CBP to provide the appropriate information, address issues, or answer questions to release any holds. Until the hold(s) are released, that cargo cannot be loaded onto the vessel. CBP anticipates that when export manifest data is provided within the required deadlines of this proposed rule there should be very few if any instances where CBP issues a hold after cargo is loaded onto the vessel. However, if a hold is issued after loading the cargo or container onto the vessel, the outbound vessel may not depart or transport that cargo or container until the responsible party resolves all holds or that cargo is unloaded from the vessel.

CBP officers would manually review all export manifest data transmissions for which 1H Enforcement holds are issued and CBP officers would conduct cargo examinations where necessary prior to loading the cargo or container onto the vessel. CBP anticipates that obtaining this export manifest data through the integrated system would help CBP work with outbound vessel carriers and other parties to address almost all outstanding issues resulting from CBP review before loading the cargo onto a vessel attempting to depart the United States. This would significantly reduce the instances where issues would be addressed after the cargo is loaded onto the vessel and would

minimize requests for cargo returns or discharges at second U.S. ports and any other potential delays resulting from a CBP officer's examination of cargo in those scenarios.

As an enforcement tool, this proposed rule provides CBP with authority to impose penalties and/or claims for liquidated damages on parties that do not provide the mandatory EEM data in the manner and in the time frame required. CBP retains the enforcement discretion to assess penalties and/or claims for liquidated damages when a violation occurs. Any party that violates the requirements for data transmission as described above in this proposed rule is subject to pay liquidated damages of \$5,000 for each violation and up to a maximum of \$100,000 per departure. Although there is the possibility for monetary enforcement action, compliance is CBP's goal and CBP aspires to work alongside outbound vessel carriers and other trade members to ensure that trade members provide the proper data in a timely manner, so that CBP can properly review the data, conduct risk assessment to identify high-risk shipments, and enforce U.S. export laws and regulations on U.S. exports in the sea environment.<sup>33</sup>

### **Time Periods of Analysis**

This analysis primarily focuses on the potential outcomes of this proposed rule after it would be in effect, but it also includes a discussion of the impacts during the vessel EEM test program that were in place before the proposed rule. The costs, cost savings, and benefits of this vessel EEM test are sunk (already incurred and cannot be recovered) for the purposes of deciding whether to proceed with the proposed rule, but they are important for understanding the full costs and benefits of implementing CBP's vessel EEM program as a whole. To give the reader a full view of the effects of implementation of CBP's vessel EEM program through the entire span of time, CBP

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<sup>33</sup> Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 21, 2022. For EEM programs, while there is a possibility of penalties when a violation occurs, compliance is the goal and CBP will use flexible enforcement to encourage compliance while giving sufficient time for industry partners to acclimate to the new process.

analyzes the effects of implementing vessel EEM collection over two time periods, comparing each time period to the baseline scenario that existed prior to the vessel EEM test. First, CBP analyzes the effects from the vessel EEM test used for the collection of pre-departure manifest data on sea exports during the pilot period, fiscal years 2015-2025.<sup>34</sup> Second, CBP analyzes the effects of the proposed rule mandating the transmission of EEM data in the sea environment during the five-year regulatory period, beginning in fiscal year 2026 and ending in fiscal year 2030. For the regulatory period, CBP estimates, to the extent data is available, the total projected costs, cost savings and benefits to the Federal government, outbound vessel carriers and other trade members as a result of requiring the transmission of vessel EEM data for vessels departing the United States, compared to the baseline scenario. In the analysis for this proposed rule, CBP defines the pilot period as fiscal years 2015-2025 and the regulatory period as fiscal years 2026-2030. Additionally, all references to years are for fiscal years unless otherwise noted.

### **Population Affected by the Proposed Rule**

CBP expects that this proposed rule would affect a number of different parties. Because the vessel EEM test was limited in scope, CBP anticipates that effects were largely experienced by a few outbound vessel carriers and CBP during the pilot period. Additionally, CBP notes that although the initial vessel EEM test was made available to no more than a total of nine outbound vessel carriers and other trade members and during the test extension CBP removed the participant limitations as the test was extended to all eligible parties, in 2022 only two outbound vessel carriers actively participated in the

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<sup>34</sup> CBP anticipates that the test would still be active until fiscal year 2026 when the proposed rule would be finalized; however, at the time this analysis was written CBP only had actual data up through fiscal year 2023. Therefore, CBP provides estimates, not actual data, for the fiscal years 2024 and 2025 in this analysis.

vessel EEM test. However, by the end of 2023 there were 15 outbound vessel carriers actively or intermittently participating in the vessel EEM test. As the vessel EEM program expands during the regulatory period, CBP expects the expansion to have broader effects to all outbound vessel carriers, some other trade members (such as USPPs, FPPIs, customs brokers, ABI filer, NVOCCs, freight forwarders or any other party with direct knowledge of the export data elements), CBP, and other government agencies that oversee U.S. exports in the sea environment. CBP expects that this proposed rule would affect all outbound vessel carrier companies currently participating in exporting cargo from the United States in the sea environment.<sup>35</sup> This proposed rule could result in effects to a large number of other trade members specifically in the case they elect to provide electronic manifest cargo data directly to CBP via ACE. CBP estimates that approximately 455 other trade members would elect to provide vessel EEM data directly to CBP as a result of this proposed rule.<sup>36</sup> CBP expects that this proposed rule would also improve the facilitation of the export process at all U.S. seaports currently conducting the exportation of goods from the United States and would improve communication between CBP and trade members and CBP and other government agencies that oversee the enforcement of U.S. export laws and regulations.

### **Vessel EEM Test Data and Vessel Export Projections**

CBP was able to identify the actual number of electronic export manifest data transmissions by participating outbound vessel carriers during the test from 2016-2023.<sup>37</sup>

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<sup>35</sup> Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 13, 2023.

<sup>36</sup> Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 13, 2023. CBP expects there will be approximately 500 trade members that will directly participate in vessel EEM. CBP used internal data to identify approximately 45 outbound vessel carrier companies that will participate which suggests around 455 other trade members would directly participate in vessel EEM.

<sup>37</sup> Pilot period vessel EEM data transmission information provided by CBP's Cargo and Conveyance Security, Office of Field Operations subject matter expert on December 13, 2022 and December 20, 2023. Data obtained from CBP's ACE.

During that time frame, vessel EEM test participants provided a total of 2,768,815 export manifest data transmissions representing approximately 6.7 percent of all estimated export manifest data submissions.<sup>38</sup> Because CBP's pilot period includes future years, CBP does not have actual test data available for 2024 and 2025. To address this issue CBP provides estimates for the final two years of the pilot period. To estimate the number of vessel EEM test data transmissions that would occur in 2024 and 2025 CBP assumes that the number of transmissions would stay relatively the same as in 2023.<sup>39</sup> Therefore, CBP expects that in both 2024 and 2025 there would be approximately 749,113 test data transmissions.

In 2022, there were only two active outbound vessel carriers participating in the vessel EEM test. CBP notes that prior to the vessel EEM test both participants provided export manifest data to CBP electronically using VTM. However, by the end of 2023 the number of vessel EEM test participants increased to 15 outbound vessel carriers and none of these new participants was providing data using VTM prior to this test. Because CBP expects there would be different effects on vessel EEM test participants based on how they provided data to CBP during the baseline scenario (paper CBP Form 1302A or VTM), CBP includes data during the pilot period on VTM data transmissions and estimates how many vessel EEM data transmissions were conducted by prior VTM participants. CBP identified the actual number of VTM data transmissions submitted to CBP from 2016-2023 was around 3,806,162.<sup>40</sup> To estimate the number of VTM data transmissions that would occur in 2024 and 2025, CBP assumes that the number of

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<sup>38</sup> CBP estimated the number of total export manifest data submissions from 2016-2023 by assuming one CBP Form 1302A represents one export manifest data transmission. Additionally, CBP assumes that the total number of export manifest data submissions include the estimated number of outbound non-empty containers (CBP assumes one CBP Form 1302A per non-empty container), other vessel departures (CBP assumes one CBP Form 1302A per other vessel departure).

<sup>39</sup> In 2023 CBP received 749,113 vessel EEM test data transmissions, data obtained by CBP's Cargo and Conveyance Security, Office of Field Operations subject matter expert on December 20, 2023. Data obtained from CBP's ACE.

<sup>40</sup> Data provided by CBP's Cargo and Conveyance Security, Office of Field Operations subject matter expert on December 13, 2022 and December 20, 2023. Data obtained from CBP's ACE.

transmissions would stay relatively the same as in 2023. Therefore, CBP expects that in both 2024 and 2025 there would be approximately 188,811 data transmissions.<sup>41</sup>

Because there were only two outbound vessel carriers participating in the vessel EEM test until 2023, and both of the participants were prior VTM participants, CBP assumes that all vessel EEM test data transmissions prior to 2023 were made by VTM participants. For the year 2023, CBP obtained data showing that the two initial vessel EEM test participants conducted around 527,938 vessel EEM test data transmissions.<sup>42</sup> CBP assumes these two participants will submit the same number of vessel EEM test data transmissions in 2024 and 2025 and all other vessel EEM test transmissions will be submitted by non-VTM participants. CBP estimates that during the entire pilot period there will be approximately 4.2 million vessel EEM test data transmissions, where 3.6 million test data transmissions will be made by VTM participants and 0.6 million will be submitted by non-VTM participants. Table 3 below displays actual number of vessel EEM test, VTM data transmissions, the expected number of vessel EEM test transmissions made by VTM participants, and the expected number of transmissions made by non-VTM participants from 2016-2023, and the estimated numbers for 2024 and 2025.

Table 3. Vessel EEM Test and VTM Test Data and Pilot Period Estimates

Year	EEM Test Data Transmissions	VTM Data Transmissions	Transmissions By VTM Participants	Transmissions by non-VTM Participants
2015				
2016	207,437	597,288	207,437	
2017	284,152	631,862	284,152	
2018	332,291	666,666	332,291	
2019	318,440	461,548	318,440	
2020	323,069	416,683	323,069	
2021	265,424	460,056	265,424	

<sup>41</sup> CBP notes that as of 2023 there was only one outbound vessel carrier actively participating in providing export manifest data to CBP via VTM; CBP assumes that this carrier will continue to participate in VTM in 2024 and 2025 and CBP uses the number of transmissions in 2023 (118,811) as an estimate for future years in the pilot period.

<sup>42</sup> Data provided by CBP's Cargo and Conveyance Security, Office of Field Operations subject matter expert on December 20, 2023. Data obtained from CBP's ACE.

2022	288,889	383,248	288,889	
2023	749,113	188,811	527,938	221,175
2024*	749,113	188,811	527,938	221,175
2025*	749,113	188,811	527,938	221,175
Total	4,267,041	4,183,784	3,603,516	663,525

\*Pilot period years with estimated not actual values

Outside of the limited vessel EEM test and VTM data provided by participants, all other export manifest data (excluding data for EEI requirements) submitted by outbound vessel carriers are on paper forms. CBP assumes that the number of future EEM data transmissions would be equal to the number of CBP Form 1302As that would be submitted absent this proposed rule. Unfortunately, CBP does not track the number of CBP Form 1302As that are submitted annually. Therefore, it was not feasible for CBP to provide an exact count for how many CBP Form 1302As (and in turn electronic export manifest data transmissions) would be submitted once this rule is implemented. To estimate the number of export manifest data transmissions that would be submitted during the regulatory period, CBP used data from the United States Army Corps of Engineers Waterborne Commerce Statistics Center (WCSC). The WCSC publishes data on total foreign vessel departures by vessel type and total outbound non-empty container traffic exported out of the United States.<sup>43</sup> WCSC provides vessel departure numbers for different categories of vessels that actively engage in exporting goods and cargo out of the United States, including self-propelled dry bulk cargo vessels (including container vessels), tankers, dry cargo barges, liquid barges, towboats and cranes (other vessels). Unfortunately, the most recent data available from WCSC on outbound container traffic

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<sup>43</sup> United States Army Corps of Engineers Waterborne Commerce Statistics Center Waterborne Commerce Reports, 'U.S. Waterborne Container Traffic by Port/Waterway in 2022' <https://usace.contentdm.oclc.org/digital/collection/p16021coll2/id/1445> and 'Waterborne Cargo and Trips Data Files 2022' <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll2/id/14579>. Accessed July 2024. WCSC provides export non-empty container volume based in twenty-foot equivalent units (TEUs). TEUs is a unit of measurement used to determine cargo capacity for container ships and terminals and is the standard form of measurement for containers carried by container ships.

and vessel departures is for 2022.<sup>44</sup> Therefore, CBP provides estimates for the number of vessel departures for 2023, 2024 and 2025. CBP does not expect every vessel departure would require a paper CBP Form 1302A in the baseline scenario. CBP anticipates the only vessel categories provided by WCSC that would require the submission of a CBP Form 1302A (or EEM data transmission in the regulatory period) would be the self- propelled dry cargo vessels, tankers, dry cargo barges and liquid barges.<sup>45, 46</sup>

According to WCSC, from 2016-2022 there were a total of 400,954 self-propelled dry cargo vessel departures to a foreign country or on average 57,279 annually. To estimate the number of self-propelled dry cargo vessel departures in 2023, 2024 and 2025, CBP multiplied the CAGR for these types of vessels from 2016-2020 (1.31%) by the previous year's total estimated departures.<sup>47</sup> According to CBP's estimates from 2016-2025 there will be approximately 621,350 self-propelled dry cargo vessel departures or on average 62,135 departures annually. According to WCSC data, from 2016-2022 there were a total of 139,882 other vessel departures or on average 19,983 annually. CBP used the CAGR for other vessel departures from 2016-2022 (5.66%) to project the number of other vessel departures in 2023, 2024, and 2025.<sup>48</sup> CBP estimates that from 2016-2025 there will be around 224,318 other vessel departures or on average

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<sup>44</sup> CBP used WCSC data from 2016-2022. CBP did not obtain WCSC data for 2015 because vessel EEM test participation did not start until 2016 despite the pilot period starting in 2015 because of CBP IT development costs.

<sup>45</sup> CBP assumes that vessel departures for categories of towboats and cranes (other vessels) are typically not carrying cargo and would not require the submission of a CBP Form 1302A and therefore are excluded from the estimate for the number of future vessel EEM data transmissions.

<sup>46</sup> For the remainder of this analysis CBP groups the following vessel categories (tankers, dry cargo barges and liquid barges) and refers to them as 'other vessels'.

<sup>47</sup> CBP excluded departures in 2021 and 2022 from the CAGR calculation because there were significant increases resulting from the COVID-19 pandemic and CBP expects the change in departures for these vessels to return to the slower growth seen before 2021.

<sup>48</sup> CBP excluded the departures in 2021 and 2022 from the CAGR calculation because there was a significant increase resulting from the COVID-19 pandemic in 2021 which CBP anticipates may have also skewed the 2022 departure numbers. CBP expects the change in departures for other vessels to return to the slower growth seen before 2021.

22,432 departures annually.

During the regulatory period CBP assumes that vessel departures should continue to increase at relatively the same rate in future years as estimated during the final three years of the pilot period. Therefore, to estimate the number of self-propelled dry cargo vessel departures and other vessel departures in the regulatory period CBP used the same CAGR for each vessel category (1.31% for self-propelled dry cargo, and 5.66% for other vessels) that was used for pilot period years 2023-2025. According to CBP's estimates during the regulatory period there would be around 386,930 self-propelled dry cargo vessel departures or on average 77,386 annually. Additionally, CBP expects there would be around 175,741 other vessel departures or on average 35,148 annually. Table 4 below displays WCSC data for total vessel departures (less towboats and cranes), self-propelled dry cargo vessels and other vessels from 2016-2022 and CBP's estimates for these types of vessel departures for the final three years of the pilot period and during the five-year regulatory period.

Table 4. Estimated Vessel Departures Carrying Cargo in the Sea Environment 2016-2030

	Total Vessel Departures	Self -Propelled Dry Cargo Vessel Departure	Percent Change	CAGR 2016-2020	Other Vessel Departures	Percent Change	CAGR 2016-2020
Pilot Period							
2016	68190	52018			16172		
2017	68565	51322	-1.34%		17243	6.62%	
2018	69237	51515	0.38%		17722	2.78%	
2019	74411	55602	7.93%		18809	6.13%	
2020	74943	54788	-1.46%	1.31%	20155	7.16%	5.66%
2021	88724	64129	17.05%		24595	22.03%	
2022	96766	71580	11.62%		25186	2.40%	
2023*	99,126	72,514			26,611		
2024*	101,578	73,461			28,117		
2025*	104,128	74,420			29,708		
Total	845,668	621,350			224,318		
Regulatory Period							
	Total Vessel Departures	Self -Propelled Dry Cargo Vessel Departures			Other Vessel Departures		
2026	106,781	75,392			31,389		
2027	109,541	76,376			33,165		
2028	112,415	77,373			35,042		

2029	115,408	78,383			37,025		
2030	118,526	79,406			39,120		
Total	562,671	386,930			175,741		

\* Pilot period years with estimated not actual values

For this analysis CBP assumes that other vessels departures would only require a single CBP Form 1302A and therefore CBP assumes that every single other vessel departure would require a single export manifest data transmission in the regulatory period.<sup>49,50</sup> However, CBP does not know how many CBP Form 1302As and in turn export manifest data transmissions would be submitted for each self-propelled dry cargo vessel departure. Some of the vessels within this category are container vessels which can carry a very large number of containers. Additionally, each container could potentially require the submission of one or many CBP Form 1302As. To estimate how many CBP Form 1302As are submitted by these vessels, CBP obtained data on outbound non-empty container traffic from WCSC from 2016-2022.<sup>51</sup> CBP assumes that for every outbound non-empty container, outbound vessel carriers would provide one export data submission and every export manifest transmission received during the vessel EEM test represents one non-empty container.<sup>52</sup> CBP used previous year data from WCSC to estimate the number of non-empty containers departing the United States in future years. CBP estimates that the CAGR of non-empty containers between 2016-2019 was

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<sup>49</sup> Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on May 17, 2023.

<sup>50</sup> Other vessels can carry a variety of goods and cargo, however when compared to container vessels the quantity of different products is typically much smaller, considering each container could have hundreds of different types of goods and cargo. CBP expects that the number of different products on other vessels is fewer than container vessels and, in most cases, it is likely that all cargo on other vessels could be entered onto a single CBP Form 1302A. To account for the difference CBP makes the assumption that each container represents one CBP Form 1302A and every other vessel departure represents one CBP Form 1302A.

<sup>51</sup> CBP used WCSC data from 2016-2022. CBP did not obtain WCSC data for 2015 because vessel EEM test participation did not start until 2016 despite the pilot period starting in 2015 because of CBP IT development costs.

<sup>52</sup> Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on May 17, 2023. CBP assumes on average there would be one CBP Form 1302A per non-empty container. CBP acknowledges that one non-empty container could require multiple CBP Form 1302As depending on the content inside the container and it is possible for one CBP Form 1302A to represent more than one container. Additionally, CBP Form 1302A must be submitted at every U.S. port of export that the vessel departs. For the matter of simplicity CBP assumes that one export manifest data transmission represents one non-empty cargo container and likewise one CBP Form 1302A.

approximately 1.56%.<sup>53</sup> CBP multiplied this CAGR by the number of non-empty containers that departed the United States in 2022 to estimate the number of non-empty containers that would depart in 2023. CBP used the CAGR to estimate the number of non-empty containers for each additional future year using the CAGR and the estimate in the prior year for the number of non-empty containers. According to CBP's estimates during the regulatory period there would be around 60 million non-empty containers departing the United States in the sea environment or on average 12 million annually. Table 5 displays the actual number of non-empty containers from 2016-2022 obtained from WCSC and CBP's estimates for the number of non-empty containers for years 2023-2030.

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<sup>53</sup> CBP excluded data from years 2020-2022 in the CAGR calculation for the number of future non-empty containers because CBP believes including these years would introduce a downward bias on future year estimates. CBP expects that the number of non-empty containers departing the United States should continue to increase gradually in future years and therefore believes that the CAGR from 2016-2019 is a better estimate.

Table 5. Estimated Non-Empty Cargo Containers Departing the United States in the Sea Environment 2016-2030

	Non-Empty Containers	Percent Change	CAGR 2016-2019
Pilot Period			
2016	11,875,482		
2017	12,031,354	1.31%	
2018	12,291,082	2.16%	
2019	12,440,388	1.21%	1.561%
2020	11,456,383	-7.91%	
2021	11,463,780	0.06%	
2022	10,940,680	-4.56%	
2023*	11,111,479		
2024*	11,284,944		
2025*	11,461,118		
Total	116,356,689		
Regulatory Period			
2026	11,640,042		
2027	11,821,759		
2028	12,006,313		
2029	12,193,748		
2030	12,384,109		
Total	60,045,970		

\* Pilot period years with estimated not actual values

To estimate the number of vessel EEM data transmissions that would be submitted during the regulatory period, CBP added the estimated number of non-empty containers departing the United States each year (Table 4) and the estimated number of other vessel departures (Table 3). According to CBP's estimates, during the regulatory period outbound vessel carriers and other trade members would transmit around 60 million vessel EEM data transmissions or on average 12 million annually. During the baseline scenario CBP already had participants in the VTM and those participants did not submit paper CBP Form 1302As. CBP estimates that the number of paper CBP Form 1302As submitted during the pilot period by subtracting the number of VTM data transmissions and vessel EEM test data transmissions submitted by VTM participants

(see Table 3) from the number of non-empty containers and other vessel departures during each year. During the pilot period CBP expects that outbound vessel carriers will submit around 108 million paper CBP Form 1302As, or on average 10.8 million annually.

CBP assumes that during the regulatory period VTM data transmissions and vessel EEM data transmissions by VTM participants would remain relatively constant to the numbers provided in 2023 (see Table 3). Because this proposed rule would require that all outbound vessel carriers provide EEM data, there would not be any VTM data transmissions during the regulatory period. CBP includes the annual VTM data transmissions from 2023-2025 (188,881) in the number of vessel EEM data transmissions by VTM participants. CBP expects that absent this proposed rule outbound vessel carriers would provide 3.5 million VTM transmissions to CBP during the regulatory period or on average 716,749 annually. Because VTM participants do not submit paper CBP Form 1302As, CBP adjusted the total number of vessel EEM data transmissions in the regulatory period to estimate the number of paper CBP 1302As that would be eliminated as a result of this proposed rule. CBP subtracted the estimated number of VTM transmissions by the estimated number of total vessel EEM data transmissions to estimate the number of paper CBP Form 1302As that would be eliminated as a result of this proposed rule during each year of the regulatory period. CBP expects that this proposed rule would eliminate approximately 56.6 million paper CBP Form 1302As or on average 11.3 million annually. Table 6 below displays CBP's regulatory period estimates for non-empty containers departing the United States in the sea environment, the number of other vessel departures, total vessel EEM data transmissions, EEM data

transmissions from previous VTM participants and estimated number of eliminated paper CBP Form 1302As.

Table 6. Actual and Estimated Vessel EEM, VTM Transmissions and Paper CBP Form 1302As (2016-2030)

	Non-Empty Containers	Other Vessel Departures	Total Vessel EEM Data Transmissions	Vessel EEM Data Transmissions by VTM participants	VTM Data Transmissions	Estimated Number of Paper CBP 1302As
Pilot Period						
2016	11,875,482	16,172	207,437	207,437	597,288	11,086,929
2017	12,031,354	17,243	284,152	284,152	631,862	11,132,583
2018	12,291,082	17,722	332,291	332,291	666,666	11,309,847
2019	12,440,388	18,809	318,440	318,440	461,548	11,679,209
2020	11,456,383	20,155	323,069	323,069	416,683	10,736,786
2021	11,463,780	24,595	265,424	265,424	460,056	10,762,895
2022	10,940,680	25,186	288,889	288,889	383,248	10,293,729
2023*	11,111,479	26,611	749,113	527,938	188,811	10,421,341
2024*	11,284,944	28,117	749,113	527,938	188,811	10,596,312
2025*	11,461,118	29,708	749,113	527,938	188,811	10,774,077
Total	116,356,689	224,318	4,267,041	3,603,516	4,183,784	108,793,707
	Non-Empty Containers	Other Vessel Departures	Vessel EEM Data Transmissions	Vessel EEM Data Transmissions by VTM participants	VTM Data Transmissions	Estimated Number of Paper CBP 1302As
Regulatory Period						
2026	11,640,042	31,389	11,671,431	716,749		10,954,682
2027	11,821,759	33,165	11,854,924	716,749		11,138,175
2028	12,006,313	35,042	12,041,355	716,749		11,324,606
2029	12,193,748	37,025	12,230,773	716,749		11,514,024
2030	12,384,109	39,120	12,423,229	716,749		11,706,480
Total	60,045,970	175,741	60,221,711	3,583,745		56,637,966

\* Pilot period years with estimated not actual values

### Pilot Period (2016-2025)

Overall, the vessel EEM test was meant to test the functionality of providing export manifest data elements electronically to CBP through ACE and to test the feasibility of outbound vessel carriers providing those data elements prior to loading cargo onto vessels attempting to depart the United States. Unfortunately, the test participants do not provide these data elements within the time frames CBP requested

during the vessel EEM test. Instead of providing vessel EEM test data prior to loading cargo onto vessels, the test participants typically provide the vessel EEM test export manifest data elements to CBP within the time frames discussed during the baseline scenario, no later than four days post departure from the U.S. port of export. Therefore, during the pilot period CBP officers are not reviewing any vessel EEM test export manifest data these participants transmitted pre-departure and all CBP review would be conducted post departure. Additionally, CBP and participating outbound vessel carriers do not review or resolve any 1H Enforcement holds or 2H Documentation holds, automatically issued through the vessel EEM test system when conducting risk assessment and screening export manifest data, during the pilot period. CBP does not expect that there will be any time burdens or costs associated with reviewing or resolving these holds during the pilot period and because export manifest data is not being provided prior to loading cargo onto vessels CBP does not expect that the vessel EEM test will limit the number of requests for a cargo or container to be returned or discharged at a second U.S. port.

## **Costs**

### **CBP Costs**

CBP expects that both CBP and outbound vessel carriers that participate in the vessel EEM test will incur costs during the pilot period. Because the vessel EEM test operates through ACE, CBP did not have to develop an entirely new system. CBP estimates that the one-time development costs for creating the vessel EEM test tool and implementing it into ACE was approximately \$911,916.<sup>54</sup> Beyond the systems costs from developing the vessel EEM test, CBP also experiences ongoing system operation and maintenance costs every year during the pilot period. CBP estimates ongoing

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<sup>54</sup> Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations subject matter expert on December 13, 2022.

maintenance of the vessel EEM test system will cost CBP a total of 1.5 million during the pilot period or on average \$138,117 annually.<sup>55</sup> Table 7 below displays CBP's systems costs related to the development and maintenance of the vessel EEM test during the pilot period. CBP estimates that total CBP system costs during the pilot period will be approximately \$2.4 million or on average \$221,018 annually.

Table 7. Estimated CBP IT Systems Costs During Pilot Period (2015-2025) (costs in undiscounted 2023 U.S. dollars)

Year	Development	O&M	Total IT Costs
2015	\$911,916		\$911,916
2016		\$139,386	\$139,386
2017		\$142,035	\$142,035
2018		\$144,733	\$144,733
2019		\$147,483	\$147,483
2020		\$150,285	\$150,285
2021		\$153,141	\$153,141
2022		\$156,051	\$156,051
2023		\$159,016	\$159,016
2024*		\$162,037	\$162,037
2025*		\$165,116	\$165,116
Total	\$911,916	\$1,519,283	\$2,431,199

\* Pilot period years with estimated not actual values

### Trade Member IT Costs

CBP estimates that participating outbound vessel carriers also incur costs during the pilot period. Outbound vessel carriers that participate in the vessel EEM test also incur costs to adjust their IT systems to meet the requirements of the vessel EEM test and provide export manifest data directly to CBP via ACE. Many outbound vessel carrier companies that engage in exporting cargo out of the United States also engage in importing cargo into the United States. Similar to many other countries, the United States requires electronic transmission of import manifest data, and therefore outbound vessel carrier companies already have IT systems to meet these import requirements. The export manifest data requirements for the vessel EEM test at export are very similar

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<sup>55</sup> Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations subject matter expert on December 13, 2022. CBP estimated the annual amounts for 2023-2024 by assuming costs increased by 1.9% annually, the same growth rate CBP assumed in the actual year values.

to data requirements for advance electronic import manifest data required during the import process. Outbound vessel carriers have already developed systems for those electronic processes at import and, as such, the vessel EEM test participants stated that they did not need to develop new systems but merely adjusted existing IT systems.<sup>56</sup> As vessel carriers already have systems to interface with ACE for import filings, among other things, systems needed to be modified rather than developed. Trade members also stated that the IT system costs to participate in the vessel EEM test would be largely operation and maintenance costs associated with the new export portion of their IT system.<sup>57</sup> The cost of adjusting and maintaining IT systems to support providing export manifest data electronically to CBP can vary depending on the outbound vessel carrier or trade member. Therefore, CBP provides a range of estimates for the IT system costs to the average vessel EEM participant during the pilot period.

CBP anticipates that the annual IT systems costs required to participate in the vessel EEM test could range from approximately \$10,000 to \$60,000 each year.<sup>58, 59</sup> CBP used the midpoint within the range — \$35,000 — as CBP’s primary estimate for annual IT systems costs to the average outbound vessel carrier participating in the vessel EEM test. As range estimates, CBP used a low estimate of \$10,000 and a high estimate of \$60,000

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<sup>56</sup> Data was obtained from feedback from Trade members on the potential costs to internal IT systems to support providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023.

<sup>57</sup> Data was obtained from feedback from Trade members on the potential costs to internal IT systems to support providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023.

<sup>58</sup> Data was obtained from feedback from Trade members on the potential costs to internal IT systems to support providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023.

<sup>59</sup> CBP notes that the two vessel EEM test participants in 2022 were already providing VTM electronic export data to CBP prior to participation in the vessel EEM test thus merely transitioning from one form of electronic data transmission to another. Therefore, CBP does not know if IT systems costs to an outbound vessel carrier would be greater than the high range estimate of \$60,000 annually if a carrier transitions from paper export manifest data to electronic data transmission as required by the vessel EEM test.

for the annual IT systems costs to each vessel EEM test participant each year.

According to CBP's primary estimate the vessel EEM test participants will incur approximately \$2,065,000 in total costs to adjust and maintain their IT systems for providing EEM data to CBP during the pilot period. CBP's alternate low and high estimates show that IT systems total costs to the participating outbound vessel carriers could be between \$590,000 and \$3,540,000 during the pilot period. Table 8 displays CBP's range of cost estimates for total annual IT systems costs to outbound vessel carrier participants during the pilot period. CBP requests comments from outbound vessel carriers and trade members on the costs associated with adjusting information technology systems to provide vessel EEM test data to CBP.

Table 8. Estimated Systems Costs to Vessel EEM Participants During Pilot Period 2015 - 2025 (cost in undiscounted 2023 U.S. dollars)

Year	Number of Vessel EEM Participants	Primary Estimate (\$35,000)	Low Estimate (\$10,000)	High Estimate (\$60,000)
2015	0	\$0	\$0	\$0
2016	2	\$70,000	\$20,000	\$120,000
2017	2	\$70,000	\$20,000	\$120,000
2018	2	\$70,000	\$20,000	\$120,000
2019	2	\$70,000	\$20,000	\$120,000
2020	2	\$70,000	\$20,000	\$120,000
2021	2	\$70,000	\$20,000	\$120,000
2022	2	\$70,000	\$20,000	\$120,000
2023	15	\$525,000	\$150,000	\$900,000
2024*	15	\$525,000	\$150,000	\$900,000
2025*	15	\$525,000	\$150,000	\$900,000
Total		\$2,065,000	\$590,000	\$3,540,000

\* Pilot period years with estimated not actual values

### Trade Member Opportunity Costs

In addition to costs associated with adjusting and maintaining information technology systems, CBP expects that some vessel EEM test participants face time burdens and opportunity costs when providing the vessel EEM test data to CBP. As mentioned earlier, as part of the vessel EEM test CBP requests that test participants provide the paper CBP Form 1302A along with the vessel EEM test data so that CBP can capture any inconsistencies or issues with the electronic transmission of vessel EEM test data to CBP. Because VTM participants are not required to provide paper CBP Form 1302As in addition to their VTM transmission, only vessel EEM test participants that were not previously VTM participants will incur this additional time burden when submitting both vessel EEM test data and paper CBP Form 1302As.<sup>60</sup> In Table 3, CBP provides an estimate for the number of vessel EEM test data transmissions that will be submitted by non-VTM participants (663,525) during the pilot period. CBP anticipates that during the pilot period, vessel EEM test participants that were not previously VTM

<sup>60</sup> Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on March 15, 2023.

participants incur a time burden of approximately 1.71 minutes (0.028 hours) per vessel EEM data transmission.<sup>61</sup> CBP multiplied the number of non-VTM participant EEM test data transmissions each year by the average time burden per transmission to estimate the time burden to vessel EEM test participants during each year of the pilot period. CBP estimates that these vessel EEM test participants will incur a time burden of around 18,889 hours. CBP calculated the costs to these outbound vessel carriers in the pilot period, by multiplying the total time burden (18,889) hours by the average hourly loaded rate for vessel operators (\$72.17). CBP calculated this loaded wage rate by first multiplying the Bureau of Labor Statistics' (BLS) 2022 median hourly wage rate for Captains, Mates, and Pilots of Water Vessels (\$45.77), which CBP assumes<sup>62, 63</sup> CBP anticipates that these outbound vessel carriers will incur time burden costs of approximately \$1,363,245 or on average \$454,415 annually during the pilot period.

<sup>61</sup> CBP calculations based on data obtained from feedback and discussions with Trade members on the potential costs associated with providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023. CBP obtained time burden hours associated with providing vessel EEM data to CBP over the course of several months and the number of data transmissions provided. CBP used this data to estimate the average time burden associated with a single vessel EEM data transmission.

<sup>62</sup> CBP calculated this loaded wage rate by first multiplying the Bureau of Labor Statistics' (BLS) 2022 median hourly wage rate for Captains, Mates, and Pilots of Water Vessels (\$45.77), which CBP assumes best represents the wage for captains, mates, and pilots of water vessels, by the ratio of BLS' Q4 2022 total compensation to wages and salaries for Transportation and Material Moving occupations (1.4736), the assumed occupational group for captains, mates, and pilots of water vessels, to account for non-salary employee benefits.

Source of median wage rate: U.S. Bureau of Labor Statistics. Occupational Employment and Wage Statistics, “May 2022 National Occupational Employment and Wage Estimates United States.” Updated April 25, 2023. Available at [https://www.bls.gov/oes/2022/may/oes\\_nat.htm](https://www.bls.gov/oes/2022/may/oes_nat.htm). Accessed August 21, 2023. The total compensation to wages and salaries ratio is equal to the total compensation cost per hour worked for Transportation and Material Moving occupations (\$33.51) divided by the wages and salaries cost per hour worked for the same occupation category (\$22.74). See “Table 2. Employer Costs for Employee Compensation for civilian workers by occupational and industry group.” Bureau of Labor Statistics, “Employer Costs for Employee Compensation – December 2022.” Released March 17, 2023. Available at [https://www.bls.gov/news.release/archives/ecec\\_03172023.pdf](https://www.bls.gov/news.release/archives/ecec_03172023.pdf). Accessed August 29, 2023.

<sup>63</sup> CBP assumes an annual growth rate of 7.01% based on the prior year's change in the implicit price deflator, published by the Bureau of Economic Analysis. To adjust to 2023 dollars, multiply by the 2021-2022 percent change in the Bureau of Economic Analysis's Implicit Price Deflators for Gross Domestic Product (127.224/118.895-1). See "Table 1.1.9. Implicit Price Deflators for Gross Domestic Product," Line 1 Gross Domestic Product, annual. Bureau of Economic Analysis. Updated August 30, 2023.

Available at

<https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey#eyJhcHBpZCI6MTkslnN0ZXBzljpbMSwyLDMsM10slmRhdGEiOltblmNhdGVnb3JpZXMiLCJTdXJ2ZXkiXSxbk5JUEFfVGFibGVfTGldZCIsIjEzIl0sWyJGaXJzdF9ZZWFyIiwiaWwMjAxNiJdLFsiTGZzdF9ZZWFyIiwiaWwMjAyMyJdLFsiU2NhbGUuLCIwIl0sWyJ0ZXJpZXMiLCJBIl1dfQ==>. Accessed September 20, 2023.

Table 9 displays CBP’s time burden and cost estimates to non-VTM participants while providing the vessel EEM test data to CBP during the pilot period.

Table 9. Estimated Time Burden Costs to Vessel EEM Participants During Pilot Period 2015 - 2025 (time burden in hours, costs in undiscounted 2023 U.S. dollars)

Year	Data Transmissions by non-VTM participants	Time Burden per Transmission	Estimated Time Burden	Wage Rate	Time Burden Costs
2015		0.028		\$72.17	
2016		0.028		\$72.17	
2017		0.028		\$72.17	
2018		0.028		\$72.17	
2019		0.028		\$72.17	
2020		0.028		\$72.17	
2021		0.028		\$72.17	
2022		0.028		\$72.17	
2023	221,175	0.028	6,296	\$72.17	\$454,415
2024*	221,175	0.028	6,296	\$72.17	\$454,415
2025*	221,175	0.028	6,296	\$72.17	\$454,415
Total	663,525		18,889		\$1,363,245

\* Pilot period years with estimated not actual values

#### Total Costs

CBP estimates that during the pilot period total costs from this proposed rule will be around \$5,859,444 or on average \$532,677 per year. CBP anticipates CBP will incur total costs of around \$2,431,199 and outbound vessel carriers participating in the vessel EEM test will incur costs around \$3,428,245. Table 10 below shows CBP’s estimates for the total costs from this proposed rule during the pilot period.

Table 10. Total Estimated Costs During Pilot Period 2015-2025 (costs in undiscounted 2023 U.S. Dollars)

Year	CBP IT Costs	Test Participant System Costs	Test Participant Time Burden Costs	Total Participant Costs	Total Costs
2015	\$911,916				\$911,916
2016	\$139,386	\$70,000		\$70,000	\$209,386
2017	\$142,035	\$70,000		\$70,000	\$212,035
2018	\$144,733	\$70,000		\$70,000	\$214,733
2019	\$147,483	\$70,000		\$70,000	\$217,483
2020	\$150,285	\$70,000		\$70,000	\$220,285
2021	\$153,141	\$70,000		\$70,000	\$223,141
2022	\$156,051	\$70,000		\$70,000	\$226,051
2023	\$159,016	\$525,000	\$454,415	\$979,415	\$1,138,431
2024*	\$162,037	\$525,000	\$454,415	\$979,415	\$1,141,452
2025*	\$165,116	\$525,000	\$454,415	\$979,415	\$1,144,531
Total	\$2,431,199	\$2,065,000	\$1,363,245	\$3,428,245	\$5,859,444

\* Pilot period years with estimated not actual values

## Cost Savings

CBP expects that some vessel EEM test participants may have experienced some time and cost savings during the pilot period as a result of participating in the vessel EEM test. As stated earlier, two vessel EEM test participants provided export data to CBP through VTM prior to participating in the vessel EEM test. Unlike the VTM, the vessel EEM test does not require outbound vessel carriers to submit and match booking data with the export manifest data.<sup>64</sup> Therefore, when transitioning from VTM to the vessel EEM test, these outbound vessel carriers experienced some time savings from no longer providing and matching booking data with the export manifest data. CBP estimates that this resulted in a time savings to these outbound vessel carrier participants of approximately 30 minutes (0.5 hours) on average per departing vessel.<sup>65</sup> During the pilot period CBP obtained the number of export manifest data transmissions from outbound vessel carriers participating in the vessel EEM test but CBP does not have exact data

<sup>64</sup> If a vessel carrier participated in the vessel EEM test and was providing data via VTM prior to participating in the test, such a vessel carrier would not be required to provide VTM data when providing EEM data.

<sup>65</sup> This estimate was based on data obtained from feedback from Trade members on the potential costs to internal IT systems to support providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023.

available for the number of vessel departures that experience this potential time savings during the pilot period.

To estimate the number of vessel departures that experience this time savings as a result of the vessel EEM test, CBP used data from the WCSC. Outbound vessel carriers participating in the vessel EEM test that are expected to experience a times savings largely provide export data for dry cargo onboard large container vessels. WCSC data does not provide the level of detail necessary to identify the specific number of container vessels within the self-propelled dry cargo vessels classification. Therefore, CBP used WCSC data on outbound container volume and the number of self-propelled dry cargo vessel departures to calculate an estimate for the number of vessel departures that experienced a time savings during the pilot period.<sup>66</sup> According to CBP's estimates from 2016 to 2025, there will be a total of 621,350 self-propelled dry cargo vessel trips and a total of 116,356,689 outbound non-empty containers. CBP assumes that for every outbound non-empty container, outbound vessel carriers would provide one export data submission. CBP assumes that these non-empty containers are equally distributed across all self-propelled dry cargo vessel departures.

CBP calculated the ratio of total outbound containers that will have vessel EEM test data transmitted by VTM participants during the vessel EEM test by dividing the total expected outbound non-containers departing the United States (see Table 5) by the expected number of export manifest data transmissions that will be provided by previous VTM participants during the vessel EEM test (see Table 3) for each year of the pilot period. Overall, CBP estimates that in total from 2016-2025 these vessel EEM test

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<sup>66</sup> For vessel departures WCSC provides data in six categories, self-propelled dry, tanker, towboat, dry cargo barge, liquid barge, crane (other). Unfortunately, WCSC does not provide departure data on container vessels only. Therefore, due to this lack of data CBP assumes that the self-propelled dry vessel category is the appropriate classification for large container vessels; however, there are other vessels included in the total count for self-propelled dry cargo vessels beyond large container vessels. Additionally, WCSC most recent data is only available through 2022, therefore CBP projected the number of self-propelled dry vessel departures and number of non-empty containers above in Tables 4 and 5 above.

participants transmitted around 3.1% of all expected export manifest data submissions.

To determine an estimate for the number of vessel departures affected by the vessel EEM test during the pilot period, CBP multiplied the ratio of total export manifest data transmitted by VTM participants during the vessel EEM test by the estimated number of self-propelled dry cargo vessel departures each year (see Table 4). During the pilot period CBP estimates that, as a result of the vessel EEM test, previous VTM participants experienced a time savings from 20,167 vessel departures or on average 2,017 vessel departures annually.<sup>67</sup> Table 11 displays CBP's estimates for total EEM data transmitted to the vessel EEM test, data from WCSC for non-empty container traffic and self-propelled dry cargo vessel departures for 2016-2022, along with CBP's estimates for 2023, 2024, and 2025 and CBP's estimate for the number of vessel EEM test departures that will experience a time savings from no longer having to match booking data.

Table 11. Estimated Vessel Departures with Time Savings during Pilot Period (2015-2025)

Year	Vessel EEM Data Transmissions by VTM Participants	Non-Empty Containers	VTM to EEM Data Transmissions as a Percent of Total	Self-Propelled Dry Vessel Departures	Estimated Vessel EEM Departures With Time Savings
2015					
2016	207,437	11,875,482	1.75%	52,018	909
2017	284,152	12,031,354	2.36%	51,322	1,212
2018	332,291	12,291,082	2.70%	51,515	1,393
2019	318,440	12,440,388	2.56%	55,602	1,423
2020	323,069	11,456,383	2.82%	54,788	1,545
2021	265,424	11,463,780	2.32%	64,129	1,485
2022	288,889	10,940,680	2.64%	71,580	1,890
2023*	527,938	11,111,479	4.75%	72,514	3,445
2024*	527,938	11,284,944	4.68%	73,461	3,437
2025*	527,938	11,461,118	4.61%	74,420	3,428
Total	3,603,516	116,356,689		621,350	20,167

\* Pilot period years with estimated not actual values

To calculate the potential time savings experienced by these outbound vessel carriers during vessel EEM test participation, CBP multiplied the expected number of vessel EEM departures (20,167) by the average time savings per vessel (0.5 hours). CBP

<sup>67</sup> Because participation did not begin until 2016, the annual average for vessel departures is based on 2016-2022 departures.

estimates that during the pilot period these outbound vessel carrier participants experienced a total of 10,083 hours in time savings or on average 917 hours annually. CBP quantified these time savings using the average hourly loaded wage rate for vessel operators (\$72.17). CBP estimates that for each vessel EEM departure the participating carriers experienced a cost savings of approximately \$36.09 ( $\$72.17 \times 0.5$  hours). CBP estimates that the total cost savings to outbound vessel carrier participants during the vessel EEM test will be approximately \$727,716 or on average \$66,156 annually.<sup>68</sup> Table 12 displays CBP's estimates for the time and cost savings that will be experienced by outbound vessel carriers participating in the vessel EEM test that were prior VTM participants during the pilot period.

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<sup>68</sup> The annual average only includes data from years 2016-2025.

Table 12. Estimated Vessel Departures with Time Savings during Pilot Period 2015-2025 (time savings in hours, cost savings in undiscounted 2023 U.S. dollars)

Year	Estimated Vessel EEM Departures With Time Savings	Time Savings per Departure	Total Time Savings	Wage Rate	Total Cost Savings
2015		0.5	-	\$72.17	\$0
2016	909	0.5	454	\$72.17	\$32,788
2017	1,212	0.5	606	\$72.17	\$43,739
2018	1,393	0.5	696	\$72.17	\$50,256
2019	1,423	0.5	712	\$72.17	\$51,358
2020	1,545	0.5	773	\$72.17	\$55,752
2021	1,485	0.5	742	\$72.17	\$53,579
2022	1,890	0.5	945	\$72.17	\$68,203
2023*	3,445	0.5	1,723	\$72.17	\$124,326
2024*	3,437	0.5	1,718	\$72.17	\$124,013
2025*	3,428	0.5	1,714	\$72.17	\$123,701
Total	20,167		10,083		\$727,716

\* Pilot period years with estimated not actual values

## Benefits

According to Section 343(a) of the Trade Act (19 U.S.C. 1415), CBP is authorized to establish regulations that provide for the mandatory electronic transmission of data by way of a CBP-approved electronic data interchange before cargo arrives or departs the United States in all environments (sea, air, rail, and truck). CBP developed and implemented the vessel EEM test to determine a feasible process to implement the Trade Act authority. Because during the pilot period vessel EEM test participants are not providing export manifest data to CBP prior to the cargo loading or prior to departure of the vessel, CBP does not believe that vessel carrier participants or CBP experience any benefits from the vessel EEM test during the pilot period. Because participants are not providing export manifest data to CBP earlier in the export process when compared to the baseline scenario, the vessel EEM test likely will not affect CBP's ability to identify high-risk cargo and improve cargo safety and security measures during the pilot period. CBP acknowledges that if there were any benefits during the pilot period, they will most likely be minimal. CBP believes that there could be some gained efficiencies from

obtaining export manifest data in an integrated system even when provided post departure if CBP reviews the vessel EEM test data once received four or more days post departure. Unfortunately, CBP does not have data on how often this occurred prior to the vessel EEM test or during the pilot period but CBP expects it was most likely infrequent.<sup>69</sup> The pilot was deemed successful not for the benefits attained during the pilot period but because of the cost savings and because it helped CBP and the trade identify a workable regulatory framework in line to implement the Trade Act of 2002 authority.

### **Net Impact of the Pilot Period**

During the pilot period the vessel EEM test results in costs to CBP and vessel EEM test participants and some cost savings to some test participants. Because outbound vessel carriers are not providing the export manifest data within the timeframes requested by CBP during the test, the vessel EEM test will not likely result in security benefits during the pilot period. According to CBP's estimates the vessel EEM test will result in total net costs of over \$5,131,729 or on average \$466,521 annually. CBP incurred IT systems costs of approximately \$2,431,199 during the pilot period while vessel carrier participants experienced net costs of around \$2,700,529 or on average \$245,503 annually.<sup>70</sup> Table 13 displays CBP's estimates for net costs from the vessel EEM test during the pilot period.

Table 13. Total Net Costs during the Pilot Period 2015-2025 (cost in U.S. 2023 dollars)

Year	CBP Costs	Vessel Participant Costs	Vessel Participant Cost Savings	Vessel Participant Net Costs	Total Net Costs
2015	\$911,916	\$0	\$0	\$0	\$911,916
2016	\$139,386	\$70,000	\$32,788	\$37,212	\$176,598
2017	\$142,035	\$70,000	\$43,739	\$26,261	\$168,296
2018	\$144,733	\$70,000	\$50,256	\$19,744	\$164,477
2019	\$147,483	\$70,000	\$51,358	\$18,642	\$166,125
2020	\$150,285	\$70,000	\$55,752	\$14,248	\$164,533

<sup>69</sup> Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on December 15, 2022 and February 15, 2023.

<sup>70</sup> Average annual net costs to outbound vessel carriers were based on data from 2016-2025 since no costs or cost savings were incurred in 2015.

2021	\$153,141	\$70,000	\$53,579	\$16,421	\$169,562
2022	\$156,051	\$70,000	\$68,203	\$1,797	\$157,848
2023*	\$159,016	\$979,415	\$124,326	\$855,089	\$1,014,105
2024*	\$162,037	\$979,415	\$124,013	\$855,402	\$1,017,439
2025*	\$165,116	\$979,415	\$123,701	\$855,714	\$1,020,830
Total	\$2,431,199	\$3,428,245	\$727,716	\$2,700,529	\$5,131,729

\* Pilot period years with estimated not actual values

Table 14 below displays CBP's estimate for discounted net costs from the vessel EEM test during the pilot period. As shown, CBP expects that this proposed rule will result in net costs to CBP and participating vessel carriers during the pilot period ranging from \$4,167,303 in 2023 U.S. dollars using a three percent discount rate and \$3,248,717 in 2023 U.S. dollars using a seven percent discount rate. CBP estimates that annualized net costs will range from \$450,391 using a three percent discount rate to \$433,329 using a seven percent discount rate.

Table 14. Total Monetized Present Value and Annualized Net Costs of Pilot Period 2015-2025 (2023 U.S. Dollars)

	3% Discount Rate	7% Discount Rate
Present Value Costs	\$4,167,303	\$3,248,717
Annualized Cost	\$450,391	\$433,239

### **Regulatory Period (2026-2030)**

For the regulatory period CBP estimated the future costs, cost savings, and benefits to CBP, vessel carriers, other trade members and other Federal government agencies as a result of the implementation of the vessel EEM program. During the regulatory period CBP would require trade members providing data to abide by the deadlines established by the proposed rule and, as a result of providing the export manifest data prior to loading cargo onto vessels, there would be additional effects that did not exist during the pilot period. These effects would also be on a much larger scale during the regulatory period because all outbound vessel carriers and some other trade members would be affected.

### **Summary of Changes and Effects of this Proposed Rule**

This proposed rule would directly result in a number of required changes that would affect both CBP and trade members. CBP was able to quantify some of the costs, cost savings and benefits resulting from these changes; however, due to lack of available data and information for some of these changes, CBP could only discuss these effects qualitatively. CBP provides in Table 15 below, a summary of the changes, costs, cost savings, benefits, and where the change or effect is discussed in greater detail in the regulatory period section of this analysis.

**Table 15. Summary of the Costs and Benefits of Vessel EEM Implementation in the Regulatory Period**

<b>Summary of Change</b>	<b>Annual Cost, Cost Savings or Benefit</b>	<b>Regulatory Period Analysis Section</b>
CBP Maintaining IT Systems for Vessel EEM	COST: \$175,000	CBP IT Systems Costs
CBP Time Burden to Review and Address CBP Issued Holds on Vessel EEM Data	COST: \$826,000	CBP Opportunity Costs
Additional Cargo Examinations Related to ATS Review of All Vessel Exported Cargo	COST: CBP does not expect this proposed rule will result in additional manual cargo examinations by CBP Officers. If additional examinations result, CBP anticipates this will cost CBP approximately \$101.44 per examination.	CBP Miscellaneous Costs
Trade Members IT Systems Updates and Maintenance to Provide Vessel EEM Data to CBP	COST: \$17,500,000	Trade Member IT Systems Costs
Trade Members Providing Vessel EEM Data	COST: \$24,700,000	Trade Member Opportunity Costs
Trade Members Addressing and Resolving CBP Issued Holds on Vessel EEM Data	COST: \$7,300,000	Trade Member Opportunity Costs
Require CBP 1300 Submission Two hours Prior to Departure	COST: CBP does not expect this to result in more than negligible costs if any.	Trade Member Miscellaneous Costs
Trade Members Complying with New Data Transmission Deadlines	COST: Vessel carriers will have to cooperate with other trade members to provide completed export manifest data within the deadlines of this proposed rule, at least 4 days earlier than prior to this rule. CBP notes that for many exports, pre-departure data is already required by either existing U.S. export regulations or existing import requirements from the country to which the cargo is being shipped.	Trade Member Miscellaneous Costs
Trade Members Transitioning Business Practices from a Paper to Electronic Process	COST: Trade members could incur costs related to this transition; however, CBP expects this to be minimal because trade members likely already have such practices developed to provide manifest data for imports that can be reused to provide export manifest data.	Trade Member Miscellaneous Costs
Bond Requirement for Participants	COST: CBP expects these costs would be minimal if any as all trade members generally are already subject to other bond requirements that would qualify them to participate in the vessel EEM.	Trade Member Miscellaneous Costs
Require Vessel EEM Participants to Have Staff Available for Contact	COST: CBP expects these costs would be negligible since additional staffing would not be required.	Trade Member Miscellaneous Costs
Trade Members Subject to Noncompliance Penalties and Claims for Liquidated Damages	COST: CBP expects such penalties and liquidated damages to be minimal and these are used as an enforcement tool to improve compliance with U.S. export laws and regulations.	Trade Member Miscellaneous Costs
Transitioning from VTM Participation to Vessel EEM submission	COST SAVING: \$166,192	Trade Member Opportunity Cost Savings
Eliminating the Paper CBP Form 1302A	COST SAVING: \$41,000,000	Trade Member Opportunity Cost Savings
Eliminating CBP Requests for Cargo Returns	COST SAVING: \$11,800,000 BENEFIT: CBP estimates this proposed rule would eliminate 2,261 requests for return annually, preventing these shipments from leaving the United States before examination; this is an added benefit of cargo security to CBP.	Trade Member Opportunity Cost Savings / Benefits Sections
Eliminating CBP Requests for Discharges	COST SAVING: \$4,300,000 BENEFIT: CBP estimates this proposed rule would eliminate 2,898 requests for discharge annually, preventing these shipments from boarding a vessel attempting to depart United States before examination; this is an added benefit of cargo security to CBP.	Trade Member Opportunity Cost Savings / Benefits Sections
Reducing Printing and Paper Costs	COST SAVING: CBP anticipates that moving to electronic data transmission of export manifest data would reduce the space required to store and file paper manifest documents, generating savings to vessel carriers and other trade members	Trade Member Miscellaneous Cost Savings
Compliance with Trade Act of 2002 in Air Environment	BENEFIT: According to the Trade Act of 2002, CBP is authorized to establish regulations that provide for the mandatory electronic transmission of data by way of a CBP-approved electronic data interchange before cargo arrives or departs the United States in all environments (sea, air, rail, and truck). This proposed rule would allow CBP to implement the Trade Act authority in the sea environment.	Benefits
Enhance CBP Security Efforts	BENEFIT: Vessel EEM data transmission allows CBP to use ATS to conduct risk assessment on all exports in the sea environment, assisting CBP to prevent smuggling and improve CBP's efforts to ensure cargo safety and security.	Benefits
Improve Government Coordination on Exports	BENEFIT: Improve coordination and communication between CBP and the Department of Commerce and other government agencies with export jurisdiction, while enforcing U.S. export laws and regulations.	Benefits

## Costs

### CBP IT Systems Costs

CBP would bear technology and opportunity costs by expanding the existing test to a mandatory program for all outbound vessel carriers and all exports in the sea environment. CBP does not anticipate it would incur any costs to develop new systems during the regulatory period because CBP completed the system development and implementation of the vessel EEM application into ACE during the pilot period. CBP does expect to incur some ongoing systems operations and maintenance costs associated with the vessel EEM application in ACE. Over the course of the regulatory period, CBP estimates that ongoing systems costs associated with the vessel EEM would be approximately \$873,847 or on average \$174,769 each year.<sup>71</sup>

### CBP Opportunity Costs

In addition to the ongoing systems costs, CBP expects to incur additional time burdens as a result of CBP officers manually reviewing, addressing and resolving 1H Enforcement holds during the regulatory period. To estimate the number of CBP 1H Enforcement holds that would be issued during the regulatory period, CBP used the number of CBP 1H Enforcement holds issued from 2018 through 2023 (6,157) compared to the total number of vessel export manifest data transmissions during the vessel EEM test during that same time period (2,277,226).<sup>72</sup> CBP estimates that on average a 1H Enforcement hold was issued on 0.27 percent (6,157 divided by 2,277,226) of all EEM test data transmissions. CBP assumes that during the regulatory period the percent of 1H Enforcement holds issued per export manifest data transmissions would remain relatively

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<sup>71</sup> Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 13, 2022. CBP extrapolated ongoing maintenance and operations costs using a 1.9% annual increase each year, as used in the initial estimate provided.

<sup>72</sup> CBP vessel EEM test data provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on December 13, 2022 and December 20, 2023. CBP did not include 2016 and 2017 in the calculation because the vessel EEM test was gradually being implemented and 1H Enforcement holds were not issued for all vessel EEM test data transmissions until 2018.

constant compared the percent issued from 2018-2023. CBP multiplied the estimated 1H Enforcement hold rate of 0.27 percent by the estimated future volume of export manifest data transmissions to CBP (see Table 6) to estimate the number of 1H Enforcement holds issued during each year of the regulatory period.

Although CBP does not anticipate 2H Documentation holds would require any action or response by a CBP officer, 2H Documentation holds would affect trade members and for consistency CBP elected to present the calculation of all estimated future holds together in Table 16. During the vessel EEM test, 2H Documentations holds are not being issued because participants are only providing data once it is complete and finalized no later than four days post departure. Therefore, in order to estimate the number of 2H Documentation holds that would be generated during the regulatory period as a result of this proposed rule, CBP used data obtained from a similar EEM test program – the ACE Electronic Export Manifest for Rail Cargo test (rail EEM test). In the rail EEM test, 2H Documentation holds were issued for approximately 3.78% percent of all EEM test data transmissions and CBP uses this as a proxy for how many 2H Documentation holds would be issued during the vessel EEM regulatory period.<sup>73</sup> To estimate the potential number of CBP issued holds each year of the regulatory period, CBP multiplied the percentage of data transmissions that were issued holds during the pilot period by the estimated number of total data transmissions. CBP anticipates that

this proposed rule would result in CBP issuing approximately 162,823 1H Enforcement holds and around 2,276,381 2H Documentation holds during the regulatory period.

Table 16 below displays CBP's estimates for the number of 1H Enforcement holds and 2H Documentation holds that would be issued each year as a result of this proposed rule.

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<sup>73</sup> Data from the ACE Electronic Export Manifest for Rail Cargo test for years 2020- 2023, provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022, and May 9, 2024. Data obtained from CBP's ACE.

Table 16. Actual and Estimated Holds Issued by Vessel EEM 2015-2030

	Vessel EEM Data Transmissions	1H Enforcement Holds Issued	2018-2023 1H Holds Per Data Transmission
Pilot Period			
2015			
2016	207,437	7	
2017	284,152	246	
2018	332,291	607	
2019	318,440	453	
2020	323,069	681	
2021	265,424	763	
2022	288,889	1,112	
2023	749,113	2,541	0.27%
2024*	749,113	-	
2025*	749,113	-	
Total	4,267,041		
	Vessel EEM Data Transmissions	1H Enforcement Holds Issued 0.27% of all Transmissions	2H Documentation Holds Issued on 3.78% of all Transmissions
Regulatory Period			
2026	11,671,431	31,556	441,180
2027	11,854,924	32,052	448,116
2028	12,041,355	32,557	455,163
2029	12,230,773	33,069	462,323
2030	12,423,229	33,589	469,598
Total	60,221,711	162,823	2,276,381

\* Pilot period years with estimated not actual values

CBP believes that it is possible that the total number of holds could be fewer than these estimates during the regulatory period as outbound vessel carriers and other trade members become more familiar and efficient at providing the pre-departure EEM data, potentially improving compliance and limiting the number of holds CBP issues. CBP has not issued any DNL holds during the vessel EEM test and does not expect a significant number of DNL holds to be issued during the regulatory period.<sup>74</sup> If DNL holds are issued, this would be an additional cost to outbound vessel carriers, who are ultimately responsible for loading and not loading cargo.

CBP estimates that a total of 162,823 1H Enforcement holds would be issued

<sup>74</sup> Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter experts on December 13, 2022.

during the regulatory period. CBP expects that the time burden to a CBP officer to manually review a 1H Enforcement hold is about 5 minutes (0.083 hours).<sup>75</sup> CBP also anticipates that after reviewing these holds CBP officers would incur an additional time burden to address and resolve these 1H Enforcement holds. Depending on the complexity of the hold and if it is determined that a CBP officer needs to manually examine cargo, the time burden to CBP officers to address and resolve these holds varies from a few minutes to a few hours.<sup>76</sup> CBP expects that the majority of these 1H Enforcement holds issued would not result in a cargo examination.<sup>77</sup> CBP estimates that, on average, CBP officers incurred an additional time burden of ten minutes (0.167 hours) to address and resolve each 1H Enforcement hold.<sup>78</sup> In total CBP expects on average a CBP officer to incur a time burden of approximately 15 minutes (0.25 hours) to review and resolve each 1H Enforcement hold.

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<sup>75</sup> CBP assumes that the time to review a 1H Enforcement hold should not differ depending on the environment, therefore CBP uses time burden estimates provided in the NPRM ACE Electronic Export Manifest for Rail Exports analysis to review and resolve a 1H Enforcement hold.

<sup>76</sup> Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, meeting with subject matter experts on December 15, 2022.

<sup>77</sup> Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, meeting with subject matter experts on December 15, 2022.

<sup>78</sup> Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, meeting with subject matter experts on December 15, 2022.

To calculate the estimated time burden to CBP officers to review and resolve 1H Enforcement holds during each year of the regulatory period, CBP multiplied the estimated number of 1H Enforcement holds issued each year by the combined time burden to CBP officers to review and resolve these holds. During the course of the regulatory period CBP expects that CBP officers would incur a time burden of approximately 40,706 hours (162,823 1H Enforcement holds x 0.25 hours) when reviewing and resolving 1H Enforcement holds. CBP calculated the costs to CBP officers in the regulatory period, by multiplying the total time burden (40,706) hours by the average hourly loaded rate for a CBP officer (\$101.44).<sup>79</sup> As a result of this proposed rule, CBP estimates that CBP officers would incur time burden costs of approximately \$4,129,195 or on average \$825,839 annually during the regulatory period. Table 17 shows CBP estimates for time burden and costs to CBP officers during the regulatory period.

Table 17. Estimated Time Burden and Costs to CBP from 1H Enforcement Holds During Regulatory Period 2026-2030(time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2028	2028	2029	2030	Total
Estimated 1H Enforcement Holds	31,556	32,052	32,557	33,069	33,589	162,823
Average Time Burden to Review 1H Hold	0.25	0.25	0.25	0.25	0.25	
Total Time Burden to CBP Officers	7,889	8,013	8,139	8,267	8,397	40,706
CBP Officer Wage Rate	\$101.44	\$101.44	\$101.44	\$101.44	\$101.44	
Costs to CBP Officers	\$800,270	\$812,851	\$825,634	\$838,622	\$851,818	\$4,129,195

<sup>79</sup> CBP bases this wage on the FY 2022 salary, benefits, premium pay, non-salary costs and awards of the national average of CBP Officer Positions, which is equal to a GS-11, Step 10. Source: Email correspondence with CBP's Office of Finance on September 26, 2023.

## CBP Miscellaneous Costs

CBP does not expect that this proposed rule would result in additional cargo examinations when compared to the baseline. To the extent that CBP is wrong and there are more manual examinations of cargo as a result of issued 1H Enforcement holds when compared to the baseline, then the time burden to CBP officers during the regulatory period would be larger than CBP estimated. Unfortunately, CBP does not have data on how many 1H Enforcement holds typically result in a cargo examination. In the case where CBP determines it is necessary to conduct a physical examination of cargo or a container on average a CBP officer is able to complete the examination and submit the findings in about 60 minutes.<sup>80</sup> Given the CBP officer hourly loaded wage rate of \$101.44, CBP estimates the average time burden cost to CBP to conduct a cargo or container examination is approximately \$101.44 per examination. Again, CBP does not expect that this rule would result in additional cargo examinations.

In total, CBP estimates that CBP would incur around \$5.0 million in costs during the regulatory period or on average around \$1.0 million annually, from operation and maintenance costs for the vessel EEM application in ACE and opportunity costs from reviewing and resolving 1H Enforcement holds. CBP displays its estimates for total costs to CBP during each year of the regulatory period below in Table 18.

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<sup>80</sup> Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter experts on December 15, 2022.

Table 18. Total Estimated Costs to CBP during Regulatory Period 2026-2030  
(cost in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
IT Systems O&M Costs	\$168,253	\$171,450	\$174,708	\$178,027	\$181,410	\$873,847
Time Burden Costs	\$800,270	\$812,851	\$825,634	\$838,622	\$851,818	\$4,129,195
Total Costs	\$968,523	\$984,301	\$1,000,342	\$1,016,649	\$1,033,227	\$5,003,042

#### Trade Member IT Systems Costs

CBP anticipates that this proposed rule would result in costs to trade members in the form of both IT systems and opportunity costs. CBP estimates that this proposed rule would require that all 45 outbound vessel carriers and approximately 455 other trade members would incur costs to adjust and maintain their IT systems to provide EEM data directly to CBP via ACE.<sup>81</sup> CBP anticipates that the cost to adjust and maintain IT systems could vary significantly depending on the outbound vessel carrier or other trade member, and therefore CBP provides a range of estimates for the annual IT system costs to the average vessel EEM participant during the regulatory period. CBP uses the same range of estimates provided during the pilot period cost section of this analysis. CBP's primary estimate suggests that the average outbound vessel carrier or other trade member would incur an annual cost of approximately \$35,000. CBP also provides a range of costs using a low estimate of \$10,000 and a high estimate of \$60,000 for the average annual cost to the average outbound vessel carrier or other trade member.<sup>82</sup>

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<sup>81</sup> CBP discusses the expected number of trade members affected by this rule above in the population affected by the proposed rule section of this analysis.

<sup>82</sup> Data obtained from feedback and discussions with Trade members on the potential costs associated with IT systems to support providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023.

CBP expects that approximately 500 trade members would incur systems costs to adjust and maintain their IT systems while providing EEM data to vessel EEM.<sup>83</sup> CBP notes that it is voluntary for the other trade members to provide the export manifest cargo data directly to CBP via ACE. If no other party elects to provide this export manifest cargo data, then outbound vessel carriers must provide the export manifest data. CBP believes that other trade members would only participate if it were beneficial for their business or company. Therefore, CBP does not anticipate these other trade members would provide export cargo manifest data directly to CBP if their participation resulted in net costs. If more than 455 other trade members decide to provide data directly to CBP, costs would be higher, but cost savings would be even higher – otherwise these trade members would have no incentive to do so.

To estimate the cost to outbound vessel carriers and other trade members from operating and maintaining their IT systems to support participation in the vessel EEM, CBP multiplied the average annual cost by the number of expected vessel EEM participants each year (500). According to CBP's primary estimate for operating and maintaining IT systems vessel EEM participants would incur costs of approximately \$87.5 million or on average \$17.5 million annually. Considering CBP's range estimates under the low estimate, vessel EEM participants would incur costs of around \$25.0 million or \$5.0 million annually and the high estimate shows IT systems costs of approximately \$150.0 million or \$30.0 million annually. Table 18 displays CBP's estimates for IT systems costs to trade members during the regulatory period. CBP notes that if this proposed rule results in more than the estimated other trade members (455

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<sup>83</sup> Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 13, 2023.

trade members) electing to provide vessel EEM data directly to CBP, then the IT systems costs to trade members would be higher than CBP estimates below. CBP requests comments from outbound vessel carriers and trade members on the potential costs during the regulatory period related to IT system adjustments, operation and maintenance needed to support transmitting pre-departure EEM data to CBP via ACE and how likely would trade members other than outbound vessel carriers provide vessel EEM data directly to CBP.

Table 18. Estimated IT Systems Costs to Vessel EEM Participants during Regulatory Period 2026-2030 (costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Vessel EEM Participants	500	500	500	500	500	
<b>CBP Primary Estimate (\$35,000 per carrier)</b>	<b>\$17,500,000</b>	<b>\$17,500,000</b>	<b>\$17,500,000</b>	<b>\$17,500,000</b>	<b>\$17,500,000</b>	<b>\$87,500,000</b>
Low Estimate (\$10,000 per carrier)	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$25,000,000
High Estimate (\$60,000 per carrier)	\$30,000,000	\$30,000,000	\$30,000,000	\$30,000,000	\$30,000,000	\$150,000,000

#### Trade Member Opportunity Costs

In addition to costs associated with adjusting and maintaining IT systems, CBP expects that outbound vessel carriers and other trade members would face time burdens and opportunity costs when providing the vessel EEM data to CBP and responding to 2H Documentation holds and 1H Enforcement holds. Because this proposed rule would require all outbound vessel carriers to provide export manifest data electronically to CBP prior to cargo loading onto vessels, CBP anticipates that all 45 outbound vessel carriers would incur a time burden to transmit this data to CBP as part of the vessel EEM. In addition, CBP expects that 455 other trade members choosing to transmit this data to CBP, though they are not required to do so, would also incur a time burden. Since transmitting this data is not required for other trade members, CBP believes they would only choose to do so if the benefits of doing so outweigh their costs. As CBP does not

know how much of the data would be filed by outbound vessel carriers and how much by other trade members, CBP displays the time burden of providing the export manifest data electronically to CBP as a cost to trade as a whole. Additionally, CBP assumes that the time burden to provide this data to CBP would be the same across all outbound vessel carriers, regardless of if an outbound vessel carrier participated in VTM or if it provided paper CBP Form 1302A prior to this proposed rule, and any other participating other trade member electing to provide vessel EEM data directly to CBP. CBP anticipates that during the regulatory period trade members would incur a time burden of approximately 1.71 minutes (0.028 hours) per vessel EEM data transmission.<sup>84</sup> CBP acknowledges that the transition to electronic data submission would allow trade members to automate some of the process involved in providing the export manifest data to CBP. CBP notes that this estimated time burden to provide a vessel EEM data transmission is less than the expected time burden to submit a paper CBP Form 1302A. The elimination of the time burden to submit a paper CBP Form 1302A is discussed in the Trade Member Opportunity Cost Savings section below. To estimate the time burden to trade members, CBP multiplied the average time burden per vessel EEM data transmission by the estimated number of vessel EEM data transmissions during each year of the regulatory period (see Table 6). During the regulatory period CBP estimates that trade would incur a time burden of approximately 1,714,403 hours or on average 342,881 hours annually to provide the required export manifest data to CBP as a result of the implementation of the vessel EEM. To calculate the costs to trade members, CBP multiplied the estimated time burden each year during the regulatory period by the loaded hourly wage rate for vessel operators (\$72.17). According to CBP's estimates, the time burden to transmit vessel

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<sup>84</sup> CBP calculations based on data obtained from feedback and discussions with Trade members on the potential costs associated with providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023. CBP obtained time burden hours associated with providing vessel EEM data to CBP over the course of several months and the number of data transmissions provided. CBP used this data to estimate the average time burden associated with a single vessel EEM data transmission.

EEM data would cost trade members around \$124 million during the regulatory period or on average around \$24.7 million annually. Table 20 displays CBP’s calculations and estimates for the time burden and costs to trade during the regulatory period when providing vessel EEM to CBP via ACE.

Table 20. Estimated Time Burden and Costs to Trade When Transmitting Vessel EEM Data during Regulatory Period 2026-2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Vessel EEM Data Submissions	11,671,431	11,854,924	12,041,355	12,230,773	12,423,229	60,221,711
Average Time Burden	0.028	0.028	0.028	0.028	0.028	
Total Time Burden	332,265	337,488	342,796	348,188	353,667	1,714,403
Wage Rate	\$72.17	\$72.17	\$72.17	\$72.17	\$72.17	
Cost to Trade	\$23,979,532	\$24,356,527	\$24,739,558	\$25,128,727	\$25,524,138	\$123,728,482

During the pilot period EEM data provided as part of the vessel EEM test was not transmitted prior to departure therefore participating vessel carriers did not review or resolve any holds during the pilot period. However, during the regulatory period CBP expects that outbound vessel carriers and other trade members that provide EEM data to CBP would incur time burdens and opportunity costs while responding to CBP issued holds. During the regulatory period, the trade member that provides the export manifest data to CBP would be the party responsible for responding to any questions, holds or issues that arise from CBP’s review of that export data. During the regulatory period CBP expects that the time burden to respond to each hold depends on the complexity of the issue. When a party is reviewing and responding to holds, if that party does not have the necessary information and needs to obtain the data from another trade member, that would impose an additional time burden on both parties. Unfortunately, during the vessel EEM test, outbound vessel carriers did not provide export manifest data any earlier in the export process than during the baseline (no later than four days post departure), therefore CBP did not issue any 2H Documentation holds or any 1H Enforcement holds

issued prior to departure. Therefore, vessel EEM test participants did not review or address these holds during the test. Because the participants did not actually go through the process of reviewing and responding to any CBP issued holds during the pilot period, CBP was not able to obtain feedback from trade members on the average time burden an outbound vessel carrier or other trade party would incur to address a 2H Documentation or a 1H Enforcement hold.

In order to provide a time burden estimate to outbound vessel carriers and other trade members when responding to holds issued by CBP as a result of the vessel EEM, CBP used feedback from trade members from a different EEM test. CBP assumes the time burden to respond to a CBP issued hold in the sea environment would be similar to the time burden faced by trade members to respond to 2H Documentation and 1H Enforcement holds in the rail environment. CBP anticipates that the time burden to outbound vessel carriers and other trade members to review and resolve the average hold (including both 2H Documentation holds and 1H Enforcement holds) during the regulatory period would be approximately 12.5 minutes (0.21 hours) for each 2H

Documentation and 1H Enforcement holds.<sup>85</sup> CBP requests comment on the relative time to resolve holds in the sea environment.

CBP does not expect that such holds would result in CBP officers conducting additional cargo examinations when compared to the baseline. However, if CBP did conduct more cargo examinations when compared to the baseline then the time burden costs to trade members to review and resolve holds could be higher than what CBP provides in this analysis. CBP does not track how many cargo examinations CBP officers conducted each year and CBP does not know how many (or the percentage) of 1H Enforcement holds would result in a cargo examination during the regulatory period. If this proposed rule resulted in significantly more cargo examinations, CBP would expect the average time burden to respond to each hold would likely be higher than CBP's estimate. Additionally, CBP was unable to estimate the number of holds issued that would require multiple parties being involved in reviewing and resolving of holds. If responding to issued holds always requires multiple parties to be involved, then the time burden to review and resolve a hold would also likely be higher than the 12.5-minute estimate CBP provided above.

To estimate the time burden to trade during the regulatory period when reviewing and resolving holds, CBP multiplied the total number of expected holds issued each year during the regulatory period by the estimated average time burden to review and resolve a hold (0.21 hours). CBP expects that during the regulatory period, trade members would review and resolve around 2,274,184 2H Documentation holds and 162,823 1H Enforcement holds (see Table 16), resulting in a total time burden of approximately

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<sup>85</sup> Data obtained from CBP discussion with Trade members on the potential costs to review and resolve holds issued by CBP in response to EEM data transmitted. Time burdens vary greatly depending on the complexity of the issue; CBP took this into consideration when calculating the average time burden to review and address an issued hold. Data obtained in February 2023. For the analysis of the vessel EEM, CBP used regulatory period time burden estimates from the NPRM for ACE EEM for Rail Cargo analysis; CBP assumes the time burden when responding to CBP issued holds should not differ depending on the environment.

507,710 hours or on average 101,542 hours annually. CBP calculated the costs to trade members from reviewing and resolving these holds by multiplying the total hours of time burden by the average hourly loaded wage rate for vessel operators (\$72.17). CBP anticipates that overall costs to trade from reviewing and resolving holds as a result of this proposed rule would be around \$36.6 million or on average \$7.3 million annually. Table 21 shows CBP regulatory period estimates for time burden and costs to trade associated with the review and resolution of holds issued by CBP.

Table 21. Estimated Time Burden and Costs to Trade from CBP Issued Holds during Regulatory Period, 2026-2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
1H Enforcement Holds	31,556	32,052	32,557	33,069	33,589	162,823
2H Documentation Holds	440,754	447,684	454,724	461,877	469,145	2,274,184
Total Holds Issued	472,311	479,736	487,281	494,946	502,734	2,437,007
Time Burden per hold	0.208	0.208	0.208	0.208	0.208	
Total Time Burden	98,398	99,945	101,517	103,114	104,736	507,710
Wage Rate	\$72.17	\$72.17	\$72.17	\$72.17	\$72.17	
Costs to Trade	\$7,101,389	\$7,213,034	\$7,326,466	\$7,441,716	\$7,558,815	\$36,641,420

#### Trade Member Miscellaneous Costs

This proposed rule would also require outbound vessel carriers to submit the CBP Form 1300 (or electronic equivalent) requesting clearance two hours prior to the departure of the vessel from each port. This proposed rule authorizes the use of an electronic version of the CBP Form 1300 but would not eliminate the use of the paper CBP Form 1300. Outbound vessel carriers would be able to decide which version of the CBP Form 1300 to submit based on what works best for their business. Prior to this proposed rule CBP already requires outbound vessel carriers to submit the CBP Form 1300 prior to being granted clearance to depart a U.S. port. CBP does not anticipate that requiring this form two hours prior to departure would result in any additional costs to outbound vessel carriers. CBP expects that the time burden to complete the CBP Form 1300 would not change as a result of this proposed rule. Additionally, since this

proposed rule would require that all export manifest data be submitted to CBP at least two hours prior to the loading of cargo onto vessels, outbound vessel carriers would have access to all the data and information needed to complete and submit to CBP the CBP Form 1300 for vessel clearance two hours prior to departure of a vessel. Therefore, CBP does not expect that this requirement would add any costs to carriers. CBP requests comment on the costs to trade members to provide the CBP Form 1300 two hours prior to departure as a result of this proposed rule.

In order for CBP to effectively conduct proper cargo safety and security assessments on U.S. exports in the sea environment, it is imperative that CBP obtains timely and sufficient data prior to loading cargo in order to review and conduct risk assessment to identify high-risk shipments and inspect cargo effectively. In this proposed rule CBP would require the complete manifest data for some exports four days earlier in the export process when compared to the baseline where most export manifest data is provided no later than four days post departure. The new deadlines imposed by this proposed rule would result in a major change to the export process affecting outbound vessel carriers, other trade members, and exporters. Outbound vessel carriers have expressed concerns about CBP requiring pre-departure export manifest data due to outbound vessel carriers' ability to track down certain required data elements from other trade members early enough to meet the deadlines. Outbound vessel carriers do have some data available early in the export transaction process (including transportation data elements); however, outbound vessel carriers often rely entirely on other trade members to provide most of the specific cargo data needed to submit a completed export manifest in the sea environment. In the baseline CBP notes that the majority of export manifest cargo data is usually provided to outbound vessel carriers from other trade members within 24 hours post departure, but it may take up to 4 days for outbound vessel carriers

to obtain all the cargo data necessary to complete the manifest.<sup>86</sup> CBP expects that outbound vessel carriers and other trade members could need to make significant adjustments to business practices and would likely need to cooperate in order to provide the required export manifest data to CBP earlier in the export process. Additionally, if other trade members have the export manifest data elements available but are reluctant for any reason to provide the data to outbound vessel carriers earlier in the export process those trade members would have the option to provide that data directly to CBP via ACE. CBP does not have data available to estimate these costs, nor could trade members provide any estimates but feedback from trade members suggests that they could be significant.<sup>87</sup> CBP requests comment on the costs to trade members to adjust business practices in order to report the data on the timeframe required by the rule.

Although these costs could be significant CBP notes that as electronic data requirements are becoming more widespread in global trade it is likely that the required vessel EEM data elements would be available early enough in the export process to meet the deadlines imposed by CBP in this proposed rule. There are a number of countries that require import manifest data at least 24 hours prior to departure from a U.S. port to a foreign port.<sup>88</sup> These countries include major trading partners such as Canada, China, the European Union, Israel, Japan, Mexico, South Africa, South Korea, and Turkey.

CBP notes that as outbound vessel carriers and other trade members provide this import manifest data to foreign countries as part of the import requirements these data

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<sup>86</sup> Based on feedback CBP acquired from Trade members which stated in most cases when a vessel departs around 90% of export manifest data could be submitted within 24 hours of departure from the U.S. port of export, with the remaining 10% of manifest data gradually becoming available over the next 72 hours (days 2-4 post departure). Data obtained in January and February 2023.

<sup>87</sup> CBP requested feedback from Trade members on the potential costs from adjusting business practices to meet the new export manifest data deadlines imposed by this proposed rule. Trade members suggested that there could be significant costs but were unable to provide additional details on the costs for such adjustments to business practices or if this would be a one-time adjustment cost or ongoing adjustment costs. Data obtained in January and February 2023.

<sup>88</sup> Information provided from CBP's Cargo Security, Carriers and Restricted Merchandise Branch subject matter expert, on March 31, 2023.

elements are very similar to the export manifest data elements required in this proposed rule. Therefore, CBP expects that the data elements submitted for foreign country import requirements should be available to provide for U.S. export requirements within the deadlines of this proposed rule. According to CBP calculations, in 2023, approximately 60 percent of all U.S. export trade value (by dollar amount) was exported to a country that requires import manifest data be provided at least 24 hours prior to the departure of the vessel from the United States.<sup>89</sup>

Additionally, under the baseline CBP requires outbound vessel carriers to submit complete export manifest data prior to departure depending on the country to which the export is being shipped. According to CBP calculations, approximately eight percent of all U.S. export trade value (by dollar amount) is exported to countries for which CBP already requires complete export manifest data prior to departure from the U.S. port of export.<sup>90</sup> Considering the U.S. exports sent to countries that require their own import manifest data and exports sent to countries that the U.S. requires the export manifest data prior to departure, approximately 68% of all U.S. export trade value (by dollar amount) prior to this proposed rule likely have all the export manifest data elements already provided pre-departure either as a foreign country import requirement or a current U.S.

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<sup>89</sup> CBP calculations based on a list of countries that have their own import manifest data requirements for data to be submitted 24 hours prior to departure from the U.S. port of export (Canada (24-96 hours prior to loading or arrival of goods in Canadian ports of entry for import cargo, depending on type and origin of goods; CBP assumes that Canadian imports from the U.S. require import manifest data 24 hours prior to departure), China, EU countries, Israel, Japan, Mexico, South Africa, South Korea and Turkey). This list was provided by CBP's Cargo Security, Carriers and Restricted Merchandise Branch subject matter expert on March 31, 2023. CBP obtained the total U.S. export trade value for all U.S. exports compared to the export value to countries that require import export manifest data 24 hours prior to departure from the U.S. CBP obtained 2023 (most recent available) export trade value from Census Bureau USA Trade Data <https://usatrade.census.gov/data>. Accessed on March 26, 2024.

<sup>90</sup> CBP calculations based on the list of existing countries from 19 CFR 4.75 that CBP requires outbound vessel carriers to provide complete export manifest data prior to departure; the current countries include China, Albania, Cambodia, Cuba, Estonia, Hungary, Iran, Iraq, Laos, Latvia, Libya, Lithuania, North Korea, Romania, Yemen, and Vietnam. To calculate the percent of total export trade value to these countries CBP used the export trade value for these countries compared to the trade value for all U.S. exports in 2023 (most recent year available). Export trade value data obtained from Census Bureau USA Trade Data <https://usatrade.census.gov/data>. Accessed on March 26, 2024.

export requirement.<sup>91</sup>

Therefore prior to this proposed rule it is likely that outbound vessel carriers and other trade members already have business practices established to obtain and provide manifest data prior to departure for the majority of cargo departing the United States. CBP expects that because outbound vessel carriers and other trade members are already providing this data for many U.S. exports, they may have already established a process to obtain and provide this data earlier in the export process. Additionally, CBP believes based on feedback from trade members that it is likely that all the export manifest data elements required by the vessel EEM would be accessible to either outbound vessel carriers or other trade members involved in the export process early enough to provide the data to CBP within the deadline imposed by this proposed rule. In order for outbound vessel carriers and other trade members to meet the imposed deadlines for export manifest data according to this proposed rule for 100 percent of U.S. exports, CBP does expect there to be costs associated with adjusting their business practices. CBP does not know these costs and was unable to obtain an estimate for the costs to the average trade member to adjust business practices. CBP requests feedback and comments on the potential costs to outbound vessel carriers and other trade members when adjusting business practices as result of having to provide the required export manifest data electronically to CBP within the deadlines imposed by this proposed rule.

The transition from a paper form process to an electronic process could also force trade members that provide export manifest data to the carriers or directly to CBP to adjust business practices. CBP expects any such costs to adjusting business practices when transitioning from a paper to electronic data process would be minimal and should not have a large effect on trade members, specifically because trade members likely

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<sup>91</sup> Some of the countries fall into both categories, requirements from the importing country and requirements from the United States to export to certain countries; CBP only counted the trade value to those countries once in the overall calculation.

already have such practices developed to provide manifest data for imports that can be reused to provide export manifest data to CBP.<sup>92</sup> CBP requests feedback and comments on the potential costs to trade members from adjusting business practices while transitioning from a paper form process to an electronic process.

This proposed rule requires trade members providing the EEM data to have a bond on file with CBP. Carriers and other potential filers generally are all subject to

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<sup>92</sup> CBP requested feedback from Trade members on the potential costs from adjusting business practices specifically from transitioning from paper to electronic data submission as a result of this proposed rule. Trade members suggested that there could be some costs but were unable to provide additional details on the costs for such adjustments to business practices or if this would be a one-time adjustment cost or ongoing adjustment costs. Data obtained in January and February 2023.

other bond requirements that would qualify them to submit EEM data to CBP.<sup>93</sup>

Therefore, CBP expects that any costs to outbound vessel carriers or other trade members from requiring a bond to provide export manifest data electronically to CBP would be negligible. Outbound vessel carriers and other trade members could also incur some costs to meet the requirements of this proposed rule because of the requirement to have someone available to respond to questions and issues that may arise from CBP's review of export manifest data transmitted. CBP anticipates that participants would not require additional staffing because trade members typically have someone working for other business operations that can respond to CBP questions and issues.

Outbound vessel carriers and other trade members may also be subject to penalties and/or claims for liquidated damages of \$5,000 for each violation and up to a maximum of \$100,000 per departure for noncompliance. These monetary claims imposed by CBP are a compliance tool and CBP anticipates that there would be high levels of compliance from participants during the regulatory period such that violations that result in penalties would likely not be a common occurrence. CBP acknowledges that compliance is CBP's primary goal and CBP plans to work with outbound vessel carriers and other trade members to ensure they provide the appropriate export manifest data in a timely manner and CBP will have flexible enforcement for a period of time after the rule goes into effect to give the trade the time it needs to be able to comply with the rule. While CBP plans to issue penalties for repeated willful noncompliance, its expectation is to limit penalties until the trade is able to comply.<sup>94</sup> Additional costs could be placed on these parties as a result of this proposed rule should CBP assess

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<sup>93</sup> CBP anticipates that any of the following bonds would be appropriate, CBP Basic Importation and Entry Bond containing the provisions found in section 113.62 of 19 CFR, a Basic Custodial Bond containing the provisions found in 113.63 of 19 CFR, or an International Carrier Bond containing the provisions found in section 113.64 of 19 CFR.

<sup>94</sup> Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert, for EEM programs, while there is a possibility of penalties when a violation occurs, compliance is the goal, on May 31, 2024.

claims against outbound vessel carriers or other trade members. However, CBP believes these costs would not be incurred if parties are compliant.

#### Total Costs

Given CBP's primary estimate for systems costs to trade, CBP expects that total costs from this proposed rule would be approximately \$253 million during the regulatory period or on average around \$51 million annually. According to CBP estimates, CBP would incur a total cost of around \$5.0 million or around \$1.0 million annually. Meanwhile CBP anticipates that trade members would experience the majority of the costs during the regulatory period incurring around \$247 million or on average around \$50 million annually. Table 22 displays CBP's estimates for total costs during each year of the regulatory period as a result of this proposed rule. CBP requests feedback and comments on the regulatory period vessel EEM costs to outbound vessel carriers and other trade members discussed above and any other cost to outbound vessel carriers and other trade members that CBP did not address in this analysis.

Table 22. Total Estimated Costs during Regulatory Period 2026-2030 (cost in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
CBP Systems Costs	\$968,523	\$984,301	\$1,000,342	\$1,016,649	\$1,033,227	\$5,003,042
CBP Time Burden Costs	\$800,270	\$812,851	\$825,634	\$838,622	\$851,818	\$4,129,195
Total CBP Costs	\$968,523	\$984,301	\$1,000,342	\$1,016,649	\$1,033,227	\$5,003,042
Trade Systems Costs	\$17,500,000	\$17,500,000	\$17,500,000	\$17,500,000	\$17,500,000	\$87,500,000
Trade Providing Vessel EEM Data	\$23,979,532	\$24,356,527	\$24,739,558	\$25,128,727	\$25,524,138	\$123,728,482
Trade Resolving CBP Issued Holds	\$7,101,389	\$7,213,034	\$7,326,466	\$7,441,716	\$7,558,815	\$36,641,420
Total Costs to Trade	\$48,580,921	\$49,069,561	\$49,566,025	\$50,070,443	\$50,582,952	\$247,869,902
Total Overall Costs	\$49,549,443	\$50,053,863	\$50,566,366	\$51,087,092	\$51,616,180	\$252,872,944

## Cost Savings

### Trade Member Opportunity Cost Savings

CBP anticipates that this proposed rule would also result in cost savings to trade members during the regulatory period. Obtaining and reviewing export manifest data electronically is a more efficient process when compared to working with paper forms. CBP expects that outbound vessel carriers would experience time savings from providing export manifest data electronically to CBP during vessel EEM when compared to the baseline process, but the amount of time savings depends on if the outbound vessel carrier was participating in the VTM prior to the proposed rule.

As discussed in the pilot period costs savings section, there were two outbound vessel carrier participants in the vessel EEM test that were providing export data to CBP through VTM prior to participating in the vessel EEM test. In addition to the vessel EEM data transmissions, CBP also continued to receive electronic data transmissions via VTM

during the pilot period from one additional outbound vessel carrier. When outbound vessel carriers switched from providing VTM data to providing vessel EEM data these outbound vessel carriers experienced some time savings because, unlike VTM data, vessel EEM data does not require the outbound vessel carriers to submit and match booking data with the export manifest data. During the regulatory period CBP uses the same estimate that CBP used during the pilot period for outbound vessel carriers that switched from VTM to vessel EEM. CBP estimates that this transition results in a time savings to the outbound vessel carrier of approximately 30 minutes (0.5 hours) on average per departing vessel.<sup>95</sup>

Table 6 above shows CBP's estimates for the expected number of vessel EEM data transmissions submitted by VTM participants and the total expected number of vessel EEM data transmissions during each year of the regulatory period. To estimate the number of vessel departures that would experience this time savings during the regulatory period CBP divided the number of expected vessel EEM data transmissions submitted by VTM participants each year (716,749) by the number of total expected vessel EEM data transmissions each year of the regulatory period. Similar to the pilot period calculations, CBP assumes that outbound vessel carriers participating in VTM prior to this proposed rule often export cargo using self-propelled dry cargo vessels. CBP assumes that VTM data transmissions were only associated with self-propelled dry cargo vessels and that data transmissions related to self-propelled dry cargo vessels are equally distributed.

CBP already provided its estimate for the total number of future self-propelled dry cargo vessel departures that will occur each year during the pilot period (see Table 3). CBP

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<sup>95</sup> This estimate was based on data obtained from feedback from Trade members on the effects of providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023.

multiplied the percent of estimated future vessel EEM data transmissions that would have been VTM data transmissions by the estimated number of self-propelled dry cargo vessel departures each year of the regulatory period to provide an estimate for the number of vessel departures that would experience a time savings from no longer requiring outbound vessel carriers to submit and match the booking data with export manifest cargo data. Overall CBP estimates that approximately 23,028 vessel departures would experience this time savings as a result of this proposed rule. Table 23 displays CBP's estimates for vessel EEM data transmissions, VTM data transmissions that would switch to vessel EEM transmissions, and the VTM vessel departures associated with VTM data transmissions that would experience a time savings as a result of this proposed rule.

Table 23. Estimated Number of Vessel EEM Transmissions, VTM Transmissions and VTM Vessel Departures Absent the Proposed Rule during Regulatory Period 2026-2030

	2026	2027	2028	2029	2030	Total
EEM Data Transmissions	11,671,431	11,854,924	12,041,355	12,230,773	12,423,229	60,221,711
VTM Transmissions	716,749	716,749	716,749	716,749	716,749	3,583,745
Ratio of VTM to EEM	6.14%	6.05%	5.95%	5.86%	5.77%	
Self-Propelled Dry Cargo Vessel Departures	75,392	76,376	77,373	78,383	79,406	386,930
Vessel VTM Departures	4,630	4,618	4,606	4,593	4,581	23,028

To estimate the time savings to outbound vessel carriers when switching from VTM data transmissions to vessel EEM data transmission, CBP multiplied the expected time savings per VTM vessel departure (0.5 hours) by the number of VTM vessel departures each year. CBP estimates that during the regulatory period outbound vessel carriers would experience a time savings of approximately 11,514 hours from no longer being required to submit and match booking data with the export manifest data when switching from VTM to vessel EEM data transmission. To estimate the cost savings to outbound vessel carriers CBP multiplied the time savings each year by the average hourly

loaded wage rate for vessel operators (\$72.17). CBP estimates that during the regulatory period vessel carriers would experience a cost savings of approximately \$830,958 or on average \$166,192 annually. Table 24 shows CBP's calculations for time and cost savings to outbound vessel carriers each year during the regulatory period when switching from VTM data transmission to vessel EEM data transmission as a result of this proposed rule.

Table 24. Estimated Time and Cost Savings to Vessel Carriers Switching from VTM to EEM Data Transmission during Regulatory Period 2026-2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Vessel EEM Departures	4,630	4,618	4,606	4,593	4,581	23,028
Time Savings per Departure	0.5	0.5	0.5	0.5	0.5	
Total Time Savings	2,315	2,309	2,303	2,297	2,291	11,514
Wage Rate	\$72.17	\$72.17	\$72.17	\$72.17	\$72.17	
Cost Savings	\$167,068	\$166,629	\$166,191	\$165,753	\$165,316	\$830,958

CBP expects that other outbound vessel carriers that did not provide VTM would also experience time savings as a result of this proposed rule. CBP would require outbound vessel carriers to provide EEM data to CBP prior to departure, eliminating the need for outbound vessel carriers to submit the paper CBP Form 1302A. CBP notes that outbound vessel carriers that were participating in VTM prior to this proposed rule were providing electronic export data to CBP in lieu of the paper CBP Form 1302A. Therefore, CBP expects that only outbound vessel carriers that were submitting the paper CBP Form 1302A prior to this proposed rule would experience a time savings associated with no longer having to provide that form.

To estimate the number of CBP Form 1302As that outbound vessel carriers or other trade members would no longer need to submit as a result of this proposed rule, CBP used the total estimated number of vessel EEM data transmissions and subtracted the estimated number of VTM transmissions each year (see Table 6). CBP anticipates that prior to this proposed rule the time burden to outbound vessel carriers and other trade

members to complete and submit a single paper CBP Form 1302A to CBP is approximately three minutes (0.05 hours).<sup>96</sup> As a result of this proposed rule, eliminating the CBP Form 1302A would result in outbound vessel carriers and other trade members experiencing a three-minute time savings for each CBP Form 1302A that would have been submitted absent this proposed rule.

CBP calculated the time savings to outbound vessel carriers and other trade members by multiplying the expected number of CBP Form 1302As eliminated each year by the time savings per CBP Form 1302A (0.05 hours). During the regulatory period CBP anticipates that outbound vessel carriers and other trade members would experience a time savings of approximately 2,831,898 million hours or on average 566,380 annually. CBP calculated the cost savings by multiplying the time savings during each year of the regulatory period by the average hourly loaded wage rate for vessel operators (\$72.17).

CBP expects that outbound vessel carriers and other trade members would experience a cost savings of approximately \$204 million or on average \$41 million annually from no longer submitting CBP Form 1302As when exporting cargo in the sea environment. Table 25 displays CBP's estimates for the number of CBP Form 1302As that would be eliminated as a result of this proposed rule and the time and cost savings to outbound vessel carriers during each year of the regulatory period.

Table 25. Estimated Time and Cost Savings to Vessel Carriers and Other Trade Members from Eliminating Paper CBP 1302A during Regulatory Period 2026-2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
EEM Data Transmissions	11,671,431	11,854,924	12,041,355	12,230,773	12,423,229	60,221,711
VTM Transmissions	716,749	716,749	716,749	716,749	716,749	3,583,745
CBP Form 1302A	10,954,682	11,138,175	11,324,606	11,514,024	11,706,480	56,637,966
Time Savings per CBP Form 1302A	0.05	0.05	0.05	0.05	0.05	

<sup>96</sup> CBP referenced the supporting statement for OMB No 1651-0001 Cargo Manifest Declaration, Stow Plan, Container Status Messages and Importer Security Filing. According to the supporting statement CBP expects the time burden to trade when submitting a CBP Form 1302A is approximately three minutes. Accessed on April 10, 2023. [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=202101-1651-001](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202101-1651-001)

Total Time Savings	547,734	556,909	566,230	575,701	585,324	2,831,898
Wage Rate	\$72.17	\$72.17	\$72.17	\$72.17	\$72.17	
Cost Savings	\$39,529,969	\$40,192,105	\$40,864,839	\$41,548,354	\$42,242,833	\$204,378,100

As discussed earlier, during the baseline when CBP identifies a high-risk cargo or container that has already been loaded and the vessel has departed the U.S. port of export CBP can issue a request that the outbound vessel carrier return the container for examination. This proposed rule would require EEM data prior to cargo being loaded onto vessels allowing CBP sufficient time to use ATS to conduct risk assessment to identify high-risk cargo and containers and issue holds preventing cargo from being loaded onto vessels until holds are resolved. Ideally, CBP would be able to conduct review of export manifest data and any examinations of high-risk cargo or containers prior to loading cargo and containers onto vessels. Therefore, CBP would no longer need to make requests for returned cargo and requests for discharges after vessels have departed a U.S. port of export. CBP anticipates eliminating cargo returns and discharges would generate significant time and cost savings to outbound vessel carriers.

When a request for return is issued by CBP, the outbound vessel carrier usually ships the cargo or container back to the United States after foreign delivery and upon the vessel's return to the United States. Additionally, if a vessel has already departed the U.S. port of export and the vessel stops at a second U.S. port, CBP can request the outbound vessel carrier to discharge that cargo or container at that second port for CBP to conduct an examination. In either scenario, returning a container from a foreign port or discharging at a second U.S. port results in additional costs to outbound vessel carriers and other trade members. The costs to trade for returning a container from a foreign port can vary significantly depending on the outbound vessel carrier, the foreign port location and if the cargo was unloaded and released at the foreign port. CBP estimates that the average shipping and freight costs to trade for returning a high-risk cargo or container for CBP to conduct an examination is approximately \$4,290.<sup>97</sup> Returning cargo or a container also requires additional coordination and documentation between outbound vessel carriers and other trade members. In addition to the freight costs, CBP estimates that returning cargo or a container from a foreign port results in a time burden to trade members staff of approximately 12.6 hours on average for each returned cargo or container.<sup>98</sup>

Costs to trade members when discharging cargo or a container at a second U.S. port can also vary widely depending on if the cargo or container is easily accessible to remove from the vessel. If the high-risk cargo or container is on a self-propelled dry cargo vessel and stowed underneath the hatch and other containers are on top of the

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<sup>97</sup> CBP calculations based on feedback obtained from Trade members on the potential costs associated with responding to a return request from CBP. Data was obtained in December 2022 and February 2023.

<sup>98</sup> CBP calculations based on feedback obtained from Trade members on the time burdens associated with responding to a return request from CBP. Data was obtained in December 2022 and February 2023.

hatch, removing the high-risk cargo or container would involve a significant amount of work to lift and move numerous containers in order to discharge the high-risk cargo or container. CBP estimates that on average it costs trade approximately \$1,261 to access and discharge a high-risk cargo or container at a second U.S. port.<sup>99</sup> Discharging also places an extra time burden on trade member staff to coordinate and document the moving of containers if necessary and discharging of the high-risk cargo or container. CBP estimates that the average time burden incurred by trade member staff to coordinate and document each discharged cargo or container would be approximately three hours.<sup>100</sup>

CBP does not track the number of requests for returns or discharges when CBP identifies a high-risk cargo or containers post departure. Therefore, to determine how frequently these requests occur and to estimate how many returns and discharges CBP could avoid by this proposed rule, CBP requested input from trade members on how often they receive these requests from CBP. Based on the feedback obtained, CBP notes that the number requests can vary significantly by outbound vessel carrier and by the type of cargo.<sup>101</sup> CBP obtained data on a subset of vessel departures in 2022 and the estimated number of requests for return and discharge to estimate that on average a request for return was issued for 2.0 percent of vessel departures and a discharge was issued for 2.6 percent of vessel departures.<sup>102</sup> To estimate the total number of CBP requests for returns and discharges during the regulatory period CBP multiplied the

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<sup>99</sup> CBP calculations based on feedback obtained from Trade members on the costs associated with responding to discharge requests from CBP. Data was obtained in December 2022 and February 2023.

<sup>100</sup> CBP calculations based on feedback obtained from Trade members on the time burden associated with responding to discharge requests from CBP. Data was obtained in December 2022 and February 2023.

<sup>101</sup> Information obtained from Trade members on the frequency of requests for returns and discharges by CBP. Data was obtained in December 2022 and February 2023. CBP notes that certain types of cargo are more prone to having returns or discharges issued by CBP, for example, exported autos receive more frequent CBP requests for return or discharge often due to high rates of automobile theft.

<sup>102</sup> CBP used internal data on the number of vessel departures for only the trade members that provided feedback on annual returns and discharges to determine the percentages of returns and discharges by vessel departure. CBP notes that although a return and discharge is issued for a cargo or container and a vessel departing could have more than one request for return or discharge as it is carrying multiple cargo or containers, regardless of if this is the case the total overall number of returns and discharges is what CBP aims to capture and for purpose of this analysis CBP is not concerned if all returns and discharges are issued to a single vessel departure or are evenly distributed across all vessel departures.

average percent of returns and discharges per vessel departure by the total number of expected vessel departures each year (see Table 4). CBP assumes that the proposed rule would eliminate all of the estimated number of CBP requests for returns and discharges because export manifest data provided prior to loading of the cargo would allow CBP to prevent high-risk cargo and containers from being loaded onto vessels.

CBP expects that during the regulatory period outbound vessel carriers would have approximately 11,307 requests for return eliminated by this rule, or on average 2,261 annually. CBP calculated the cost savings associated with eliminating CBP requests for returns by multiplying the estimated number of requests for return that would be eliminated each year by the average freight cost to trade for returning cargo or a container (\$4,290). CBP estimates that the cost savings to trade would be around \$48 million or on average \$9.7 million annually. In addition to the freight costs to return the cargo and containers back to the United States for examination, trade members incurred time burdens to document and coordinate the return. To estimate the time burden to trade member staff to conduct returns CBP multiplied the total number of returns each year by the estimated time burden per return (12.6 hours). CBP expects that trade members staff would incur a time savings of approximately 142,393 hours during the regulatory period or on average 28,479 hours annually. CBP estimated the cost savings to trade members from eliminating requests for returning cargo and containers by multiplying the time savings by the hourly loaded wage rate for vessel operators (\$72.17). CBP anticipates that this proposed rule would reduce time burden to trade member staff resulting in cost savings of around \$10.3 million during the regulatory period or on average \$2.1 million each year. In total CBP estimates that eliminating the requests for returns would result in a total cost savings to trade of approximately \$58.8 million or on average \$11.8 million annually. Table 26 displays CBP estimates for time and cost savings from no longer requesting cargo and container returns from a foreign

port during each year of the regulatory period.

Table 26. Estimated Time and Cost Savings to Trade from Eliminating CBP Requests for Cargo Returns during Regulatory Period 2026-2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Vessel Departures	106,781	109,541	112,415	115,408	118,526	562,671
% of Return Request by Departures	2.0%	2.0%	2.0%	2.0%	2.0%	
Total Returns	2,146	2,201	2,259	2,319	2,382	11,307
Cost per Return	\$4,290	\$4,290	\$4,290	\$4,290	\$4,290	
Costs Saved	\$9,205,839	\$9,443,820	\$9,691,574	\$9,949,605	\$10,218,446	\$48,509,284
Time Burden per Return	12.6	12.6	12.6	12.6	12.6	
Total Time Savings	27,023	27,721	28,448	29,206	29,995	142,393
Wage Rate	\$72.17	\$72.17	\$72.17	\$72.17	\$72.17	
Time Cost Savings	\$1,950,215	\$2,000,630	\$2,053,115	\$2,107,778	\$2,164,731	\$10,276,469
Total Cost Savings	\$11,156,054	\$11,444,450	\$11,744,689	\$12,057,383	\$12,383,177	\$58,785,753

To estimate the number of requests for discharges that would be eliminated during the regulatory period as a result of this proposed rule, CBP multiplied the expected average number of discharges per vessel departure (2.6%) by the total number of vessel departures each year of the regulatory period (see Table 4). CBP expects that during the regulatory period this proposed rule would eliminate approximately 14,488 discharges or

on average 2,898 annually. CBP calculated the cost savings to trade from CBP no longer requesting discharges as a result of this proposed rule by multiplying the total discharges each year by the estimated average cost incurred by trade members to discharge a high-risk cargo or container (\$1,261). CBP anticipates that during the regulatory period, trade members would experience a cost savings of approximately \$18.3 million or on average \$3.6 million from no longer discharging cargo or containers for CBP to conduct examinations.

CBP also expects that trade members would avoid time burdens associated with documenting and coordinating discharges. During the regulatory period CBP estimates this time saving by multiplying the estimated number of discharges eliminated each year by the average time burden (three hours) to trade members when documenting and coordinating each discharge. CBP calculated that trade would experience a time savings of approximately 43,465 hours during the regulatory period or on average 8,693 hours annually from no longer conducting discharges. To monetize these time savings CBP used the hourly loaded wage rate for vessel operators (\$72.17) multiplied by the expected time savings each year during the regulatory period. CBP estimates that over the course of the regulatory period trade would experience cost savings of around \$3.1 million or on average \$0.63 million annually from avoiding the time burdens associated with conducting discharges. In total, CBP estimates that during the regulatory period trade members would experience cost savings of around \$21.4 million or on average \$4.3 million annually, from no longer discharging high-risk cargo and containers at a second U.S. port. Table 27 displays CBP's estimates for the time and cost savings to trade during each year of the regulatory period from this proposed rule which would avoid the costs of discharging high-risk cargo and containers at a second U.S. port.

Table 27. Estimated Time and Cost Savings to Trade from Eliminating CBP Requests for Cargo Discharges during Regulatory Period 2026-2030 (time burden in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Vessel Departures	106,781	109,541	112,415	115,408	118,526	562,671
% of Discharges by Departures	2.6%	2.6%	2.6%	2.6%	2.6%	
Total Discharges	2,750	2,821	2,895	2,972	3,052	14,488
Costs per Discharge	\$1,261	\$1,261	\$1,261	\$1,261	\$1,261	
Cost Saved	\$3,466,883	\$3,556,506	\$3,649,809	\$3,746,982	\$3,848,227	\$18,268,406
Time Burden per Discharge	3	3	3	3	3	
Total Time Savings	8,249	8,462	8,684	8,915	9,156	43,465
Wage Rate	\$72.17	\$72.17	\$72.17	\$72.17	\$72.17	
Time Burden Cost Savings	\$595,301	\$610,690	\$626,711	\$643,397	\$660,782	\$3,136,882
Total Cost Savings	\$4,062,184	\$4,167,196	\$4,276,520	\$4,390,379	\$4,509,009	\$21,405,288

### Trade Member Miscellaneous Cost Savings

Additionally, CBP anticipates that moving to electronic data transmission of export manifest data would reduce the space required to store and file paper manifest documents, generating savings to outbound vessel carriers and other trade members. Unfortunately, CBP does not have data available to provide a quantifiable estimate for the savings to trade members from reduced storage space as a result of eliminating paper form manifest documents but based on feedback from trade members CBP does not consider the cost savings to be substantial.

### Trade Member Total Cost Savings

In total, CBP estimates that this proposed rule would result in significant cost savings to trade. During the regulatory period CBP estimates that total cost savings to trade members would be approximately \$285 million or on average \$57 million annually. Table 28 displays CBP's estimate for total cost savings that trade members would experience as a result of this proposed rule for each year of the regulatory period. CBP requests feedback and comments from outbound vessel carriers and other trade members on CBP's estimates for the cost savings to trade as a result of this proposed rule and any other potential cost savings from this proposed rule that CBP may not have included in

this analysis.

Table 28. Estimated Time and Cost Savings to Trade from Eliminating CBP Requests for Cargo Discharges during Regulatory Period 2026-2030 (time in hours, costs in millions of undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Switching to EEM Data	\$39.70	\$40.36	\$41.03	\$41.71	\$42.41	\$205.21
Eliminating Returns	\$11.16	\$11.44	\$11.74	\$12.06	\$12.38	\$58.79
Eliminating Discharges	\$4.06	\$4.17	\$4.28	\$4.39	\$4.51	\$21.41
Total Cost Savings	\$54.92	\$55.97	\$57.05	\$58.16	\$59.30	\$285.40

## Benefits

CBP expects that CBP and most trade members involved in exporting goods from the United States in the sea environment and other Federal government agencies would likely experience benefits as result of this proposed rule during the regulatory period. CBP does not have the data available to quantify these benefits and therefore will discuss those benefits qualitatively. A primary benefit of requiring pre-departure EEM data would be an improvement in CBP's security efforts and its ability to use CBP's ATS to conduct risk assessment for all sea export cargo prior to departing the United States, while also minimizing the disruption to the export process. This proposed rule would assist CBP in preventing illegal, dangerous, and hazardous cargo from being exported out of the United States and would allow CBP to ensure cargo safety and security for all exports in the sea environment. As discussed earlier, if this proposed rule identified high- risk cargo and containers prior to loading onto vessels then CBP would no longer need to request returns and discharges. According to CBP calculations this proposed rule could eliminate approximately 11,307 requests for cargo returns and around 14,488 requests for discharges during the regulatory period. In total this proposed rule could prevent 25,795 high-risk cargo shipments or containers from being loaded onto vessels attempting to depart the United States until CBP can conduct a proper examination during the course of the regulatory period.

Additionally, transitioning to electronic data would reduce the usage of paper for

all parties involved and bring the outbound sea export process level with existing inbound sea import processing technology. CBP anticipates after transitioning to electronic data some trade members would also be able to generate efficiencies by adjusting their IT systems to automate some of the data transmission process compared to the baseline scenario. This has been the experience the trade has had with the Importer Security Filing, which has become more automated over time, and CBP expects a similar shift here. The deadlines for submitting export manifest data and the gained efficiencies from moving to electronic data transmission using an integrated system, from paper forms, provides CBP more time to review the necessary detailed export data prior to a vessel's departure, allowing CBP officers to allocate more time to mission-critical activities. CBP also anticipates this proposed rule would generate benefits to other Federal government agencies through improved coordination and communication between CBP and the Department of Commerce and other government agencies with export jurisdiction, while enforcing U.S. export laws and regulations. In addition, CBP would implement the Trade Act authority in the sea environment , which authorizes CBP to establish regulations providing for the mandatory electronic transmission of data by way of a CBP-approved electronic data interchange before cargo arrives or departs the United States in all environments.

### **Net Impact of the Proposed Rule**

CBP expects that during the regulatory period this proposed rule would result in overall net cost savings and would also generate meaningful unquantified security benefits. CBP notes that lack of data available prevented CBP from providing exact estimates for some of the potential costs and cost savings from the implementation of vessel EEM and therefore the actual net cost savings could be more or less than what CBP's primary estimates project in this analysis. CBP acknowledges that if a greater number of other trade members elect to participate directly in vessel EEM, than what

CBP anticipates, there would be significantly higher IT systems costs to trade than what CBP estimated in the analysis for this proposed rule. However, CBP notes that directly participating in vessel EEM by other trade members is voluntary and CBP expects that other trade members would only elect to directly participate if it were beneficial to their company and the benefits or cost savings outweigh the costs, meaning that if other trade members voluntarily participate, the cost savings of the rule would increase by more than the costs of the rule. Additionally, CBP was unable to provide an estimate for the costs to outbound vessel carriers and other trade members to adjust business practices in order to provide pre-departure export manifest data electronically to CBP for all exports in the sea environment within the required deadlines imposed by this proposed rule.

Additionally, CBP anticipates that this proposed rule would result in added benefits, but CBP was unable to quantify these benefits. This proposed rule would improve CBP's cargo safety and security efforts by using ATS to conduct risk assessment measures on export manifest data for all exports in the sea environment prior to loading the cargo onto vessels. CBP anticipates that this proposed rule would help to prevent smuggling and improve CBP's efforts to ensure cargo safety and security for all exports in the sea environment. As a result of this proposed rule, CBP would implement the Trade Act authority for exports in the sea environment.

CBP estimates that, during the regulatory period, CBP, outbound vessel carriers, and other trade members would incur costs of approximately \$252 million or an average of \$51 million per year. Meanwhile, CBP estimates a total cost savings to CBP, outbound vessel carriers and other trade members of approximately \$285 million during the regulatory period, or an average of \$57 million per year. According to CBP estimates the proposed rule would result in a net cost savings of approximately \$32 million, or an average of \$6.5 million per year. Table 29 displays CBP's estimates for costs and cost savings to CBP and trade members during each year of the regulatory

period.

Table 29. Estimated Total Costs and Cost Savings from the Proposed Rule during Regulatory Period 2026-2030 (costs in millions of undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Cost						
CBP Systems	\$0.17	\$0.17	\$0.17	\$0.18	\$0.18	\$0.87
CBP Time Burden	\$0.80	\$0.81	\$0.83	\$0.84	\$0.85	\$4.13
Trade Systems	\$17.50	\$17.50	\$17.50	\$17.50	\$17.50	\$87.50
Trade Time Burden	\$31.08	\$31.57	\$32.07	\$32.57	\$33.08	\$160.37
Total Costs	\$49.55	\$50.05	\$50.57	\$51.09	\$51.62	\$252.87
Cost Savings						
Trade Switching to EEM Data	\$39.70	\$40.36	\$41.03	\$41.71	\$42.41	\$205.21
Trade Eliminating Returns	\$11.16	\$11.44	\$11.74	\$12.06	\$12.38	\$58.79
Trade Eliminating Discharges	\$4.06	\$4.17	\$4.28	\$4.39	\$4.51	\$21.41
Total Cost Savings	\$54.92	\$55.97	\$57.05	\$58.16	\$59.30	\$285.40
Net Cost Savings						
Net Cost Savings	\$5.37	\$5.92	\$6.49	\$7.07	\$7.68	\$32.53

Table 30. Total Monetized Present Value and Annualized Costs of Regulatory Period 2026-2030 (2023 U.S. dollars)

	3% Discount Rate	7% Discount Rate
Present Value Costs	\$231,477,000	\$207,079,811
Annualized Costs	\$50,544,061	\$50,504,839

Table 30 shows the discounted total quantified costs during the regulatory period from this proposed rule. As shown, the total costs over the five-year regulatory period of analysis range from \$231 million (in 2023 U.S. dollars), using a three percent interest rate and \$207 million (in 2023 U.S. dollars) using a seven percent discount rate. Expected annualized costs from this proposed rule are expected to be around \$50.5 million using a three and seven percent discount rate.

Table 31. Total Monetized Present Value and Annualized Cost Savings of Regulatory Period 2026-2030 (2023 U.S. dollars)

	3% Discount Rate	7% Discount Rate
Present Value Cost Savings	\$261,113,190	\$233,432,737
Annualized Cost Savings	\$57,015,259	\$56,932,072

Table 31 displays the discounted total quantified cost savings as a result of this

proposed rule during the regulatory period. CBP’s primary estimates show that this proposed rule would provide cost savings to outbound vessel carriers and other trade members ranging from \$261 million (2023 U.S. dollars) using a three percent discount rate to \$233 million (2023 U.S. dollars) using a seven percent discount rate. Annualized cost savings from this proposed rule would be approximately \$57 million using both a three and seven percent discount rate.

Table 32. Total Monetized Present Value and Annualized Net Cost Savings of Regulatory Period 2026-2030 (2023 U.S. dollars)

	3% Discount Rate	7% Discount Rate
Present Value Net Cost Savings	\$29,636,191	\$26,352,926
Annualized Net Cost Savings	\$6,471,198	\$6,427,233

Table 32 displays CBP’s primary estimate for quantifiable net cost savings from the implementation of vessel EEM. As shown, CBP expects that this proposed rule would result in total net cost savings ranging from \$29.6 million (2023 U.S. dollars) using a three percent discount rate to \$26.3 million (2023 U.S. dollars) using a seven percent discount rate. CBP estimates that annualized net cost savings would be around \$6.5 million using a three percent discount rate and \$6.4 million using a seven percent discount rate.

### **Total Impact of the Proposed Vessel EEM Program**

CBP anticipates that over the entire 16-year time period of analysis 2015-2030, the proposed vessel EEM program would result in overall net cost savings compared to the baseline (before the vessel EEM test was introduced). Initially as the vessel EEM test was introduced, costs outweighed the cost savings, but CBP estimates that as the test expanded and after the proposed rule would be implemented, cost savings would far outweigh the costs incurred by this proposed rule. In addition, CBP expects that this

proposed rule would generate meaningful unquantified security benefits after it is implemented as discussed above in the regulatory period net impact section. CBP estimates that between 2015-2030 the vessel EEM program would result in total costs of \$259 million or on average \$16.2 million annually. Additionally, the vessel EEM program would result in total cost savings of \$286 million or on average \$19 million annually between 2016-2030.<sup>103</sup> CBP estimates that total net cost savings from the vessel EEM program during the period of analysis 2016-2030 would be \$27.4 million or on average \$1.7 million annually when compared to the baseline. Table 33 displays CBP's estimates for total costs, cost savings and net cost savings as a result of this proposed rule from 2015-2030.

Table 33. Estimated Cost, Cost Savings, and Net Cost Savings from Vessel EEM 2015- 2030 (undiscounted 2023 U.S. dollars)

Year	Costs	Cost Savings	Net Cost Savings
2015	\$911,916		(\$911,916)
2016	\$209,386	\$32,788	(\$176,598)
2017	\$212,035	\$43,739	(\$168,296)
2018	\$214,733	\$50,256	(\$164,477)
2019	\$217,483	\$51,358	(\$166,125)
2020	\$220,285	\$55,752	(\$164,533)
2021	\$223,141	\$53,579	(\$169,562)
2022	\$226,051	\$68,203	(\$157,848)
2023	\$1,138,431	\$124,326	(\$1,014,105)
2024	\$1,141,452	\$124,013	(\$1,017,439)
2025	\$1,144,531	\$123,701	(\$1,020,830)
2026	\$49,549,443	\$54,915,275	\$5,365,831
2027	\$50,053,863	\$55,970,380	\$5,916,517
2028	\$50,566,366	\$57,052,240	\$6,485,874
2029	\$51,087,092	\$58,161,870	\$7,074,778
2030	\$51,616,180	\$59,300,334	\$7,684,154
<b>Total</b>	<b>\$258,732,388</b>	<b>\$286,127,814</b>	<b>\$27,395,426</b>
Average	\$16,170,774	\$19,075,188	\$1,712,214

Table 34. Total Monetized Present Value and Annualized Costs of Vessel EEM 2015-2030 (2023 U.S. dollars)

	3% Discount Rate	7% Discount Rate
Present Value Cost	\$171,972,123	\$102,069,791
Annualized Cost	\$13,690,847	\$10,804,868

<sup>103</sup> CBP notes that 2015 did not provide any cost savings therefore the average for total cost savings was for the 2016-2030 time period.

Table 34 shows the discounted total quantified costs from the vessel EEM program from 2015-2030 compared to the baseline scenario. As shown, the total costs over the 16-year period of analysis would range from \$172 million (2023 U.S. dollars) using a three percent discount rate to \$102 million (2023 U.S. dollars) using a seven percent discount rate. Expected total annualized costs from this proposed rule are \$13.7 million using a three percent discount rate and \$10.8 million using a seven percent discount rate.

Table 35. Total Monetized Present Value and Annualized Cost Savings of Vessel EEM 2015-2030 (2023 U.S. dollars)

	3% Discount Rate	7% Discount Rate
Present Value Cost Savings	\$194,891,074	\$119,135,041
Annualized Cost Savings	\$15,515,444	\$12,611,355

Table 35 shows the discounted total quantified cost savings as a result of this proposed rule from 2015-2030. As shown, the total cost savings over the 16-year period of analysis would range from \$195 million in 2023 U.S. dollars, using a three percent discount rate, and \$119 million in 2023 U.S. dollars using a seven percent discount rate. Expected total annualized cost savings from this proposed rule would be \$15.5 million using a three percent discount rate and \$12.6 million using a seven percent discount rate.

Table 36. Total Monetized Present Value and Annualized Net Cost Savings of Vessel EEM 2015-2030 (2023 U.S. dollars)

	3% Discount Rate	7% Discount Rate
Present Value Net Cost Savings	\$17,242,512	\$9,271,369
Annualized Net Cost Savings	\$1,372,691	\$981,445

Table 36 shows the discounted total quantified net cost savings from this proposed rule. As shown, the total net cost savings over the 16-year period of analysis compared to the baseline would be \$17.2 million in 2023 U.S. dollars, using a three

percent discount rate and \$9.3 million in 2023 U.S. dollars using a seven percent discount rate. Expected total annualized net cost savings from this proposed rule would range between \$1.4 million using a three percent discount rate and \$0.98 million using a seven percent discount rate. Accounting statements 1 and 2 show the expected costs, cost savings and benefits from this proposed rule for the regulatory period and the program as a whole, respectively. Though CBP presents the costs of the program as a whole, including both the pilot period and the regulatory period, the costs of the pilot period are sunk for the purposes of decision-making. Therefore, CBP considered the net effects for the regulatory period when deciding whether to proceed with this rule.

Accounting Statement 1: Regulatory Period (Fiscal Years 2026-2030) (discounted 2023 U.S. dollars)

	3% Discount Rate	7% Discount Rate
<b>Costs</b>		
Annualized monetized costs	\$50,544,061	\$50,504,839
Annualized quantified, but non-monetized costs	None	None
Qualitative (non-quantified) costs	If additional cargo examinations occur estimated cost to CBP would be around \$101.44 per additional exam.	If additional cargo examinations occur estimated cost to CBP would be around \$101.44 per additional exam.
	Vessel carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process.	Vessel carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process.
	Securing a Bond required to participate.	Securing a Bond required to participate.
	Vessel carriers and voluntary participants must have someone available to respond to CBP questions about data transmitted.	Vessel carriers and voluntary participants must have someone available to respond to CBP questions about data transmitted.
	Liquidated damages, \$5,000 for each violation up to max of \$100,000 per departure.	Liquidated damages, \$5,000 for each violation up to max of \$100,000 per departure.
<b>Cost Savings</b>		
Annualized monetized cost savings	\$57,015,259	\$56,932,072
Annualized quantified, but non-monetized cost savings	None	None
Qualitative (non-quantified) cost savings	Reduce paper, printing and storage costs related to paper forms.	Reduce paper, printing and storage costs related to paper forms.
<b>Benefits</b>		
Annualized monetized benefits	None	None
Annualized quantified, but non-monetized benefits	Prevent at least 25,795 high-risk cargo shipments from being loaded onto vessels. (Estimated number of requests for return and discharges eliminated by this proposed rule)	Prevent at least 25,795 high-risk cargo shipments from being loaded onto vessels. (Estimated number of requests for return and discharges eliminated by this proposed rule)
Qualitative (non-quantified) benefits	Improve CBP's security efforts on sea exports; electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all exports in the sea environment.	Improve CBP's security efforts on sea exports; electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all exports in the sea environment.
	Gained efficiencies for trade by switching from paper to electronic data transmission.	Gained efficiencies for trade by switching from paper to electronic data transmission.
	Improved communication among Federal Agencies with export jurisdiction.	Improved communication among Federal Agencies with export jurisdiction.
<b>Net Cost Savings</b>	<b>\$6,471,198</b>	<b>\$6,427,233</b>

**Accounting Statement 2: Vessel EEM Program (Fiscal Years 2015-2030) (discounted 2023 U.S. dollars)**

	3% Discount Rate	7% Discount Rate
<b>Costs</b>		
Annualized monetized costs	\$13,690,847	\$10,804,868
Annualized quantified, but non-monetized costs	None	None
Qualitative (non-quantified) costs	If additional cargo examinations occur estimated cost to CBP would be around \$101.44 per additional exam.	If additional cargo examinations occur estimated cost to CBP would be around \$101.44 per additional exam.
	Vessel carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process.	Vessel carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process.
	Securing a Bond required to participate.	Securing a Bond required to participate.
	Vessel carriers and voluntary participants must have someone available to respond to CBP questions about data transmitted.	Vessel carriers and voluntary participants must have someone available to respond to CBP questions about data transmitted.
	Liquidated damages, \$5,000 for each violation up to max of \$100,000 per departure.	Liquidated damages, \$5,000 for each violation up to max of \$100,000 per departure.
<b>Cost Savings</b>		
Annualized monetized cost savings	\$15,515,444	\$12,611,355
Annualized quantified, but non-monetized cost savings	None	None
Qualitative (non-quantified) cost savings	Reduce paper, printing and storage costs related to paper forms.	Reduce paper, printing and storage costs related to paper forms.
<b>Benefits</b>		
Annualized monetized benefits	None	None
Annualized quantified, but non-monetized benefits	Prevent at least 25,795 high-risk cargo shipments from being loaded onto vessels. (Estimated number of requests for return and discharges eliminated by this proposed rule)	Prevent at least 25,795 high-risk cargo shipments from being loaded onto vessels. (Estimated number of requests for return and discharges eliminated by this proposed rule)
Qualitative (non-quantified) benefits	Improve CBP's security efforts on sea exports; electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all exports in the sea environment.	Improve CBP's security efforts on sea exports; electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all exports in the sea environment.
	Gained efficiencies for trade by switching from paper to electronic data transmission.	Gained efficiencies for trade by switching from paper to electronic data transmission.
	Improved communication among Federal Agencies with export jurisdiction.	Improved communication among Federal Agencies with export jurisdiction.
<b>Net Cost Savings</b>	\$1,372,691	\$981,445

### *B. Regulatory Flexibility Act.*

This section examines the impact on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This proposed rule which requires electronic transmission of export manifest data for all cargo prior to departure for vessels departing the United States, could potentially impact a substantial number of small U.S. entities. CBP expects that all outbound vessel carrier companies that engage in exporting goods from the United States in the sea environment and an unknown number of other trade members (such as USPPs, FPPIs, customs brokers, ABI filer, NVOCCs, freight forwarders or any other party with direct knowledge of the export data element) would be affected by this proposed rule. The scope of impact on small U.S. entities depends largely on how many other trade members elect to provide electronic data directly to CBP as a result of this proposed rule but CBP expects that a significant number of small U.S. entities would be impacted from this proposed rule. CBP expects that approximately 45 outbound vessel carriers and around

costs to outbound vessel carriers and other trade members from this proposed rule would be an average of \$99,148 each year, meanwhile the cost savings to the average trade member would be around \$114,160 annually. CBP expects that the net cost savings would be \$15,012 annually to the average trade member.<sup>104</sup>

To determine how many outbound vessel carriers are small U.S. businesses, CBP used the Small Business Administration (SBA) size standards for Deep Sea Freight Transportation Industry (NAICS 483111) which defines a small business as one with 1,050 employees or fewer regardless of revenue.<sup>105</sup> CBP obtained business level data on these 45 companies and compared the 45 anticipated outbound vessel carrier companies' employment numbers against the size standards to determine if each one is a small business.<sup>106</sup> CBP identified that 20 of these outbound vessel carrier companies qualify as small U.S. entities. Additionally, from the business level data obtained CBP estimates that the average annual revenue of these small U.S. entities was approximately \$271 million. CBP expects that at least 20 small U.S. outbound vessel carrier companies would be affected by this rule and incur annual costs around \$99,148 which on average represent just 0.04% of the annual revenue of these small U.S. outbound vessel carriers. CBP does not consider annual costs of less than one percent of annual revenue to be a significant economic impact to the average small U.S. vessel carrier company. Additionally, CBP anticipates that vessel EEM participants would experience time savings as a result of this proposed rule which is not reflected in the annual costs.

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<sup>104</sup> To calculate the expected net cost savings to the average outbound vessel carrier CBP used the average total estimated net costs to trade during the regulatory period divided by the estimated number of trade members participating in vessel EEM (500).

<sup>105</sup> U.S. Small Business Administration, "2023 Table of Size Standards," March 17, 2023, accessed July 2023. This is the most recent updated size standards provided by the U.S. Small Business Administration as of July 2024.

<sup>106</sup> CBP used Dun & Bradstreet Hoovers business database to obtain business level data on the 45 outbound vessel carrier companies identified by CBP to be affected by this proposed rule. CBP then compared the number of employees for each company by the SBA size standards to determine if that company is a small entity. CBP also used the physical address for each company to determine if the location is in a foreign or domestic location. Sampling was conducted in 2023.

CBP expects that other trade members are categorized within the Freight Transportation Arrangement Industry (NAICS 488510). CBP used the SBA size standards to determine the percent of small entities within this industry.<sup>107</sup> SBA defines a small business in this industry as businesses with annual revenue less than \$34 million regardless of the number of employees.<sup>108</sup> CBP used data from the U.S. Census Bureau on industry level revenue and which shows that approximately 98% of businesses in the Freight Transportation Arrangement Industry (NAICS 488510) likely have annual revenue less than \$34 million and therefore CBP assumes that around 98% of businesses within this industry are small entities.<sup>109</sup> According to CBP's estimate that 455 other trade members would participate in providing vessel EEM data directly to CBP, approximately 448 of those CBP anticipates are small businesses. Table 37 displays U.S. Census Bureau industry level data on the Freight Transportation Arrangement Industry and CBP's process for determining the percentage of small businesses.

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<sup>107</sup> U.S. Small Business Administration, "2023 Table of Size Standards," March 17, 2023. This is the most recent updated size standards provided by the U.S. Small Business Administration as of July 2024.

<sup>108</sup> For NAICS 488510, CBP used the SBA size standard for Non-Vessel Owning Common Carriers and Household Goods Forwarders (Exception) (NAICS 488510) of \$34 million annual revenue instead of the Freight Transportation Arrangement (NAICS 488510) size standards of \$20 million of annual revenue.

<sup>109</sup> United States Census Bureau, "2017 County Business Patterns and 2017 Economic Census," Released March 6, 2020, <https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html>. Accessed July 28, 2023.

Table 37. Small Business in the Freight Transportation Arrangement Industry (NAICS 488510) (receipts in thousands of U.S. dollars)

Employment Size	Number of Firms	Total Receipts	Average Receipts Per Firm	SBA Size Standard	Small Business?
01: Total	15,104	\$64,643,370	\$4,280	\$34,000	-
02: < 5	8,912	\$6,244,628	\$701	\$34,000	YES
03: 5-9	2,731	\$5,256,561	\$1,925	\$34,000	YES
04: 10-19	1,524	\$5,808,892	\$3,812	\$34,000	YES
05: < 20	13,167	\$17,310,081	\$1,315	\$34,000	YES
06: 20-99	1,344	\$13,563,505	\$10,092	\$34,000	YES
07: 100-499	357	\$10,783,623	\$30,206	\$34,000	YES
08: < 500	14,868	\$41,657,209	\$2,802	\$34,000	YES
09: 500+	236	\$22,986,161	\$97,399	\$34,000	NO

Note: CBP acknowledges that it is possible for any firm in each category to be a small or large firm according to the SBA size standards, however since CBP does not have that level of detail available CBP assumes that all firms in a category are represented by the average receipts per firm.

CBP expects that the average annual revenue for other trade members that are small businesses is approximately \$2.8 million (see Table 33). CBP expects approximately 448 of these trade members would incur on average costs of \$99,148 annually as a result of this proposed rule. CBP estimates that the average annual costs to other trade members would represent about 3.5% of the average annual revenue for small entities. CBP considers costs of more than one percent of revenue to be a significant economic impact. These costs do not take into account any potential cost savings experienced by other trade members that are small businesses as a result of this proposed rule. CBP notes that these trade members are not required to participate directly in providing vessel EEM data to CBP and CBP assumes they would only participate directly if they determine their benefits exceed their costs.

The Regulatory Flexibility Act generally requires agencies to prepare a regulatory flexibility analysis for proposed rules, unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. According to CBP's estimates on the impacts of this proposed rule, CBP could not conclude that the costs to a substantial number of small entities from this proposed rule would be sufficiently small to justify "certification." Accordingly, the proposed rule is subject to the regulatory

analysis of 5 U.S.C. 603 and 604 and CBP has conducted the following Initial Regulatory Flexibility Analysis. CBP requests comments on this determination.

1. A Description of the Reasons Why Action by the Agency Is Being Considered.

CBP is proposing to amend regulations as part of its ongoing efforts to transition away from paper forms and to Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 1415). The Trade Act directs CBP to establish regulations that provide for the mandatory electronic transmission of data by way of a CBP-approved electronic data interchange before cargo arrives or departs the United States in all environments (sea, air, rail, and truck). CBP believes this proposed rule provides the best option to transition to electronic environments and implement the Trade Act authority in a way that also improves CBP's enforcement efforts on cargo security and smuggling prevention.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule.

This proposed rule is authorized under the Trade Act. This proposed rule would require trade members to provide export manifest data to CBP electronically for all exports in the sea environment prior to departure. Obtaining export manifest data electronically for exports in the sea environment prior to departure would allow CBP to use the Automated Targeting System (ATS) to conduct risk assessment and to identify high-risk shipments before they depart the United States. Additionally, transitioning to obtaining export manifest data through an electronic system allows CBP to implement the Trade Act (for exports in the sea environment) and improve CBP's cargo security efforts and smuggling prevention efforts.

3. A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply.

This proposed rule would affect all outbound vessel carriers that engage in exporting cargo out of the United States. CBP identified 45 outbound vessel carrier

companies that engage in exporting goods out of the United States, of which 39 (20 domestic entities, 19 foreign entities) were determined to be small entities. All of these small entities would be affected by this proposed rule.

Additionally, CBP anticipates that a substantial number of other trade members (including USPPIs, FPPIs, customs brokers, ABI filer, NVOCCs, and freight forwarders) would be affected by this proposed rule, specifically for those other trade members who elect to participate in providing vessel EEM data directly to CBP. CBP anticipates that 455 other trade members would elect to directly participate in providing vessel EEM data to CBP. Approximately 448 of those other trade members are expected to be small entities.<sup>110</sup>

#### 4. A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record.

This proposed rule would propose changes to reporting and recordkeeping and compliance for outbound vessel carriers and other trade members that elect to provide electronic export manifest data directly to CBP. Outbound vessel carriers would no longer be required to complete and submit CBP Form 1302A ‘Cargo Declaration Outward with Commercial Forms’ in lieu of providing export manifest electronically to CBP as part of the vessel EEM. Reporting and recordkeeping would transition away from paper forms and would all be conducted in an electronic environment as vessel EEM participants would develop their own IT system to submit data directly to CBP via ACE. All outbound vessel carriers and other trade members electing to participate

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<sup>110</sup> According to CBP estimates, see Table 33, approximately 98% of entities in the Freight Transportation Arrangement Industry (NAICS 488510) are small entities. CBP multiplied the percentage of small entities in the industry (98%) by the expected number of direct vessel EEM participants in the industry (455) to estimate the number of small entities that would elect to directly participate in vessel EEM (.98 X 455 = 448).

directly in vessel EEM would be required to submit export manifest data elements under new deadlines prior to departure. This proposed rule provides CBP with authority to impose penalties and/or claims for liquidated damages on parties that do not provide the mandatory EEM data in the manner and in the time frame required. CBP expects that this proposed rule would affect a substantial number of small entities including companies categorized as outbound vessel carriers, USPPs, FPPIs, customs brokers, ABI filer, NVOCCs, and freight forwarders. Because this proposed rule largely moves from a paper submission to an electronic submission and because many entities are already submitting data electronically for imports into the United States, CBP anticipates that any small entity affected by this proposed rule would already possess the professional skills necessary for the preparation of the proposed reporting of electronic export manifest data as would be required for vessel EEM.

5. An Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap or Conflict with the Proposed Rule.

This proposed rule would require export manifest data for all exports in the sea environment to be provided to CBP electronically through CBP's ACE as per 19 CFR 4.61, 4.63, 4.75, and 4.76. CBP would transition away from the paper process to only accepting the electronic versions of the CBP Form 1302A 'Cargo Declaration Outward with Commercial Forms. This rule does not duplicate, overlap, or conflict with any existing Federal rules.

6. A Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities.

Alternative 1 (chosen alternative): Allows CBP to require trade to provide export manifest data electronically to CBP prior to departure for all exports in the sea environment. According to Section 343(a) of the Trade Act of 2002, as amended (Trade

Act) (19 U.S.C. 1415), CBP is authorized to establish regulations that provide for the mandatory electronic transmission of data by way of a CBP-approved electronic data interchange before cargo arrives or departs the United States in all environments. The requirement to submit manifest data electronically in such a way is important to help facilitate a more efficient trade process. Submitting electronic export manifest data prior to departure also increases CBP's ability to conduct proper risk assessment and identify high-risk cargo to ensure cargo security and to prevent smuggling before vessels depart.

Alternative 2: No regulatory action. Alternative 2 would mean that the status quo would continue, and trade members would provide export manifest data to CBP for many exports in the sea environment post departure and on paper CBP Form 1302As. This alternative would avoid all the costs and benefits under the rule. Alternative 2 would eliminate average annual total costs of approximately \$50.1 million and would eliminate all cost savings associated with this proposed rule, which CBP expects would be on average \$57.1 million annually.<sup>111, 112</sup> Alternative 2 would also not generate any benefits to CBP from improved cargo security efforts on exports in the sea environment. Under this alternative CBP would not implement the Trade Act authority with respect to these exports and would not be able to conduct proper risk assessment on exports in the sea environment because export manifest data is provided post departure.

Alternative 3: Exempt small entities from the effects of the proposed rule.

Exempting small entities from this proposed rule would result in only a few large entities being affected. According to CBP's estimates of the number of outbound vessel carrier companies and other trade members that are not small businesses, under this alternative

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<sup>111</sup> This would include all expected costs to CBP and trade members as a result of this proposed rule including, CBP's systems maintenance and operating costs, costs to CBP to review and address generated holds on vessel EEM data, all expected costs to trade members to upgrade IT systems and provide vessel EEM data and respond to holds.

<sup>112</sup> Cost savings eliminated in alternative 2 include all cost savings to trade members from transitioning to a pre-departure electronic data submission process and this alternative would not decrease any requests for cargo returns or discharges or induce the time savings from submitting electronic data compared to paper submission.

there would be a total of six outbound vessel carrier companies and approximately seven other trade members effected by this proposed rule. The costs of this proposed rule would be significantly lower under alternative 3 when compared to the proposed rule. Using the average annual costs of \$99,148 per business, if only 13 companies participate in vessel EEM, then the average annual total costs to trade members would decrease from \$49.6 million to around \$1.3 million. However, the average annual total cost savings from this rule to trade members would also decrease significantly. CBP expects that alternative 3 would generate annual cost savings of around \$114,160 per participating business, totaling approximately \$1.5 million each year.<sup>113</sup> Compared to alternative 1, alternative 3 would result in a decline in average annual total cost savings of around \$55.6 million (\$57.0 million - \$1.5 million). Although alternative 3 would avoid costs to small entities, CBP would not implement the Trade Act authority on all exports in the sea environment. Additionally, CBP would not be provided export manifest data for all exports prior to departure in the sea environment, preventing CBP from being able to conduct proper risk assessment to ensure cargo security and to prevent smuggling.

CBP has chosen to implement Alternative 1. CBP believes this is the best alternative to implement the Trade Act for all exports in the sea environment and to enhance CBP's efforts to ensure cargo security while also preventing smuggling for sea exports. Additionally, transitioning to electronic submission of data allows for a more efficient process for all parties involved and providing export manifest data prior to departure would prevent high-risk shipments from departing the United States in the sea environment.

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<sup>113</sup> CBP calculated the average annual cost savings per entity of around \$114,160 by dividing average total annual estimated cost savings during the regulatory period by the anticipated number of entities affected. CBP estimates in the regulatory impact analysis for this proposed rule that the average total annual cost savings to trade members would be around \$57.1 million. CBP assumes the cost savings would be equally distributed across all participating entities and therefore divided \$57.1 million by 500 entities resulting in average annual cost savings to each entity of around \$114,160.

*C. Paperwork Reduction Act.*

An agency may not conduct, or sponsor and an individual is not required to respond to a collection of information unless it displays a valid OMB control number. The collections of information in the current regulations have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB control number 1651-0001. CBP anticipates that this proposed rule would result in a reduction in time burden to respondents when providing vessel EEM data directly to CBP. This proposed rule establishes new requirements for trade members to provide electronic export manifest data for vessels departing the United States to CBP prior to a vessel departing from a U.S. port of export. CBP notes that prior to this proposed rule trade members were already providing vessel export manifest data to CBP through the paper Export Cargo Declaration CBP Form 1302A. This proposed rule would now require trade members to provide vessel EEM prior to departure and would eliminate the paper CBP Form 1302A, removing time burdens associated with CBP Form 1302A from collection 1651-0001. Comments on the information collection may address one or more of the following four points:

- (1) Is the collection of information necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Are there ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Are there ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic,

mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Under this proposed rule, collection 1651-0001 would be revised to reflect the changed burden hours from eliminating the CBP Form 1302A and introducing a new time burden to trade members for providing vessel EEM data to CBP prior to departure of the vessel from a U.S. port of export. The new information collection requirements from this proposed rule would result in the following change in the estimated time burdens to the public for the information collection number 1651-0001:

Time Savings from Eliminating the Export Cargo Declaration (CBP Form 1302A)

Estimated number of respondents annually:	45
Average responses per respondent:	231,585
Total responses:	10,421,341
Estimated time savings per respondent:	11,579 hours
Total time savings:	521,067 hours

Time Burden From Requiring vessel EEM

Estimated number of respondents annually:	500
Average responses per respondent:	23,343
Total responses:	11,671,431
Estimated time savings per response:	661 hours
Total time burden:	330,691

CBP expects that as a result of this proposed rule estimated time burden hours to the public related to this information collection would decrease by around 200,123 hours down from 11,653,193 to 11,453,070 burden hours. CBP estimates that the cost to the

public from this information collection would now be \$826,568,048.

CBP also expects that this proposed rule would result in a decrease in the time burden and the annual cost to the Federal government for this information collection. This proposed rule would decrease time burdens to the Federal government by eliminating the paper CBP Form 1302A and because CBP's Automated Targeting System would automate the review process for vessel EEM data provided to CBP. CBP officers would experience a reduced time burden from reviewing an estimated 0.27 percent of all vessel EEM responses provided by the public. These revisions decreased the total number of responses reviewed by CBP for this information collection by 11,138,898 resulting in a reduced time burden of around 928,241 hours and cost reduction of around \$67,761,628 annually. The total estimated cost to the Federal government from this collection is now estimated to be \$1,708,392,011.

#### *D. Privacy.*

CBP will ensure that all Privacy Act requirements and applicable DHS privacy policies are adhered to as a result of this proposed regulation.<sup>114</sup> CBP has issued a Privacy Impact Assessment (PIA) for the Automated Commercial Environment (ACE),<sup>115</sup> which outlines how CBP ensures compliance with Privacy Act protections and DHS privacy policies, including DHS's Fair Information Practice Principles (FIPPs). The FIPPs account for the nature and purpose of the information being collected in relation to DHS's mission to preserve, protect and secure the United States. The PIA addresses issues such as the security, integrity, and sharing of data, use limitation and transparency. The PIA is publicly available at: <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

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<sup>114</sup> See the DHS Privacy Policy webpage, available at <https://www.dhs.gov/privacy-policy-guidance>.

<sup>115</sup> See U.S. Department of Homeland Security, U.S. Customs and Border Protection, Privacy Impact Assessment for The Automated Commercial Environment, DHS/CBP/PIA-003 and all subsequent updates, available at <https://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

The Privacy Act of 1974 requires that federal agencies issue a System of Record Notice (SORN) to provide the public notice regarding personally identifiable information (PII) collected in a system of records. SORNs explain how the information is used, retained, and may be accessed or corrected, and whether certain portions of the system are subject to Privacy Act exemptions for law enforcement, national security, or other reasons. CBP issued the DHS/CBP-001 Import Information Systems (IIS) System of Records and the DHS/CBP-020 Export Information System (EIS) System of Records, which provide coverage for the proposed regulation.<sup>116</sup>

*E. Unfunded Mandates Reform Act.*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year. *See* section 202(a) of the UMRA (2 U.S.C. 1532(a)). This proposed rule will not result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Therefore, no actions were deemed necessary under the provisions of the UMRA.

**VI. Signing Authority**

The signing authority for these amendments falls under 19 CFR 0.2(a).

Accordingly, this document is signed by the Secretary of Homeland Security (or the

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<sup>116</sup> *See* DHS/CBP-001 Import Information System, 81 FR 48826 (July 26, 2016), available at <https://www.dhs.gov/system-records-notices-sorns>; and DHS/CBP-020 Export Information Systems (EIS), 80 FR 53181 (Jan. 2, 2015), available at <https://www.federalregister.gov/documents/2015/09/02/2015-21675/privacy-act-of-1974-department-of-homeland-security-us-customs-and-border-protection-dhscbp-020>.

Secretary's delegate).

## **List of Subjects**

### *19 CFR Part 4*

Exports, Freight, Harbors, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements, Vessels.

### *19 CFR Part 103*

Administrative practice and procedure, Confidential business information, Courts, Freedom of information, Law enforcement, Privacy, Reporting and recordkeeping requirements.

### *19 CFR Part 113*

Common carriers, Exports, Freight, Laboratories, Reporting and recordkeeping requirements, Surety bonds.

## **Proposed Amendments to the Regulations**

For the reasons stated in the preamble, CBP proposes to amend parts 4, 103 and 113 of title 19 of the Code of Federal Regulations (19 CFR parts 4, 103 and 113) as set forth below.

## **PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES**

1. The authority citation for part 4 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1415, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

\* \* \* \* \*

Section 4.61 also issued under 46 U.S.C. 12101, 12120, 12132, 55102, 55105–55108, 55110, 55115–55117, 55119;

\* \* \* \* \*

Section 4.75 also issued under 46 U.S.C. 60105;

\* \* \* \* \*

Section 4.81 also issued under 19 U.S.C. 1442, 1486; 46 U.S.C. 12101, 12120, 12132, 55102, 55105–55108, 55110, 55114–55117, 55119;

\* \* \* \* \*

Section 4.82 also issued under 19 U.S.C. 293, 294; 46 U.S.C. 60308;

\* \* \* \* \*

Section 4.84 also issued under 46 U.S.C. 12118;

Section 4.85 also issued under 19 U.S.C. 1442, 1623;

Section 4.86 also issued under 19 U.S.C. 1442;

\* \* \* \* \*

Section 4.88 also issued under 19 U.S.C. 1442, 1622, 1623;

\* \* \* \* \*

Section 4.93 also issued under 19 U.S.C. 1322(a); 46 U.S.C. 12101, 12120, 12132, 55102, 55105–55108, 55110, 55114–55117, 55119;

\* \* \* \* \*

2. Amend § 4.61 as follows:

- a. Revise paragraph (a);
- b. In paragraph (b), add at end of the fourth sentence before the period “or its electronic equivalent”; and
- c. Add paragraph (c)(25).

The revision and addition read as follows:

**§ 4.61 Requirements for clearance.**

(a) *Application for Clearance.* A clearance application for a vessel intending to depart for a foreign port must be made by filing Vessel Entrance or Clearance Statement, CBP Form 1300 (Vessel Entrance or Clearance Statement), executed by the vessel master or other proper officer with CBP, or by transmitting a certified electronic equivalent via an approved electronic

system. Clearance will be granted by CBP either on the Vessel Entrance or Clearance Statement, CBP Form 1300, or by approved electronic means. Clearance may be permitted at times and at locations as the port director may designate. For clearance by non-electronic means, the port director may require advance notice of vessel departure be given prior to granting requests for optional clearance locations. Expenses incurred by CBP for clearance at such locations will be reimbursed as authorized.

\* \* \* \* \*

(c) \* \* \*

(25) Electronic receipt of required electronic export manifest information (see § 4.63).

\* \* \* \* \*

3. Revise § 4.62 to read as follows:

**§ 4.62 Accounting for inward cargo.**

Inward cargo discrepancies shall be accounted for and adjusted through the electronic manifest correction process (see § 4.12).

4. Revise § 4.63 to read as follows:

**§ 4.63 Advance vessel and cargo departure information: Outward Cargo**

**Declaration; Electronic Export Manifest (EEM); Electronic Export Information**

(a) *General requirement.* No vessel will be cleared directly for a foreign port, or for a foreign port by way of another domestic port (see § 4.87(b)), unless CBP receives certain advance vessel and cargo departure information. CBP must receive this information no later than the time frames prescribed in paragraph (b) of this section. CBP must receive from the outbound vessel carrier a Vessel Entrance or Clearance Statement, CBP Form 1300, or its electronic equivalent. CBP must also receive from the outbound vessel carrier, or

other eligible filer as specified in paragraph (c) of this section, electronic information concerning the vessel and its cargo, known as Electronic Export Manifest (EEM) data and enumerated in paragraphs (d), (e), and (f) of this section. Any EEM holds must be resolved in accordance with the provisions and time frames prescribed in paragraph (g) of this section. Any Do-Not-Load (DNL) instructions must be addressed in accordance with the provisions prescribed in paragraph (h) of this section. Additionally, CBP must receive certain Electronic Export Information (EEI) pursuant to § 192.14 of this chapter and the Census Bureau's Foreign Trade Regulations (FTR) (15 CFR part 30). The transmission of the required EEM and EEI data must occur through CBP-approved electronic interchange systems. Completion of the EEM data requirements of this section serves as a complete manifest for purposes of this chapter.

*(b) Time frame for transmitting advance vessel and cargo departure information--*

*(1) Vessel Clearance Statement.* Vessel Entrance or Clearance Statement, CBP Form 1300, or its electronic equivalent must be presented to CBP by the outbound vessel carrier no later than 2 hours prior to departure of the vessel from the United States either directly or via another domestic port or ports (see § 4.61(a)).

*(2) EEM data--*

*(i) Initial filing.* The initial filing of EEM data required by paragraph (d) of this section must be transmitted as early as practicable, but no later than 24 hours prior to loading of cargo on the vessel departing from the United States.

*(ii) Other EEM data.* The EEM data other than the initial filing data described in paragraph (d) of this section must be transmitted according to the

two-hour time frame prior to loading the cargo on the vessel in anticipation of departure as identified below:

(A) *Export manifest transportation data.* The export manifest transportation data described in paragraph (e) of this section must be transmitted no later than 2 hours prior to loading of the cargo on the vessel in anticipation of departure of the vessel from the United States either directly or via another domestic port or ports.

(B) *Export manifest cargo data.* The export manifest cargo data described in paragraph (f) of this section must be transmitted no later than 2 hours prior to loading of the cargo on the vessel in anticipation of departure of the vessel from the United States either directly or via another domestic port or ports.

(C) *Empty container data.* Data related to empty containers as described in paragraph (f) of this section must be transmitted no later than 2 hours prior to loading of the container on the vessel in anticipation of departure of the vessel from the United States either directly or via another domestic port or ports.

(3) *Electronic Export Information (EEI).* Electronic Export Information (EEI) must be filed in the manner and in the time frames established by § 192.14 of this chapter and the Census Bureau's Foreign Trade Regulations (FTR) (15 CFR part 30).

(4) *Updates.* The party described in paragraph (c) of this section who transmits data required by this section must update the data if, after the filing is transmitted, any of the transmitted data changes or more accurate data becomes available. Updates are required upon discovery of data changes or availability. The outbound vessel carrier shall notify the U.S. Principal Party in Interest

(USPPI) or the authorized agent of changes to the transportation data. The corrections, cancellations, or amendments to transportation data shall be electronically transmitted by the USPPI or the authorized agent in accordance with the FTR (15 CFR Part 30).

(5) *Post-departure EEM and/or EEI.* Consistent with the provisions of § 4.75, only certain EEM or EEI may be filed post-departure.

(c) *Parties filing advance vessel and cargo departure information--*

(1) *Outbound vessel carrier.* The outbound vessel carrier must submit Vessel Entrance or Clearance Statement, CBP Form 1300, or its electronic equivalent. The outbound vessel carrier also must transmit the export manifest transportation data described in paragraph (e) of this section and data for any empty container as described in paragraph (f) of this section. If no other eligible party elects to transmit the initial filing required by paragraph (d) of this section and/or the export manifest cargo data described in paragraph (f) of this section, the outbound vessel carrier must transmit the applicable EEM data. If another eligible party elects to transmit the initial filing data and/or export manifest cargo data, the outbound vessel carrier may also choose to do so.

(2) *U.S. Principal Party in Interest (USPPI) or Filing Agent for Foreign Principal Party in Interest (FPPI).* The U.S. Principal Party in Interest (USPPI), as defined by § 30.2 of the FTR (15 CFR 30.2) or its authorized filing agent, or the authorized filing agent of the Foreign Principal Party in Interest (FPPI) as defined by § 30.2 of the FTR (15 CFR 30.2) is responsible for the electronic transmission of EEI.

(3) *Other filers.* In addition to the outbound vessel carrier and the USPPI or its authorized agent, or the authorized agent of the FPPI, for whom certain transmissions are mandatory, any other party with direct knowledge of the EEM data, which may include a customs broker, Automated Broker Interface (ABI)

filer, non-vessel operating common carrier (NVOCC) as defined by § 4.7(b)(3)(ii), or a freight forwarder as defined by part 112 of this chapter, meeting the qualifications of paragraph (a) of this section that require transmission of information through a CBP-approved electronic system, may elect to transmit to CBP the initial filing data required by paragraph (d) of this section and/or the export manifest cargo for outgoing cargo listed in paragraph (f) of this section.

(4) *Non-participation by other party.* If another party specified in paragraph (c)(3) of this section does not transmit EEM data, the party that arranges for and/or delivers the cargo to the outbound vessel carrier must fully disclose and present to the outbound vessel carrier the cargo information listed in paragraphs (d) and (f) of this section. The outbound vessel carrier must transmit this information to CBP in accordance with this section.

(5) *Bond required.* Any party described in paragraph (c) of this section transmitting any of the data described in this section other than the USPPI or its authorized agent or the authorized agent of the FPPI, must transmit to CBP pursuant to part 113 of this chapter the appropriate bond containing all the necessary conditions of § 113.62, § 113.63, or § 113.64 of this chapter.

(6) *Required information in possession of third party.* Any entity in possession of required data that is other than the outbound vessel carrier, USPPI or its authorized agent, the authorized agent of the FPPI, or a party described in paragraph (c)(3) of this section must fully disclose and present the required data to either the outbound vessel carrier or other eligible electronic filer, as applicable, which must transmit such data to CBP.

(7) *Party receiving information believed to be accurate.* Where the party electronically transmitting the data required in paragraphs (d), (e), and (f) of this

section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the transmitting party acquired such information, and whether and how the transmitting party is able to verify this information. Where the transmitting party is not reasonably able to verify such information, CBP will permit the party to electronically transmit the information based on what that party reasonably believes to be true.

(d) *Initial filing.* The following EEM data comprises the initial filing which is mandatory and may be made by any eligible party identified in paragraph (c) of this section.

(1) Bill of Lading number;

(2) The numbers and quantities of the cargo laden aboard the vessel as contained in the carrier's bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(3) Total Weight of cargo expressed in pounds or kilograms;

(4) A precise cargo description (or the Harmonized Tariff Schedule (HTS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper); or, for a sealed container, the shipper's declared description (generic descriptions, specifically those such as "FAK" ("freight of all kinds"), "general cargo," "bulk cargo" and "STC" ("said to contain") are not acceptable);

(5) The shipper's complete name and address, or identification number, from the Bill(s) of Lading (for each house bill in a consolidated shipment);

(6) The complete name and address of the consignee, or identification

number, from the bill(s) of lading (The consignee is the party to whom the cargo will be delivered to in the foreign country. However, in the case of cargo shipped “to order of [a named party],” the “to order” party must be named as the consignee; and if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party’s identity and contact information including address in the “Notify Party” field.);

(7) The estimated scheduled departure date and departure port; and

(8) Automated Export System (AES) Internal Transaction Number (ITN) or AES Exemption Statement (per shipment).

(e) *Export manifest transportation data--*

(1) *Mandatory data.* The following transportation data is mandatory and must be transmitted by the outbound vessel carrier:

(i) Mode of transportation data (containerized vessel cargo or non-containerized vessel cargo);

(ii) Vessel Country Code (International Organization for Standardization (ISO) country code);

(iii) Vessel Name;

(iv) Voyage Number;

(v) Port of Departure;

(vi) Port of Unlading;

(vii) Date of Departure;

(viii) Bill of Lading type (Master, House or Simple);

(ix) Vessel Code (International Maritime Organization (IMO) code);

(x) The outbound vessel carrier identification SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier in the National Motor Freight Traffic

Association, Inc., Directory of Standard Multi-Modal Carrier and Tariff Agent Codes; see

§ 4.7a(c)(2)(iii));

(xi) Container information;

(xii) Load Status (Empty or Loaded); and

(xiii) Place outbound vessel carrier took possession of cargo or empty container.

(2) *Conditional data: seal number(s)*. Seal number(s) constitutes conditional transportation data and must be transmitted by the outbound vessel carrier when applicable. The seal numbers must be provided for all seals affixed to containers to the extent that CBP's data system can accept this information (for example, if a container has more than two seals, and only two seal numbers can be accepted through the system per container, electronic presentation of two of these seal numbers for the container would be considered as constituting full compliance with this data element).

(3) *Optional data--*

(i) Marks and Numbers;

(ii) Number of house Bills of Lading; and

(iii) Country of Ultimate Destination.

(f) *Export manifest cargo data--*

(1) *Mandatory data*. The following export manifest cargo data is mandatory and may be transmitted by any eligible party described in paragraph (c) of this section. If the information has been provided in the initial filing described in paragraph (d) of this section, it need not be transmitted again unless there are updates or changes.

(i) Shipper name and address (for empty containers, the shipper may be the carrier from whom the outbound vessel carrier received the empty container to transport);

(ii) Consignee name and address (for empty containers, the consignee

may be the carrier to whom the outbound vessel carrier is transporting the empty container);

- (iii) Port of Lading;
- (iv) Bill of Lading numbers;
- (v) Bill of Lading type (Master, House, or Simple); and
- (vi) Cargo description.

(2) *Conditional data.* The following export manifest cargo data is conditional and may be transmitted by any eligible party eligible described in paragraph (c) of this section:

- (i) In-bond number and type or in-bond house bill number;
- (ii) Mexican Pedimento (for cargo exported to Mexico);
- (iii) Notify Party name and address;
- (iv) Chemical Abstract Service (CAS) Registry Number;
- (v) Additional Party Details; and

(vi) 6-character Hazmat Code (UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided).

(3) *Optional data.* The following export manifest cargo data is optional and may be transmitted by any eligible party described in paragraph (c) of this section:

- (i) Secondary Notify Party SCAC; and
- (ii) Vehicle Identification Number (VIN).
- (g) *EEM holds--*

(1) *Potential holds.* There are two types of holds that may be issued by CBP after a risk assessment of an EEM data transmission:

- (i) *2H Documentation hold.* A 2H documentation hold will be issued if a

risk assessment of the cargo cannot be conducted due to non-descriptive, inaccurate, or insufficient data. This can be due to typographical errors, vague cargo descriptions, and/or unverifiable information; and

(ii) *1H Enforcement hold*. A 1H enforcement hold will be issued if a potential high-risk cargo or container is identified and warrants further examination. Enforcement holds may be issued even if the cargo or container has already been loaded onto the vessel.

(2) *Hold resolution*. All parties transmitting EEM data and/or the outbound vessel carrier, as applicable, must respond to and take the necessary action to address all holds as provided in paragraphs (g)(2)(i)-(ii) of this section. The appropriate protocols and time frame for taking the necessary action to address these holds must be followed as directed. The parties responsible for taking the necessary actions to address EEM holds are as follows:

(i) *2H Documentation hold*. The party who transmitted the EEM data is responsible for taking the necessary action to address a documentation hold issued upon CBP review of that data. The responsible party must update the missing or invalid EEM data to release the hold on the cargo or container. Until CBP releases the hold, the cargo or container should not be loaded onto the vessel.

(ii) *1H Enforcement holds —(A) Generally*. An enforcement hold requires a CBP officer to conduct a manual review of the EEM data transmitted. The party that transmitted the EEM data to CBP will be notified of the hold and if CBP needs to conduct further examination of the data transmission or if a mandatory inspection of the cargo or container is necessary. If the party who transmitted the EEM data is the outbound vessel carrier, it may address an enforcement hold directly. If the party who transmitted the EEM data is a party

other than the outbound vessel carrier, the party who transmitted the EEM data may choose to address the enforcement hold directly while informing the outbound vessel carrier of the hold. If the party who transmitted the EEM data chooses not to address the enforcement hold, it must notify the outbound vessel carrier of the enforcement hold. Upon such notification, the outbound vessel carrier is responsible for taking the necessary action to address the enforcement hold.

(B) *Issued after loading.* If an enforcement hold is issued after loading the cargo or container onto the vessel and CBP requests to manually examine the cargo or container, the outbound vessel carrier must coordinate with the appropriate parties to remove the cargo or container before departure so CBP officers can manually examine the cargo or container. If the vessel has already departed the U.S. port of export the outbound vessel carrier must return the cargo or container from foreign for CBP to examine or discharge the cargo or container if the vessel is stopping at a second U.S. port.

(3) *Prohibition on transporting cargo or containers with unresolved holds.* The outbound vessel carrier may not transport cargo or containers on a vessel destined for departure from the United States until all holds issued pursuant to paragraph (g)(1) of this section with respect to such cargo or containers, other than enforcement holds issued as described in paragraph (g)(2)(ii)(B) of this section, have been resolved.

(h) *Do-Not-Load (DNL) instructions--*

(1) A Do-Not-Load (DNL) instruction will be issued if it is determined that the cargo or container may contain a potential immediate lethal threat to the vessel and its vicinity.

(2) All outbound vessel carriers and any other transmitter must respond

fully and cooperate when a Do-Not-Load (DNL) instruction is issued. The party with physical possession of the cargo will be required to carry out the Do-Not-Load (DNL) protocols and the directions provided by law enforcement authorities. All outbound vessel carriers and transmitters who receive a DNL instruction must contact CBP at the port of export.

(3) The outbound vessel carrier may not transport cargo with a Do-Not-Load (DNL).

5. Amend § 4.72 by revising the last sentence of paragraph (a) to read as follows:

**§ 4.72 Inspection of meat, meat-food products, and inedible fats.**

(a) \* \* \* If such statement has been used as the basis for obtaining vessel clearance, failure to submit a copy of the certificate to CBP within 4 days of departure may result in issuance by CBP of a request for redelivery of the shipment and/or in the assessment of penalties or liquidated damages as prescribed by law.

\* \* \* \* \*

6. Amend § 4.75 by revising paragraphs (a) and (b) to read as follows:

**§ 4.75 Complete Electronic Export Manifest (EEM) and Electronic Export Information (EEI) requirements and exceptions.**

(a) The Electronic Export Manifest (EEM) data required by § 4.63 is a complete manifest. Post-departure filing of EEM data is not permitted except as provided in paragraph (b) of this section. Post-departure filing of Electronic Export Information (EEI) is not permitted except as provided for eligible parties by the provisions of the Census Bureau's Foreign Trade Regulations (15 CFR part 30).

(b) For shipments from a State or the District of Columbia to Puerto

Rico or from Puerto Rico to a State or the District of Columbia, the EEM data required by § 4.63 may be filed within one business day after arrival in Puerto Rico or a State or the District of Columbia. For a party to avail itself of this allowance, a bond must be transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.64. Liquidated damages will apply for the failure to transmit the EEM in a timely manner.

\* \* \* \* \*

#### **§ 4.76 [Removed]**

7. Remove § 4.76.

#### **§4.81 [Amended]**

8. Amend § 4.81 as follows:

a. In paragraph (e):

i. Remove the text “Customs”, wherever it appears, and add, in its place, the text “CBP”;

ii. At the end of the first sentence, before the text “in duplicate” add the text “or its electronic equivalent; if a paper form is filed, it must be filed”;

iii. In the second sentence, add the text “, or its electronic equivalent” after the text “Vessel Entrance or Clearance Statement”;

iv. In the third sentence, add the text “, or its electronic equivalent” after the text “Cargo Declaration”;

v. In the fourth sentence, remove the text “Three” and add, in its place, the text “If the Cargo Declaration is filed in paper form, three”;

vi. At the end of the fifth sentence before the period, add the text “; the port director may also grant the permit through an electronic system approved by CBP on the electronic equivalent of Vessel Entrance or Clearance Statement, CBP Form 1300”;

vii. In the eighth sentence, add the text “, or updated electronic equivalent,” after the first appearance of the text “Vessel Entrance or Clearance Statement”, and add the text “or its electronic equivalent,” after the second appearance of “Vessel Entrance or Clearance Statement”;

b. In paragraph (g)(1):

i. Remove the text “Customs”, wherever it appears, and add, in its place, the text “CBP”;

ii. Add the text “, or its electronic equivalent” after the text “Form 1300”, wherever it appears; and

c. In paragraph (g)(2), add the text “, or its electronic equivalent” after the text “Form 1300”, wherever it appears.

9. Amend § 4.82 as follows:

a. In paragraph (a), remove the last sentence, and add, in its place, the sentence “The Electronic Export Manifest (EEM) data (see § 4.63) need only be transmitted pertaining to the cargo for foreign destination. (See §§ 4.61 and 4.87.)”;

b. Revise paragraph (b);

c. In paragraph (c), in the last sentence, remove the phrase “and the certified copies of the coastwise Cargo Declaration, Customs Form 1302”; and

d. In paragraph (d), in the last sentence, remove the phrase “by the coastwise Cargo Declaration, Customs Form 1302, or otherwise, as part of the coastwise cargo,”.

The revision reads as follows:

**§ 4.82 Touching at foreign port while in coastwise trade**

\* \* \* \* \*

(b) The carrier must also transmit electronically to CBP cargo information

for merchandise to be transported via the foreign port or ports to the subsequent ports in the United States to include information consistent with an initial filing of EEM data as described in § 4.63(d). Merchandise to be carried by the vessel under a transportation entry pursuant to part 18 of this chapter need not be included in this transmission.

\* \* \* \* \*

10. Revise and republish § 4.84(c) to read as follows:

**§ 4.84 Trade with noncontiguous territory.**

\* \* \* \* \*

(c)

(1) A vessel which is not required to clear but which is transporting merchandise from a port in any State or the District of Columbia to any noncontiguous territory of the United States (excluding Puerto Rico), or from Puerto Rico to any State or the District of Columbia, or any other noncontiguous territory, will not be permitted to depart without filing a complete EEI filing, when required by the Census Bureau's Foreign Trade Regulations (15 CFR part 30). Requests for permission to depart may be written, oral, or electronic, and permission to depart will be granted by the appropriate CBP officer. The Vessel Entrance or Clearance Statement, CBP Form 1300, or its electronic equivalent, required at the time of clearance is not required to transport merchandise to or from any State or the District of Columbia and any non-contiguous territory.

(2) A vessel which is not required to clear but which is transporting merchandise from a port in any State or the District of Columbia to Puerto Rico must file a complete EEI filing, when required by the Census Bureau's Foreign Trade Regulations (15 CFR part 30).

\* \* \* \* \*

**§ 4.85 [Amended]**

11. Amend § 4.85 as follows:

a. Remove the text “Customs”, wherever it appears, and add, in its place, the text “CBP”;

b. Revise paragraph (a), to read as follows: “Any foreign vessel or documented vessel with a registry endorsement, arriving from a foreign port with cargo or passengers manifested for ports in the United States other than the port of first arrival, may proceed with such cargo or passengers from port to port, provided a bond has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers, in a suitable amount. No additional bond shall be required at subsequent ports of entry. Before the vessel departs from the port of first arrival, the master shall obtain from the port director a certified copy of the complete inward foreign manifest (hereinafter referred to as the traveling manifest). The certified copy shall have a legend similar to the following endorsed on the Vessel Entrance or Clearance Statement, Customs Form 1300:

Port  
Date

Certified to be a true copy of the original inward foreign manifest.

Signature and title

The traveling manifest described in this paragraph (a) may also be obtained through an electronic system approved by CBP.”;

c. In paragraph (b)(1), add at the end of the paragraph the sentence “The application for and the granting of a permit to proceed to the next port described in this paragraph (b)(1) may also be transmitted through an electronic system approved by CBP on the electronic equivalent of Vessel Entrance or Clearance

Statement, CBP Form 1300.”;

d. In paragraph (b)(2):

i. At the beginning of the first sentence, remove the word “The”, and add, in its place, the phrase “If the master presented a paper application pursuant to paragraph (b)(1) of this section, the”;

ii. In the second sentence, after the text “Form 1300”, add the text “, or electronic equivalent,” and after the word “proceed”, add the phrase “or by indicating electronically that only loading will occur”;

e. In paragraph (c)(1):

i. In the second sentence, add the text “, or its electronic equivalent” after the text “this section”; and

ii. In the third sentence, add the text “, or their updated electronic equivalents” after the text Form 1302”.

#### **§ 4.86 [Amended]**

12. Amend § 4.86 as follows:

a. Remove the text “Customs”, wherever it appears, and add, in its place, the text “CBP”;

b. In paragraph (a), add the text “, or its electronic equivalent” after the text “Form 1302”;

c. In paragraph (b):

i. In the first sentence, remove the text “in original only” and add, in its place, the text “, or its electronic equivalent,”; and

ii. Add at the end of the last sentence the text “or its electronic equivalents”.

#### **§ 4.87 [Amended]**

13. Amend § 4.87 as follows:

a. Revise paragraph (b);

b. In paragraph (c), add the text “, or its electronic equivalent” after the text “Form 1300”;

c. In paragraph (d):

i. Add the text “, or its electronic equivalent” after the text “Form 1300”;

ii. Add the text “, or its electronic equivalent” after the text “Vessel Entry or Clearance Statement”; and

d. Remove paragraphs (f) and (g).

The revision reads as follows:

**§ 4.87 Vessels proceeding foreign via domestic ports.**

\* \* \* \* \*

(b) When applying for a clearance from the first and each succeeding port of lading, the master must present to the port director a Vessel Entrance or Clearance Statement, CBP Form 1300, or its electronic equivalent, and the Electronic Export Manifest (EEM) data in accordance with § 4.63 for all the cargo laden at that port. All previous ports of lading must be identified.

\* \* \* \* \*

14. Revise § 4.88(c) to read as follows:

**§ 4.88 Vessels with residue cargo for foreign ports.**

\* \* \* \* \*

(c) If the vessel clears directly foreign from the first port of arrival, cargo brought in from foreign ports and retained on board shall be declared in the Electronic Export Manifest (EEM) transmission (see § 4.63). If any cargo has been landed, the EEM data must describe each item of the cargo from a foreign port which has been retained on board.

\* \* \* \* \*

#### **§4.89 [Amended]**

15. Amend § 4.89 as follows:

a. Remove the text “Customs”, wherever it appears, and add, in its place, the text “CBP”;

b. In paragraph (a), remove the last sentence, and add, in its place, the sentence “The Electronic Export Manifest (EEM) data (see § 4.63) must show the cargo destined for a foreign port or place in the manner provided for in § 4.88(c).”;

c. In paragraph (b):

i. Add the text “, or the electronic equivalent(s)” after the text “Declarations”;

ii. Add the text “, or its electronic equivalent” after the text “Form 1300”

d. In paragraph (c), add the text “, or its electronic equivalent” after the text “Form 1302”; and

e. In paragraph (d), add the text “, or their electronic equivalents” after the text “Declaration”.

#### **§4.90 [Amended]**

16. In § 4.90(b), remove the text “Customs Form 1300”, and add, in its place, the text “CBP Form 1300, or its electronic equivalent”.

#### **§4.91 [Amended]**

17. Amend § 4.91 as follows:

a. Remove the text “Customs”, wherever it appears, and add, in its place, the text “CBP”;

b. In paragraph (a):

i. Add the text “, or its electronic equivalent” after the text “Form 1300”, wherever it appears;

- ii. In the last sentence, add the text “CBP” before the text “Form 1300”;
- c. In paragraph (b)(2), add the text “CBP” before the text “Form 1300”;
- d. In paragraph (b)(3), remove the word “certificate”, wherever it appears, and add, in its place, the word “certification”; and
- e. In paragraph (c), add the text “, or its electronic equivalent” after the text “Form 1302”.

#### **§4.93 [Amended]**

- 18. In the introductory text of § 4.93(c), remove the text “Customs Form 1302” and add, in its place, the text “CBP Form 1302, or its electronic equivalent”.

#### **§ 4.99 [Amended]**

- 19. Amend § 4.99 as follows:
  - a. Remove the text “Customs Forms”, wherever it appears, and add, in its place, the text “CBP Forms”; and
  - b. Remove the text “1302A,”, wherever it appears.

### **PART 103—AVAILABILITY OF INFORMATION**

- 20. The general authority section for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

\* \* \* \* \*

Section 103.31 also issued under 19 U.S.C. 1431;

\* \* \* \* \*

- 21. Amend § 103.31 by revising paragraphs (a)(1) (a)(2) (d)(1)(iii), (d)(2)(iii), and (e) to read as follows:

#### **§ 103.31 Information on vessel manifests and summary statistical reports.**

(a) \* \* \*

(1) Of the information and data appearing on outward manifests, the information listed below may be copied and published. However, if the Secretary

of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure of the below information is likely to pose a threat of personal injury or property damage, that information shall not be disclosed to the public.

The data elements which may be copied and published, include:

- i. Voyage Number
- ii. Vessel carrier identification SCAC Code (the unique Standard Carrier Alpha Code assigned for each carrier in the National Motor Freight Traffic Association)
- iii. Bill of Lading and type
- iv. Date of Departure
- v. Manifested quantity and unit type
- vi. Manifested weight and weight unit
- vii. First Foreign Port of Destination
- viii. Port of Unlading
- ix. Country of Destination
- x. Container Number
- xi. Container Length, Height, Width, and Type
- xii. Equipment Description Code
- xiii. Piece Count
- xiv. Measurement and Unit of Measurement
- xv. Conveyance ID
- xvi. Manifest Number
- xvii. Vessel Country Code
- xviii. Place of Receipt
- xix. Seal information
- xx. Load Status
- xxi. Type of Service

xxii. Hazmat code

xxiii. Hazmat details

xxiv. Shipper name and complete address

xxv. Notify Party name and address

xxvi. Consignee name and address

xxvii. Record Status Indicator

(2) Commercial or financial information, such as the marks and numbers shall not be copied from outward manifests or any other papers.

\* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) The certification must be submitted to the Vessel Manifest Program Manager, Office of Trade (Mail Stop 1354), U.S. Customs and Border Protection, 22001 Loudon County Parkway, Mail Stop #1354, Sterling, Virginia 20598-1354; or submitted electronically via an email transmission at vesselmanifestconfidentiality@cbp.dhs.gov or via the Vessel Manifest Confidentiality Online Application on CBP's public website, www.CBP.gov.

\* \* \* \*

(2) \* \* \*

(iii) The certification must be submitted to the Vessel Manifest Program Manager, Office of Trade (Mail Stop 1354), U.S. Customs and Border Protection, 22001 Loudon County Parkway, Mail Stop #1354, Sterling, Virginia 20598-1354; or submitted electronically via an email transmission at vesselmanifestconfidentiality@cbp.dhs.gov or via the Vessel Manifest Confidentiality Online Application on CBP's public website, www.CBP.gov.

\* \* \* \*

(e) *Availability of manifest data on Secure File Transfer Protocol (SFTP)* —

(1) *Availability.* Manifest data acquired from the Automated Manifest System (AMS) is available to interested members of the public on SFTP. This data, compiled daily, will contain all manifest transactions made on the nationwide system within the last 24-hour period. Data for which parties have requested confidential treatment in accordance with paragraph (d) of this section will not be included on the SFTP. These SFTP data files may be purchased at the government's production cost. SFTP files are available for specific days or on a subscription basis.

(2) *Requests and subscriptions.* Requests for SFTP files must be in writing and submitted to: U.S. Customs and Border Protection, ATTN: FIN OPS- REV Reimbursable Team, ATTN: Mail Stop 203 J, 8899 E. 56th St., Indianapolis, IN 46249. Actual costs and other specific information to include payment information via electronic fund transfer should be ascertained by contacting Reimbursables at (317) 614-4520 or by email at [reimbsvcs@cbp.dhs.gov](mailto:reimbsvcs@cbp.dhs.gov). Bills for subscriptions will be issued monthly, with the first month's fee due in advance. Requested SFTP files are not available via United States Postal Service. Subscriptions may be canceled provided CBP receives written notice at least 10 days prior to the end of the month. The CBP Technology Support Center must be notified in writing within seven days of technical problems with SFTP files in order to receive a replacement or credit towards future purchases. Refunds will not be provided. Information regarding the technical specifications of the SFTP files or problems with SFTP files should be directed to CBP Technology Support Center at 1-800-927-8729.

\* \* \* \* \*

**PART 113—CBP Bonds**

22. The general authority section for part 113 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1623, 1624.

\* \* \* \* \*

23. Revise § 113.62(k)(2) to read as follows:

**§113.62 Basic importation and entry bond conditions.**

\* \* \* \* \*

(k) *Agreement to comply with electronic entry and/or advance cargo information filing requirements.*

(1) \* \* \*

(2) If the principal elects to provide advance inward or outbound cargo information to CBP electronically, the principal agrees to provide such cargo information to CBP in the manner and the time period required by law and regulation. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation, to a maximum of \$100,000 per conveyance arrival or departure.

\* \* \* \* \*

24. Amend § 113.63 as follows:

- a. Add a heading for paragraph (g);
- b. Redesignate paragraph (g) as paragraph (g)(1); and
- c. Add new paragraph (g)(2).

The additions read as follows:

**§113.63 Basic custodial bond conditions.**

\* \* \* \* \*

(g) *Agreement to comply with advance cargo information filing requirements.*

(1) \* \* \*

(2) If the principal elects to provide advance inward or outbound cargo information to CBP electronically, the principal agrees to provide such cargo

information to CBP in the manner and the time period required by law and regulation. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation, to a maximum of \$100,000 per conveyance arrival or departure.

25. Amend § 113.64 by revising paragraphs (d), (e), and (j) to read as follows:

**§ 113.64 International carrier bond conditions.**

\* \* \* \* \*

(d) *Agreement by carrier to provide advance electronic information.* The carrier agrees to provide advance electronic information to CBP for arriving or departing conveyances in the manner and the time period required by law and regulation. If the carrier, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation, to a maximum of \$100,000 per conveyance arrival or departure.

(e) *Agreement by party other than carrier to provide advance electronic information.* Any party other than an arriving or departing carrier who elects to provide advance electronic information to CBP for cargo on arriving or departing conveyances must provide or transmit that information in the manner and the time period required by law and regulation. If the party providing or transmitting information, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation, to a maximum of \$100,000 per conveyance arrival or departure.

\* \* \* \* \*

(j) *Agreement to Provide Export Information.* The principal agrees to provide export information, including but not limited to any certifications of export, in the manner and in the time provided by law. If the principal defaults,

the obligors agree to pay liquidated damages for each day's delinquency in an amount equal to penalties described in the provisions of title 13, United States Code, section 304(a) (13 U.S.C. 304(a)) as amended in accordance with civil penalty adjustment authorities.

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Kristi Noem,  
Secretary of Homeland Security.

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