

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Parts 113 and 123

[Docket No. USCBP–2024–0030]

RIN 1651–AB52

Automated Commercial Environment (ACE) Electronic Export Manifest for Rail Cargo

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes a new regulation pursuant to the Trade Act of 2002 requiring the submission of export manifest data electronically to U.S. Customs and Border Protection (CBP) in the Automated Commercial Environment (ACE) for cargo transported by rail for any train departing the United States. The proposed regulation would mandate the electronic transmission of rail export manifest information, identify the parties eligible to transmit information, and describe the time frames prior to departure of the train in which the information is due. This rule would enable CBP to address important cargo security concerns while providing efficiencies to the trade.

DATES: Comments must be received by March 14, 2025.

ADDRESSES: Please submit comments, identified by docket number, by the following method:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP–2024–0030.

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 the plain language summary, background documents or comments received, go to <http://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, or by telephone, (202) 344–3277.

SUPPLEMENTARY INFORMATION:

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 in developing these procedures 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 Automated Commercial Environment (ACE) Electronic Export Manifest for Rail Cargo

1. Need for the Regulatory Action

Current regulations are insufficient to adequately capture cargo data for rail shipments leaving the United States. CBP is proposing this rule to reduce the data gaps existing under current regulations, and to address important cargo security concerns resulting from incomplete data. This proposed rule will apply to all rail cargo exports and provide efficiencies to the trade. CBP does not presently require the pre-departure electronic submission of data for all exported cargo as it does for imported cargo. This can result in a threat to cargo and broader U.S. national security because CBP has no regulation prescribing any method or means of review for cargo being exported by rail. The electronically transmitted cargo data that is submitted prior to departing the United States by rail is limited significantly in its scope. Currently, 19 CFR 192.14 requires a U.S. Principal Party in Interest (USPPI), the USPPI’s agent, or the authorized filing agent of a Foreign Principal Party in Interest (FPPI) to transmit Electronic Export Information (EEI) to CBP through the Automated Commercial Environment (ACE). While this pre-departure data is helpful, EEI is generally only required by the Bureau of Census regulations on shipments that exceed \$2,500 per Schedule B number and is not generally required for shipments to Canada, unless certain controlled items are involved or the shipment is being transhipped to another destination. 15

CFR parts 30 and 758. Because of these limitations, there is a significant lack of electronic manifest data which inhibits the enforcement efforts by CBP for such exports because of the gaps in information. The proposed regulation would create an integrated pre-departure electronic export manifest which includes receiving advance information for risk assessment purposes from the source most likely to have correct information about the cargo. This proposed regulation closes the gap which currently exists and requires all information to be manifested which enhances the security of the rail cargo and aligns the security of exported rail cargo with the regulations that are required of rail cargo imported into the United States.

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 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). The required cargo information is reasonably necessary to enable CBP to identify high-risk shipments for purposes of ensuring cargo safety and security, including compliance with export controls; preventing smuggling; and commercial risk assessment targeting, pursuant to the laws enforced and administered by CBP. 19 U.S.C. 1415(a)(3)(F). 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.

B. Summary of the Major Provisions of ACE EEM for Rail Cargo

This proposed rule would mandate the transmission of EEM data in addition to the EEI data required under 15 CFR part 30 for all cargo prior to departing the United States for Canada and Mexico in the rail environment in lieu of paper submissions. The new regulation that CBP is seeking to promulgate is proposed 19 CFR 123.93 which would mandate the electronic transmission of rail export manifest information, identify the parties eligible to transmit information, describe the time frames prior to departure of the train in which the information is due, and identify an initial filing that must occur 24 hours prior to departure from

the port of export while requiring the remaining data to be transmitted at least two hours prior to such departure. The proposed regulation designates information as transportation data, cargo data, or empty container data, and lists the data elements to be transmitted while calling them out as mandatory, conditional, or optional. The data elements that are identified as mandatory must be submitted, while elements identified as conditional shall be submitted if available, and optional elements may be provided at the discretion of the filers. These elements 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.

CBP proposes adding 19 CFR 123.93(c) which identifies the parties that can file the cargo and conveyance data. The outbound carrier is responsible for transmitting the export manifest transportation data and empty container data. If no other party elects to transmit the initial filing data and the export manifest cargo data, then the outbound carrier must transmit this data. If another eligible party elects to transmit either the initial filing data or export manifest cargo data, the outbound carrier may also choose to, but is not required to transmit such data. Other eligible parties include USPPI and FPPI, as defined by the provisions of section 30.1 of the FTR of the Department of Commerce, Bureau of the Census (15 CFR 30.1), or its authorized agent. Other eligible filers also include any other party with direct knowledge of the export information, such as a customs broker, Automated Broker Interface (ABI) filer, NVOCC as defined by 19 CFR 4.7(b)(3)(ii), or a freight forwarder as defined in 19 CFR 112.1. If another party does not transmit advance export information, the party that arranges for and/or delivers the cargo to the outbound carrier must fully disclose and present to the outbound carrier the data elements for the initial filing.

Proposed 19 CFR 123.93(d) requires a mandatory initial filing of seven data elements identified below to be submitted 24 hours prior to departure to a foreign port, by either the carrier, USPPI, or other qualified parties or their authorized agents. The results of the test have shown that some rail carriers would have the export manifest data available days in advance prior to 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, CBP would require electronic export manifest information in sections 123.93(e), and (f) to be transmitted two hours prior to train departure to a foreign port from the final U.S. port.

Proposed 19 CFR 123.93(g) provides for two types of referrals that may be issued by CBP after a risk assessment of an outbound export manifest data transmission. Should any rail cargo be identified by CBP as requiring review, the cargo will be held until required additional information related to the shipment is submitted or some other appropriate action is taken, as specified by CBP. Once the cargo is cleared for loading, a release message will be generated and transmitted to the filer. In addition to holds, 19 CFR 123.93(h) would provide for procedures for when a CBP officer determines during the review that cargo or a rail car may contain a potential threat to the train and its vicinity, so that a Do-Not-Load (DNL) instruction can be issued, which prohibits the rail carrier from transporting that cargo or rail car so that further examination can be conducted. These examinations allow for CBP to secure the cargo, conduct risk assessment, and inspect cargo effectively.

As an enforcement tool, CBP is also proposing 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 to amend 19 CFR 113.62 to add new paragraph (k)(3), amend 19 CFR 113.63 and 19 CFR 113.64, in order to address electronically provided outbound information in the time frame required as they currently address electronic transmissions for merchandise or cargo which is inbound. With each of these regulations, CBP may assess liquidated damages if a violation occurs. CBP's primary goal is compliance and CBP seeks to work alongside rail 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. rail exports.

For CBP, the proposed requirement to submit an electronic export manifest will enhance cargo security in that it would allow for improvements in risk assessment capabilities by allowing CBP to use its Automated Targeting System

(ATS) to screen all of the data submitted. Port operations will enjoy considerable efficiencies through the elimination of paper manifests. Storage space currently reserved for manifest documents will be freed. Coordination and information exchange among CBP, the Department of Commerce, and other Government agencies with export jurisdiction will improve. Carriers, USPPIs, non-vessel operating common carriers (NVOCC), and other interested parties who transmit information will receive better and more rapid examination decisions from CBP and improved communication between CBP and trade members. The trade will benefit further through the ease of making information corrections and additions electronically in contradiction to the process that is required with paper submissions which is more time consuming to manually complete, distribute, edit and transmit in addition to the storage required for paper submissions. These benefits, including targeting which is necessary for security purposes, outweigh the flexibility of allowing parties to file submissions either by paper or electronically.

C. Costs and Benefits

CBP anticipates that during the time period of analysis including the test period and the regulatory period (2016–2030), this proposed rule would result in costs, cost savings and benefits to CBP and trade members engaging in exporting merchandise out of the United States in the rail environment.¹ CBP estimates present value total costs to CBP and trade members would be around \$9.3 million using a two percent discount rate, or \$0.7 million annualized. CBP identified some other potential costs from this proposed rule, but CBP was unable to monetize these costs, including time burdens to CBP officers if the proposed rule results in additional cargo examinations and trade members participating in the rail EEM would also need to adjust business practices, be required to hold or obtain a qualifying bond, be required to have staff available 24 hours a day 7 days a week to respond to CBP questions and pay liquidated damages for any violations. Present value total cost savings to CBP and trade members are expected to be around \$59.1 million using a two percent discount rate, or \$4.6 million annualized. CBP expects

¹ In the Regulatory Impact Analysis for this NPRM, CBP also discusses and provides estimates for the costs, cost savings and benefits compared to the baseline (prior to the introduction of the rail EEM test) during both the rail EEM test pilot period (2016–2025) and for the regulatory period (2026–2030).

that there would be additional cost savings to trade members that CBP was unable to monetize such as reduced paper, printing and storage costs related to paper forms, and reducing or eliminating instances where trains need to be deconstructed in order for CBP to examine cargo would typically results in a delay of up to 2 hours and results in around \$3,000 in freight movement costs. CBP anticipates that benefits from

this proposed rule would include improving CBP’s security efforts by using ATS to conduct risk assessment on all rail 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 costs from the implementation of this final rule would be around \$49.8 million using a two percent discount rate, or approximately \$3.9 million annualized.² Table 1 displays CBP’s estimates for future annualized costs, costs savings, benefits, and net costs from this proposed rule using a two percent discount rate over the period of analysis (2016–2030).

Table 1. Estimated Annualized Cost, Cost Savings, Benefits using 2% Discount Rate (2016–2030) (thousands U.S. dollars)

Costs	
Annualized monetized costs	\$726,156
Annualized quantified, but non-monetized costs	None
Qualitative (non-quantified) costs	If additional cargo examinations occur estimated cost to CBP would be around \$101.44 per additional exam.
	Rail carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process. ³
	Bond required to participate.
	Rail carriers and voluntary participants must have someone available 24 hours a day 7 days a week to respond to CBP questions about data transmitted.
	Liquidated damages, \$5,000 for each violation up to max of \$100,000 per departure.
Cost Savings	
Annualized monetized cost savings	\$4,601,091
Annualize quantified, but non-monetized cost savings	None
Qualitative (non-quantified) cost savings	Reduce paper, printing and storage costs related to paper forms.
	Rail carriers may avoid instances where trains need to be deconstructed in order for CBP to examine cargo, resulting in delays (1-2 hours) and freight movement costs (\$3,000 per occurrence).
Benefits	
Annualized monetized benefits	None
Annualized quantified, but non-monetized benefits	None
Qualitative (non-quantified) benefits	Improve CBP’s security efforts on rail exports, electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all rail exports. ⁴
	Gained efficiencies from trade by switching from paper to electronic data transmission.
	Improved communication among Federal Agencies with export jurisdiction.
Net Costs	
	\$3,874,935

² In the economic analysis for this proposed rule, CBP used a 2% discount rate for estimated future

quantified and monetized costs, costs savings and benefits based on guidance from OMB Circular A–

4 (<https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf>).

III. Statutory Authority

Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 1415), 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 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)(3)(F).

CBP consulted with carriers throughout the process of developing the proposed regulation and during the course of the ACE Export Manifest for Rail Cargo Test (*see* Section IV.B below) that has been administered since 2015. 19 U.S.C. 1415(a)(3)(A). As the statute requires, the proposed regulation imposes 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 regulations take into account how, under ordinary commercial practices, information is acquired by the party on which the requirement is 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 is imposed, the regulations shall permit that party to transmit information on the basis of what it reasonably believes to be true. 19 U.S.C. 1415(a)(3)(B). The proposed regulation that CBP is seeking to promulgate would require the submission of the export manifest data electronically in ACE for cargo transported by rail, pursuant to section 343(a), of the Trade Act of 2002, as amended. 19 U.S.C. 1415(a)(3)(E). 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 VII.C. 19 U.S.C. 1415(a)(3)(I).

IV. Background

A. Current Regulations

Under the existing regulations, rail carriers are not required to submit a paper or electronic manifest for cargo exported from the United States by rail. CBP does have regulations which support the transmission of electronic export information (EEI) required by the Bureau of the Census Foreign Trade Regulations (FTR) or the Bureau of Industry and Security's Export Administration Regulations (EAR). Section 192.14 of title 19 of the Code of Federal Regulations (19 CFR 192.14) implements the requirements of the Trade Act regarding cargo departing the United States. Under 19 CFR 192.14, the U.S. Principal Party in Interest (USPPI) or its authorized agent or the authorized filing agent of the Foreign Principal Party in Interest (FPPI) is required to submit certain advance information to CBP for export cargo leaving the United States by rail.⁵

Under 19 CFR 192.14, the USPPI or its authorized agent must transmit and verify system acceptance of this EEI, generally no later than two hours prior to the arrival of the train at the border. *See* 19 CFR 192.14(b)(1)(iv). A rail 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. *See* 19 CFR 192.14(c)(4)(i). While the rail carrier is not required to submit a rail cargo export manifest to CBP, the outbound rail carrier must annotate the carrier's outward manifest, waybill, or other export documentation with the applicable Automated Export System (AES) proof of filing, post departure, downtime, exclusion, or exemption citations, conforming to the approved data formats found in the Bureau of the Census FTR. *See* 15 CFR part 30.

The current regulations found in 19 CFR 192.14 also require the USPPI, the USPPI's authorized agent, or the authorized filing agent of the FPPI to electronically transmit to CBP through AES certain EEI. This information supports statistical gathering; however, it falls short of addressing important cargo security considerations to include almost all shipments with a value less

than \$2,500.00 per Schedule B number and shipments directed to Canada, other than those containing certain items controlled under the EAR or intended for transshipment through Canada, creating a gap in security which the proposed regulation seeks to resolve by requiring information on all exports for rail cargo. CBP seeks to require the submission of manifest information providing CBP the opportunity to review and examine cargo such that high risk shipments such as narcotics, weapons or ammunition, including any that may not be subject to EEI filing requirements under the FTR or EAR, have a means of being discovered and withheld thereby enhancing the security of the United States. This proposed regulation will close that security gap by requiring compliance with the regulation in order to export the cargo as parties will have to provide electronic manifest information which CBP can screen and inspect for the safety of the United States and its neighboring countries. This proposed regulation also aligns with the regulation for rail cargo imported into the United States.

The transmission of EEI is a Bureau of the Census filing regulated by 15 CFR part 30 and, with few exceptions, only submitted when the value of merchandise is above \$2,500.00 per Schedule B number. The requirement also does not apply to rail shipments bound for Canada unless such shipments contain certain export-controlled items or are destined for transshipment to third countries. This regulatory gap leaves many shipments outside of CBP security review. The lack of pre-departure information, which includes commodity information submitted by rail carriers into CBP targeting systems, hinders CBP's ability to conduct risk assessment and inspect cargo effectively to ensure compliance with U.S. export control laws and regulations. The proposed regulation would create an integrated pre-departure electronic export manifest which includes receiving advance information for risk assessment purposes from the source most likely to have correct information about the cargo.

Currently, for exporting purposes, each carrier submits a train consist in a format it develops and with the data elements that it believes should be reported. The train consist identifies what is on the train, the order of the train, and what the train is consisted of as it prepares to depart the country. These data elements provide export information similar to that required by the provisions of 19 CFR 123.91, which

³ These costs to participants are discussed in further detail in the Regulatory Period Costs section in the Regulatory Impact Analysis below.

⁴ 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.

⁵ The USPPI is defined in the Bureau of the Census 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.

describes electronic information for rail cargo required in advance of arrival, and 19 CFR 123.6, which includes a train sheet for arriving railroad trains.

B. The ACE Export Manifest for Rail Cargo Test

On September 9, 2015, CBP published a general notice in the **Federal Register** (80 FR 54305) announcing the National Customs Automation Program (NCAP) Test for the transmission through ACE of Electronic Export Manifest (EEM) information for rail shipments, the Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test (“Test”), which was limited to nine rail carriers.

1. The National Customs Automation Program

The NCAP was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057, 2188 (1993) (Customs Modernization Act) (19 U.S.C. 1411–14). Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of ACE, the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP’s business functions and the information technology that supports those functions. CBP’s modernization efforts are accomplished through phased releases of ACE component functionality.

In part, the Test has been used in furtherance of International Trade Data System (ITDS) key initiatives, set forth in section 405 of the Security and Accountability for Every Port Act of 2006, Public Law 109–347, 120 Stat. 1884, 1929–1931 (SAFE Port Act) (19 U.S.C. 1411(d)) and Executive Order 13659, Streamlining the Export/Import Process for America’s Businesses, 79 FR 10655 (February 25, 2014). The purpose of ITDS, as stated in section 405, § 411(d)(1)(B) of the SAFE Port Act (19 U.S.C. 1411(d)(1)(B)), is to eliminate redundant information requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by establishing a single portal

system operated by CBP for the collection and distribution of standard electronic import and export data required by all participating Federal agencies. ACE was developed by CBP as the “single window” for the trade community to comply with the ITDS requirement established by the SAFE Port Act. *See* sec. 405, § 411(d)(1)(B) (19 U.S.C. 1411(d)(1)(B)).

2. Data Elements in the Test

The data elements as set forth in the original Test have been mandatory unless otherwise indicated below. The Test has required that five conditional data elements must be transmitted to CBP only if the particular information pertains to the shipment or cargo. The data elements are required to be submitted at the lowest bill level. The data elements in the Test for all shipments, including empty rail cars, consist of:

- (1) Mode of Transportation (containerized rail cargo or non-containerized rail cargo)
- (2) Port of Departure from the United States
- (3) Date of Departure
- (4) Manifest Number
- (5) Train Number
- (6) Rail Car Order
- (7) Car Locator Message
- (8) Hazmat Indicator (Yes/No)
- (9) 6-character Hazmat Code (conditional) (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.)
- (10) Marks and Numbers
- (11) SCAC (Standard Carrier Alpha Code) for exporting carrier
- (12) Shipper name and address (For empty rail cars, the shipper may be the railroad from whom the rail carrier received the empty rail car to transport.)
- (13) Consignee name and address (For empty rail cars, the consignee may be the railroad to whom the rail carrier is transporting the empty rail car.)
- (14) Place where the rail carrier takes possession of the cargo shipment or empty rail car
- (15) Port of Unlading
- (16) Country of Ultimate Destination
- (17) Equipment Type Code
- (18) Container Number(s) (for containerized shipments) or Rail Car Number(s) (for all other shipments)
- (19) Empty Indicator (Yes/No)

If the empty indicator is no, then the following data elements must also be provided, as applicable:

- (20) Bill of Lading Numbers (Master and House)
 - (21) Bill of Lading Type (Master, House, Simple or Sub)
 - (22) Number of House Bills of Lading
 - (23) Notify Party name and address (conditional)
 - (24) AES Internal Transaction Number or AES Exemption Statement (per shipment)
 - (25) Cargo Description
 - (26) Weight of Cargo (may be expressed in either pounds or kilograms)
 - (27) Quantity of Cargo and Unit of Measure
 - (28) Seal Number
 - (29) Split Shipment Indicator (Yes/No)
 - (30) Portion of split shipment (*e.g.*, 1 of 10, 4 of 10, 5 of 10—Final, etc.) (conditional)
 - (31) In-bond Number (conditional)
 - (32) Mexican Pedimento Number (only for shipments for export to Mexico) (conditional)
3. Test Expansion, Extension, Modification and Second Extension

On August 14, 2017, CBP extended the Test for an additional two-year period (82 FR 37893). At the same time, the Test began accepting additional applications for all parties that met the eligibility requirements of the original nine stakeholders composed of rail carriers. 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 two hours prior to loading of the cargo on the train 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 Test and considering COAC’s comments, CBP determined that, to better test the functionality and feasibility of submitting the specified export data two hours prior to loading of the cargo on the train, the filing condition for nine 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 Test to change the following eight mandatory or conditional data elements to optional:

- Mode of Transportation (containerized rail cargo or non-containerized rail cargo) (Data Element #1)
- Place where the carrier took possession (Data Element #14)
- Country of Ultimate Destination (Data Element #16)
- Equipment Type Code (Data Element #17)
- Number of House Bills of Lading (Data Element #22)
- Split Shipment Indicator (Data Element #29)
- Portion of Split Shipment (Data Element #30)
- Mexican Pedimento Number (Data Element #32)

CBP also modified the Test to change Data Element #10, Marks and Numbers, from mandatory to conditional.

The remaining data elements under the extended Test continued to be mandatory, conditional, or optional as provided in the September 9, 2015, notice, and as detailed in Section IV.B.2. above.

CBP identified in the expansion and modification of the Test that it 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 train should CBP decide to conduct rulemaking. Accordingly, as discussed in more detail below, the proposed regulation changes the timing of presentation of most electronic export manifest data from two hours prior to loading on the train to two hours prior to departure of the train to a foreign port.

On April 27, 2022, CBP extended the Test for an additional two years. (87 FR 25037.)

V. Results of the Test, Modification, Expansion and Extensions

Since its inception, the Test has assessed the feasibility of requiring rail carriers to file export manifest data for which CBP did not have regulations established for specific data elements and obtained train consists in the format and manner in which the rail carriers chose to provide such elements. In addition, the Test has assessed the functionality regarding the filing of export manifest data for rail cargo electronically to ACE in furtherance of the ITDS initiatives described above. CBP also re-engineered AES to move it to the ACE 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 reduces costs for CBP, partner government agencies, and the trade community, and improves facilitation of export shipments through the supply chain.

Additionally, the Test has examined the feasibility of requiring the rail carrier to submit manifest information electronically in ACE generally within a specified time before the cargo has been loaded on the train. Test participants were and are required to submit export manifest data electronically to ACE at least two hours prior to loading of the cargo or, for empty rail cars, upon assembly of the train. This time frame has enabled CBP to link the EEI submitted by the USPPI with the export manifest information. Much of that success has resulted from the fact that a high percentage of information is being transmitted well before the two-hour prior to departure deadline. Upon a random review of data identifying compliance with time frame submission, CBP found that nearly 94% of data transmissions occurred more than 24 hours prior to conveyance departure.

The success of the Test has 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.

VI. Purpose and Need of the Rule

CBP proposes a new regulatory requirement because it does not currently have regulations in place requiring the submission of an electronic export manifest for cargo transported by rail to assess cargo security. The proposed regulatory changes are the culmination of CBP's efforts with the Test described above.

The proposed regulation will leverage the data elements and train consist requirements in advance of departure to Mexico and Canada. The data elements are already included in the current Test, which has been operational since September 9, 2015. 80 FR 54305. The proposed regulation identifies the mandatory, conditional, and optional data elements and who would be required to submit the data. The proposed regulation also would add an initial filing for seven data elements to be presented 24 hours prior to departure of the train.

For CBP, the proposed requirement to submit an electronic export manifest will enhance cargo security in that it would allow for improvements in risk assessment capabilities at the port level. Port operations will enjoy considerable efficiencies through the elimination of paper manifests. Storage space currently reserved for manifest documents will be freed. Coordination and information exchange among CBP, the Department of Commerce, and other Government agencies with export jurisdiction will improve. Carriers, USPPIs, non-vessel operating common carriers (NVOCC), and other interested parties who transmit information will receive better and more rapid examination decisions from CBP. The trade will benefit through the ease of making information corrections and additions electronically, a process that requires cumbersome manifest discrepancy reporting in a paper world.

The ACE Export Manifest data submission is used to conduct risk assessment to identify high-risk rail cargo includes but is not limited to weapons, ammunition, currency or narcotics. High risk shipments are based on the totality of the review which includes party name, country of destination, cargo description, and/or a combination of data elements. Data supports a conclusion that Test participants have access to the manifest data early in the planning stages of an export rail cargo transaction and will be able to comply with these time frames. As stated, CBP anticipates that these timeframes will provide adequate time to perform 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. At present, regulations do not provide for any method to screen or secure rail cargo exports which this proposed regulation seeks to address. ACE Export Manifest data submission allows CBP to use its Automated Targeting System (ATS) to screen all of the data submitted which allows CBP to make better examination decisions while also reducing the time required to make such decisions. Although CBP will aim to identify shipments for inspection prior to loading, inspections could potentially happen at any time before the train departs the United States.

Any rail cargo identified by CBP as requiring review will be held 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 will be generated and transmitted to the filer.

VII. Proposed Requirements

CBP is seeking to promulgate a new regulation, proposed 19 CFR 123.93, requiring the submission of export manifest data electronically in ACE for cargo transported by rail, pursuant to section 343(a), of the Trade Act of 2002, as amended. The proposed regulation would mandate the electronic transmission of rail export manifest information, identify the parties eligible to transmit information, describe the time frames prior to departure of the train in which the information is due, and identify an initial filing that must occur 24 hours prior to departure from the port of export while requiring the remaining data to be transmitted at least two hours prior to such departure.

Further, to comply with Section 343 of the Trade Act of 2002, as amended (19 U.S.C. 1415), new 19 CFR 123.93 would require parties with the most direct knowledge to provide certain information to CBP. In furtherance of that goal, the proposed regulatory language sets forth differences between transportation data (always required of the carrier and carrier only) and cargo data, which can be provided by the party with direct knowledge of that information.

Consistent with the provisions of 19 U.S.C. 1415(a)(3)(B), when requiring information from the party with direct knowledge of the information is not practicable, the proposed regulation would take into account how, under ordinary commercial practices, information is acquired by the party on which the requirement is imposed and whether and how such party is able to verify the information. Where information is not reasonably verifiable by the party, the proposed regulation would permit the party to transmit information on the basis of what it reasonably believes to be true.

The proposed regulation designates information as transportation data, cargo data, or empty container data, and lists the data elements to be transmitted while calling them out as mandatory, conditional, or optional. The data elements that are identified as mandatory must be submitted. These elements are necessary 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. Data elements that are identified as conditional must be provided if available. Data elements

identified as optional provide additional information for purposes of clarity and may facilitate the clearance process but are not required to be submitted.

The proposed regulation provides for direction regarding enforcement referrals, Do-Not-Load messages, and Hold messages. Any rail cargo identified by CBP as requiring review would be held 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. If the cargo is cleared for loading, a release message would be generated and transmitted to the filer. If a potential high-risk cargo is identified, then a CBP officer would conduct an examination. The rail carriers would be notified of these holds through the integrated system and if a mandatory examination of the cargo and/or freight car is required or if CBP needs to conduct further review of the data transmitted. In addition to holds, if a CBP officer determines during review that cargo or a rail car may contain a potential threat to the train and its vicinity, a Do-Not-Load (DNL) instruction would be issued, which prohibits the rail carrier from transporting that cargo or railcar. The rail carrier should not transport any cargo or rail car with a DNL. The advance transmission of EEM data would help CBP review and issue holds before cargo is loaded or before a train reaches the U.S. port of export, thus facilitating a more efficient export process.

Specifically, CBP is proposing to require seven data elements, characterized as an initial filing, to be transmitted no less than 24 hours prior to train departure. The seven data elements chosen for mandatory transmission 24 hours prior to departure would be those data elements that would provide CBP with the cargo information it needs to perform the appropriate security analysis, including: Bill of Lading Number, Total Quantity, Total Weight, Cargo Description, Shipper's Name and Address, Consignee Name and Address, and Automated Export System (AES) Exemption Statement, as applicable. The proposed rule provides for the submission of transportation, conveyance, and empty container information two hours prior to departure of the train rather than two hours prior to loading (or on assembly of the train in the case of information pertinent to empty rail cars). This change in transmission timing for all other data elements would combine with the initial transmission to afford

CBP the ability to better assess risk and effectively target and inspect shipments prior to the cargo departing the United States to ensure compliance with all U.S. export laws.

A. Initial Data Elements

Different from the Test's time periods for data presentation, proposed 19 CFR 123.93 requires a mandatory initial filing of seven data elements identified below to be submitted 24 hours prior to departure to a foreign port, by either the carrier, USPPPI, or other qualified parties or their authorized agents. In proposed 19 CFR 123.93(b)(1), CBP has determined that requiring this initial filing in a time frame even earlier than prescribed in the Test is necessary to allow for complete vetting of cargo and transportation information for security purposes. The high percentage of data available for transmission 24 hours prior to departure supports the feasibility of requiring this initial filing. In further support of this proposal, some validations would be relaxed until the carrier links the master bill and house bill to allow for the submission of advance data. Upon receipt of the initial filing submission, CBP would validate and notify the filer of the master bill and house bill data, if any data is required, or if the house bill has been placed on hold pending the updating of the bill. Under the proposed regulation, the carrier would have the ultimate responsibility to load, hold, or not load the cargo. The carrier, USPPPIs and other parties qualified to transmit data (or their authorized agent) would be eligible to submit the initial data filing as discussed below.

CBP proposes adding 19 CFR 123.93(c) which identifies the parties that can file the cargo and conveyance data. The outbound carrier is responsible for transmitting export manifest transportation data and empty container data. The outbound carrier must also transmit the initial filing data and the export manifest cargo data if no other eligible party elects to do so. If another eligible party elects to transmit either the initial filing data or export manifest cargo data, the outbound carrier may also choose to, but is not required to, transmit such data. Other eligible parties include USPPPI and FPPI, as defined by the provisions of section 30.1 of the FTR of the Department of Commerce, Bureau of the Census (15 CFR 30.1), or its authorized agent. Other eligible filers also include any other party with direct knowledge of the export information, such as a customs broker, Automated Broker Interface (ABI) filer, NVOCC as defined by 19 CFR 4.7(b)(3)(ii), or a freight forwarder

as defined in 19 CFR 112.1. If another party does not transmit advance export information, the party that arranges for and/or delivers the cargo to the outbound carrier must fully disclose and present to the outbound carrier the data elements for the initial filing. Any party transmitting any of the data described in this subsection must be in possession of either a CBP Basic Importation and Entry Bond containing the provisions found in 19 CFR 113.62, a Basic Custodial Bond containing the provisions found in 19 CFR 113.63, or an International Carrier Bond containing the provisions found in 19 CFR 113.64.

CBP also proposes adding 19 CFR 123.93(d) which identifies the seven data elements from the Test that are required in the mandatory initial filing. Descriptions of those data elements have been revised in the proposed rule to clarify the kind and character of data that is required. The revised data elements in the proposed rule for the initial filing and the Test data elements to which they correspond are as follows:

(1) Bill of lading number, which is necessary to link the transmission to the cargo throughout the entire electronic manifest process;

(2) The numbers and quantities of the cargo laden aboard the train 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; numbers or quantities of containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons) [Test data element of Quantity of Cargo and Unit of Measure];

(3) Total weight of cargo expressed in pounds or kilograms [Test data element of Weight of Cargo (may be expressed in either 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", and "STC" ("said to contain") are not acceptable) [Test data element of Cargo Description];

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

(6) The consignee's complete name and address, or identification number, from the bill(s) of lading. (The consignee

is the party to whom the cargo will be delivered to in a 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.) [Test data element of Consignee name and address]; and

(7) The Automated Export System (AES) Exemption Statement, as applicable [Test data element of AES Exemption Statement (per shipment)].

Except for these seven data elements re-described or re-formatted above, CBP would require electronic export manifest information in sections 123.93(e), and (f) to be transmitted two hours prior to train departure to a foreign port. That data comprises all additional data elements to be described as export manifest transportation data, cargo data, and empty container data. While 32 data elements are described in the Test, experience has shown that some are no longer necessary for inclusion in the proposed rule.

B. Transportation Data Elements

Proposed 19 CFR 123.93(e)(1) establishes the obligation on the carrier or its agent to supply transportation data. The transportation data elements carried forward from the Test to the proposed rule include the following:

(1) Port of Departure from the United States (mandatory);

(2) Date of Departure (mandatory);

(3) Mode of Transportation (containerized rail cargo or non-containerized rail cargo) (optional);

(4) Equipment Type Code (optional);

(5) Place where the rail carrier takes possession of the cargo shipment or empty rail car (optional);

(6) Carrier-assigned conveyance name, equipment number and trip number (mandatory);

(7) 6-character Hazmat Code. If the Hazmat Code is provided, 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.) (conditional);

(8) Marks and Numbers (conditional);

(9) SCAC (Standard Carrier Alpha Code) for the exporting carrier (mandatory);

(10) Container or Equipment Numbers (for containerized shipments) or Rail Car Numbers (for all other shipments) (mandatory);

A transportation data element carried over from the Test to the proposed 19 CFR 123.3(e) with an expanded definition is as follows:

Seal Number (conditional, only required if container was sealed). The seal numbers for all seals affixed to containers and/or rail cars 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).

In proposed 19 CFR 123.3(e), CBP is adding the transportation data element of "Estimated Time of Departure" (mandatory) to be supplied by the carrier or its agent that was not required in the Test but provides important information to CBP.

Proposed 19 CFR 123.3(e) also adds the transportation data element of "Train Consist" (mandatory) to be supplied by the carrier or its agent. The Train Consist provides CBP with what is on the train from the engine through the last car and how the cargo is lined up for departure from the United States. The Train Consist is composed of the following data elements that were required in the Test:

- (1) Manifest Number
- (2) Train Number
- (3) Rail car order
- (4) Empty containers.

C. Cargo Data Elements

Proposed 19 CFR 123.93(f) establishes the obligation on the party with knowledge of the facts or its agent to supply manifest cargo data. The cargo data elements carried forward from the Test to the proposed rule in addition to the seven data elements forming the Initial Data Filing include the 17 data elements listed below. CBP recognizes that some cargo data elements would already be requested in the initial data elements; those data elements would not need to be transmitted again unless there are updates or changes made. The proposed cargo data elements are as follows:

(1) Shipper name and address (for empty rail cars, the shipper may be the railroad from whom the rail carrier received the empty rail car to transport) (mandatory);

(2) Consignee name and address (for empty rail cars, the consignee may be the railroad to whom the rail carrier is transporting the empty rail car) (mandatory);

(3) Port of Lading (mandatory);

(4) Port of Unlading (mandatory);

- (5) Bill of Lading Type (Master, House, Simple or Sub) (mandatory);
- (6) Bill of Lading Numbers (Master, House, Simple or Sub) (mandatory);
- (7) AES Internal Transaction Number or In-bond Number (per shipment) (mandatory);
- (8) Cargo description (mandatory);
- (9) Weight of cargo (may be expressed in either pounds or kilograms) (mandatory);
- (10) Quantity of cargo and unit of measure (mandatory);
- (11) In-bond type (conditional);
- (12) Notify party name and address (conditional);
- (13) Secondary notify party name and address (conditional);
- (14) Mexican Pedimento Number (only for shipments for export to Mexico) (optional);
- (15) Secondary notify party SCAC (optional);
- (16) Country of ultimate destination (optional); and
- (17) Number of house bills of lading (optional).

CBP has determined that the collection of the following data elements required in the Test were found to be problematic or superfluous or are addressed by other regulations and will not be carried forward in the proposed rule:

- (1) Car Locator Message;
- (2) Empty Indicator (yes/no);
- (3) Hazmat Indicator;
- (4) Split Shipment Indicator (Yes/No)⁶; and
- (5) Portion of split shipment (e.g., 1 of 10, 4 of 10, 5 of 10—Final, etc.)

D. Examination Referrals

Proposed 19 CFR 123.93(g) provides for two types of referrals that may be issued by CBP after a risk assessment of an outbound export manifest data transmission. A referral for information will be delivered to the rail carrier or its agent if the information provided fails to appropriately describe the cargo or if the information provided is inaccurate or insufficient. The data transmitter must then add or correct the information prior to the departure of the train from the United States. A referral for screening will be issued if the potential risk of the cargo is deemed high enough to warrant enhanced screening. In this instance, the rail carrier is notified of these holds and the notification lets the rail carrier know that a mandatory examination of the cargo and or freight car is required or if CBP needs to

conduct further review of the data transmitted.

E. Do-Not-Load (DNL)/Hold Instructions

CBP is also proposing to add 19 CFR 123.93(h) to provide for procedures for when a CBP officer determines during the review that cargo or a rail car may contain a potential threat to the train and its vicinity, so that a Do-Not-Load (DNL) instruction can be issued, which prohibits the rail carrier from transporting that cargo or rail car. The rail carrier should not transport any cargo or rail car with a DNL. A Hold instruction will be issued, even after loading, if further examination is required. In order to address such issues, data transmitters must provide a telephone number and email address that is monitored 24 hours a day/seven days a week. Data transmitters must respond and fully cooperate when such an instruction or hold is issued.

F. Other Technical Amendments to Part 123

By adding new subpart J, CBP is revising the scope provision (19 CFR 123.0) to reflect that customs procedures at the Canadian and Mexican borders would include electronic information for cargo in advance of departure which is not presently addressed in the regulation.

G. Proposed Amendments to CBP Bond Conditions

As an enforcement tool, CBP is also proposing changes to the relevant bond provisions in 19 CFR 113.62 (basic importation and entry bond), in 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 to amend 19 CFR 113.62 to add new paragraph (k)(3) to address electronically provided outbound information. Section 113.62(k) currently addresses electronic transmissions for merchandise or cargo which is inbound. CBP also proposes to amend 19 CFR 113.63 to include advance outbound information provided to CBP electronically and in the manner and in the time period required under 19 CFR 123.93. CBP is also seeking to amend 19 CFR 113.64 to include outbound information provided electronically by international carriers in the manner and time period required under 19 CFR 123.93. With each of these regulations, CBP may assess liquidated damages if a violation occurs. Any party that violates the bond conditions for outbound data

transmission as described above in this proposed rule agrees to pay liquidated damages of \$5,000 for each violation and up to a maximum of \$100,000 per departure. Compliance is CBP's goal and CBP aspires to work alongside rail carriers and other parties to ensure that trade members provide the proper data in a timely manner, so that CBP can properly review the data, conduct risk assessment of high-risk shipments, and enforce U.S. export laws and regulations on U.S. rail exports.

VIII. Regulatory Analyses

A. Executive Orders 12866 and 13563 (Regulatory Planning and Review)

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has designated this rule a "significant regulatory action" as defined under section 3(f) of E.O. 12866, as amended by Executive Order 14094. Accordingly, OMB has reviewed this rule.

In summary, CBP expects that this proposed rule would result in a present value total combined net cost savings of \$49.8 million using a two percent discount rate, or approximately \$3.8 million annualized (2023 U.S. dollars) to CBP, outbound rail carriers and other related parties during the period of analysis (2016 to 2030). CBP anticipates that this proposed rule would also provide added benefits from enhanced cargo security measures by improving compliance and the enforcement of U.S. export laws and regulations on U.S. rail exports, while also improving the facilitation of the export process. The following is the economic analysis of the potential impacts from this proposed rule.

Purpose and Background

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

⁶ Although split shipment and portion of split shipment were data elements identified in the Test, CBP decided it was unnecessary to carry them into the proposed rule because they are elements required, to the extent necessary, by 15 CFR 30.28.

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). Transmitting export manifest data electronically, instead of on paper or via email, allows CBP to use its Automated Targeting System (ATS) to screen all of the data submitted. This allows CBP to make better examination decisions while also reducing the time required to make such decisions. Trade members also experience efficiencies through quicker CBP examination decisions and improved communication between CBP and trade members. The requirement to submit manifest data through an electronic data interchange (ACE) which is the same system through which data is incorporated from AES is also important to help facilitate a more efficient trade process for all federal agencies and trade members involved. Submitting electronic manifest data (specifically pre-arrival or pre-departure) significantly increases CBP's ability to conduct risk assessment and identify high-risk cargo to ensure cargo security and to prevent smuggling. The electronic environment would improve and expedite communications between CBP and trade members in resolving examinations where additional or corrected information of the transmission is required.

Baseline

In the rail environment, CBP currently requires the advance electronic submission of data for all cargo being brought into the United States, but CBP does not require the pre-departure electronic submission of data for all exported cargo. CBP requires some electronically transmitted cargo data prior to departing the United States by rail but this data is significantly limited in scope. Current regulations⁷ require the U.S. Principal Party in Interest (USPPI), the USPPI's agent, or the authorized filing agent of the Foreign Principal Party in Interest (FPPI) to transmit Electronic Export Information (EEI) to CBP through the Automated Commercial Environment (ACE), no later than two hours prior to the arrival of the train at the border. Although this

pre-departure data is helpful, the information provided by EEI falls short of what CBP requires for proper enforcement.

The required transmission of EEI is subject to certain exemptions, as established by the Bureau of the Census regulations,⁸ which generally only require EEI transmission on shipments greater than \$2,500 and do not require the transmission of EEI for shipments destined for Canada, unless the shipment contains certain controlled items or is being transhipped to another destination.⁹ Therefore, numerous low dollar value shipments and/or Canadian-bound shipments of merchandise departing the United States by rail 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 rail exports.

Although CBP receives limited pre-departure electronic data for rail exports, CBP usually receives additional pre-departure data from rail carriers or their agents. This information, however, is submitted via attachments to an email, which is not the most efficient or effective method to obtain such data and perform risk assessment.¹⁰ During the export cargo process, the rail 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. While the rail carrier is not required to submit a rail cargo export manifest to CBP, the outbound rail carrier must annotate the carrier's outward manifest, waybill, or other export documentation with the applicable Automated Export System (AES) proof of filing, post departure, downtime, exclusion, or exemption citations, conforming to the approved data formats found in the Bureau of the Census Foreign Trade Regulations.¹¹

In the baseline rail carriers or their agents submit finalized train consists to CBP in a format of the rail carrier's choosing before a train is granted permission to depart from the U.S. port of export.¹² ¹³ Rail carriers or their

agents can provide this data via email prior to a train's arrival at the U.S. port of export (pre-departure) or present this data to a CBP officer at departure when the train arrives at the U.S. port of export (at departure). The submission of such data pre-departure via email is not mandatory, nor is there a required time frame for submitting such information. However, rail carriers have the incentive to provide this information pre-departure so that CBP has time to review the information before the train reaches the U.S. port of export, expediting the export process and usually rail carriers send this information to CBP at least two hours prior to a train's arrival at the United States border.¹⁴ If rail carriers or agents choose not to provide this data pre-departure, they must present the finalized train consists to CBP upon arrival at the U.S. port of export at which point CBP officers must complete the review of the train consists while the train is at the U.S. port of export, resulting in a delay in the train's departure.

Once this information is received by CBP (either via email or in person at the port of export) CBP officers will then conduct a review of the export information, which includes manually reviewing the finalized train consist (paper version or emailed) and address any issues. CBP officers must then also compare this data with any EEI information electronically submitted for that train along with any other documents. To ensure proper cargo security, during this review CBP officers must also conduct their targeting, risk assessment measures and determine if any cargo needs to be examined before a train departs the United States. In the baseline scenario, CBP is not able to automatically use ATS for risk assessment on the export information contained on the train consists provided by rail carriers to CBP.¹⁵ Although CBP officers can manually query ATS with information provided on the finalized train consists, CBP notes this is a cumbersome and time-consuming process and is not a frequent

¹³ A train consist is document that generally refers to the contents of a train including the position of the locomotives and cars, as well as both non-hazardous and hazardous freight within those cars.

¹⁴ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 21, 2022.

¹⁵ In the baseline scenario CBP is not able use ATS for risk assessment on export data submitted on paper forms (or via email) and paper forms cannot be automatically uploaded or submitted to ATS for risk assessment. A primary benefit of this proposed rule would be allowing CBP to automatically use ATS for risk assessment on all rail EEM data provided.

⁸ See 15 CFR part 30.

⁹ See 15 CFR 30.36.

¹⁰ This information is submitted by rail carriers for trains transporting cargo out of the United States and is provided regardless of whether an EEI submission is required.

¹¹ See 15 CFR part 30.

¹² Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on February 25, 2022.

⁷ See 19 CFR 192.14.

occurrence. If during CBP's review of this information, prior to the train's arrival at the U.S. port of export, CBP officers find any discrepancies or missing data, CBP communicates via email to the rail carrier that submitted the data, requesting updates or corrections to the data provided. The CBP review process, including communications between CBP and rail carriers about discrepancies discovered while reviewing train consist information, can be unnecessarily cumbersome and time consuming because this data is provided via email attachments and the formats can be inconsistent across rail carriers. If CBP is not provided the pre-departure data or is not provided the data in a time frame that allows for CBP to properly review, request, and receive updates from rail carriers, and conduct proper risk assessment or manually examine high-risk cargo or shipment, then a CBP officer must resolve these issues at the U.S. port of export. This usually results in a delay to the train's departure.

CBP does not track how often rail carriers provide this pre-departure data nor to what extent CBP officers are able to conduct some or all of their manual review of the data prior to the train's arrival at the U.S. port of export. Sometimes CBP identifies a high-risk cargo or shipment during manual review at the U.S. port of export or while reviewing pre-departure data but does not have time to adjudicate the shipment prior to a train's arrival at the U.S. port of export. In this situation, the CBP officer holds the train until one or more freight car(s) can be removed from the already constructed train for examination, which can cause delays and can be costly to rail carriers.¹⁶

This proposed rule would establish a requirement for the electronic transmission of export manifest data pre-departure from the United States for all cargo in the rail environment. CBP defines the process described above as the regulatory baseline and the analysis of this proposed rule attempts to measure any incremental costs, cost savings or benefits compared to the baseline scenario.

The ACE Export Manifest for Rail Cargo Test

CBP has been working toward developing a new process to require the transmission of electronic export manifest (EEM) data for all cargo departing the United States by rail to

¹⁶ Unfortunately, CBP does not track how often manual examinations occur on average each year as these examinations are not entered into a system of record.

enhance CBP's efforts to ensure cargo security while also preventing smuggling, and to be compliant with the Trade Act. CBP expects that the transmission of pre-departure EEM data would help CBP obtain all the necessary data to successfully review and conduct risk assessment measures before trains reach the U.S. port of export, thereby limiting the number of issues that CBP must address at the U.S. port of export and reducing potential delays. Rail carriers have also acknowledged that the baseline process of sending forms of rail export data by email is unnecessarily costly, time burdensome and inconsistent with the process for providing data on cargo entering the United States.¹⁷ As such, rail carriers have been supportive of CBP's efforts to provide a more efficient process by allowing for the transmission of rail EEM data.

In September of 2015, CBP introduced a two-year pilot test program, referred to in this analysis as the ACE Export Manifest for Rail Cargo Test (the Test), to determine the feasibility for rail carriers or their agents to provide pre-departure EEM data for rail exports to CBP via ACE within a specified time before cargo departs the United States. To test the functionality of this new process, CBP initially limited participation in the Test to nine rail carriers. During this initial phase of the Test, CBP worked with rail carriers who agreed to participate and submit EEM data to CBP via ACE in addition to providing paper forms. The participants were large rail companies, similar in most respects to those that did not participate. As such, CBP believes their experience with the test is informative for analyzing the effects of the rule. CBP requests comment on any meaningful differences between the participants and the non-participants that would affect the analysis. CBP requested that participants continue to submit data in paper forms as they did before the Test so that CBP could capture any inconsistencies or issues with the electronic transmission of rail export manifest data to CBP. In the Test, CBP requested that participants provide rail EEM data to CBP at least two hours prior to loading the cargo onto the train, or in the case of empty rail cars upon assembly of the train.¹⁸ Because the

¹⁷ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on June 21, 2022.

¹⁸ CBP notes that although the Test requested export manifest data to be provided within certain deadlines, participants were not required to provide data within these time frames. Participants were given flexibility to provide the data to CBP electronically and were not penalized if export

ACE system would conduct a majority of the risk assessment and review of electronically transmitted data, CBP anticipated that this two-hour window would provide enough time for CBP to review pre-departure EEM data prior to the cargo being loaded onto trains and before the trains have been assembled. The two-hour time frame also provided CBP the opportunity to notify rail carriers or agents to revise and correct export manifest data where necessary before the cargo is loaded. This increased the chance that CBP could conduct cargo inspections before cargo is loaded and trains are assembled, avoiding costly time burdens if issues were to be addressed after the train has been constructed. The required deadline for EEM data also provided CBP an opportunity to compare any EEI submitted by the USPPI with the export manifest data to properly conduct safety and security screening for cargo departing the United States on rail.

One major improvement of the Test is that rail carriers can provide and revise export manifest data electronically on a flow basis when the export data becomes available during the export process. Typically, rail carriers provide export manifest data in documents known as bills of lading (bills), which act as a receipt and contract of transporting cargo and goods. These bills can 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 party such as a Non-Vessel Operating Common Carrier (NVOCC) or freight forwarder. This bill acts as the receipt of exported goods and provides export manifest data at its lowest level. Carriers issue a master bill which includes all other export manifest information such as transportation details for the transporting train covering any number of house bills that are included on that train. Additionally, in the case where a NVOCC or freight forwarder is not involved in the shipment transaction and the carrier has the specific cargo data available, the 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. In the rail environment, house bills and master bills are not typically issued because rail carriers usually issue simple bills for all cargo and then submit finalized

manifest data was not submitted within the time frames of the Test. However, CBP experienced high levels of compliance with submitting EEM data transmissions with 94 percent of all data transmissions were submitted greater than 24 hours prior to the departure time.

train consists to CBP. These consists include the simple bills associated with all the cargo on the train and any other transportation data for the train prior to departure from the U.S. port of export. The Test allows participants to transmit these simple bills on a flow basis when the information becomes available. This differs from the baseline scenario where rail carriers typically waited for simple bills to be finalized before sending the export manifest data in the finalized train consist in a paper format to CBP for review. The transmission of EEM data, via ACE, 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 rail carriers loading cargo onto freight cars or constructing the train. Additionally, upon transmission of the pre-departure EEM data, CBP can review data on a flow basis while rail carriers provide updated data throughout the export process.

The integrated system will generate two types of holds when rail carriers transmit bills: 2H Documentation holds, which notifies the rail carriers or their agents in the integrated system of outstanding issues with the data provided, and 1H Enforcement holds, which result from risk assessment. In the instance of a 2H Documentation hold, the rail carrier or agent must add or revise the missing or incorrect reference data in order to release the hold on the cargo prior to departure from the United States. The 2H Documentation holds automatically generated by ACE do not require any action or response from CBP or CBP officers and only affect rail carriers or their agents. The integrated system assists CBP in its risk assessment efforts and the identification of high-risk cargo. If during the integrated systems risk assessment, a potential high-risk cargo is identified, then a 1H Enforcement hold is generated which requires a CBP officer to conduct a review of the export manifest data submitted.¹⁹ The rail carriers are notified of these holds through the integrated system which lets them know if a mandatory examination of the cargo and or freight car is required or if CBP needs to conduct further review of the data transmitted. These holds can be issued and addressed even after rail carriers load the cargo. If a 1H Enforcement hold is issued to a rail carrier after loading the cargo and CBP requests to inspect the cargo, the rail carrier must provide CBP with a location where CBP can

conduct a proper examination. In addition to holds, if a CBP officer determines during review that cargo or a rail car may contain a potential threat to the train and its vicinity, a Do-Not-Load (DNL) instruction is issued, which prohibits the rail carrier from transporting that cargo or rail car. The rail carrier should not transport any cargo or rail car with a DNL. The transmission of EEM data in advance would help CBP review and issue holds before cargo is loaded or before a train reaches the U.S. port of export. This transmission facilitates a more efficient export process by reducing the likelihood of a freight car or cargo being removed from a constructed train and the resulting delays when departing the U.S. port of export.

Rail carriers participating in the Test provide a number of mandatory and conditional data elements electronically to CBP via ACE. CBP determined that the selected data elements (listed below) would provide the information necessary to conduct proper cargo security enforcement. Rail carriers were already providing these data elements by the time of departure from the U.S. port of export to CBP prior to the Test but in paper form within the finalized train consists. The Test also required participating rail carriers to submit these data elements at the lowest bill level possible. The necessary data elements CBP selected during this initial phase of the Test, including empty rail cars, consisted of the following:

- (1) Mode of Transportation (containerized rail cargo or non-containerized rail cargo)
- (2) Port of Departure from the United States
- (3) Date of Departure
- (4) Manifest Number
- (5) Train Number
- (6) Rail Car Order
- (7) Car Locator Message
- (8) Hazmat Indicator (Yes/No)
- (9) 6-character Hazmat Code (conditional) (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.)
- (10) Marks and Numbers
- (11) SCAC (Standard Carrier Alpha Code) for exporting carrier
- (12) Shipper name and address (For empty rail cars, the shipper may be the railroad from whom the rail carrier received the empty rail car to transport.)
- (13) Consignee name and address (For empty rail cars, the consignee may be

- the railroad to whom the rail carrier is transporting the empty rail car.)
- (14) Place where the rail carrier takes possession of the cargo shipment or empty rail car
- (15) Port of Unlading
- (16) Country of Ultimate Destination
- (17) Equipment Type Code
- (18) Container Number(s) (for containerized shipments) or Rail Car Number(s) (for all other shipments)
- (19) Empty Indicator (Yes/No)

Additionally, if the rail carrier identified that the rail car is not empty (empty indicator is no), then CBP also required information for the following data elements for non-empty rail cars, as applicable:

- (20) Bill of Lading Numbers (Master and House)
- (21) Bill of Lading Type (Master, House, Simple or Sub)
- (22) Number of house bills of lading
- (23) Notify Party name and address (conditional)
- (24) AES Internal Transaction Number or AES Exemption Statement (per shipment)
- (25) Cargo Description
- (26) Weight of Cargo (may be expressed in either pounds or kilograms)
- (27) Quantity of Cargo and Unit of Measure
- (28) Seal Number
- (29) Split Shipment Indicator (Yes/No)
- (30) Portion of split shipment (e.g., 1 of 10, 4 of 10, 5 of 10—Final, etc.) (conditional)
- (31) In-bond Number (conditional)
- (32) Mexican Pedimento Number (only for shipments for export to Mexico) (conditional)

After the initial two-year period, CBP determined that the initial phase of the Test had been feasible and functional for participating rail carriers to provide EEM data and therefore CBP extended the test in 2017. At that time, CBP expanded the Test and made it available to all rail carriers and other trade members (beyond the initial nine rail carrier limit) which met the eligibility criteria.²⁰ After the first two years of the

²⁰ Limited to those parties able to electronically transmit manifest data in the identified acceptable format. Prospective ACE Export Manifest for Rail Cargo Test participants must have the technical capability to electronically submit data to CBP and receive response message sets via Cargo-ANSI X12 (also known as "Rail 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 takes into consideration the order in which the applications are received.

¹⁹ CBP officers can also issue 1H Enforcement holds during manual review of electronic export manifest data transmitted.

Test, CBP received feedback from rail carriers from the Commercial Customs Operations Advisory Committee (COAC), which stressed that rail carriers may not have access to certain export manifest data elements requested by CBP two hours prior to loading of cargo. Therefore, CBP determined to change the filing condition for nine of the pre-departure export manifest data elements for the Test moving forward. As part of the Test extension, CBP separated EEM data elements into three categories, mandatory, conditional, and optional data, and requested this information for all cargo and empty rail cars, at least two hours prior to loading of the cargo. CBP changed the following pre-departure EEM data elements (which were originally mandatory) to optional for the Test extension.

- Mode of Transportation (containerized rail cargo or non-containerized rail cargo) (Original Data Element #1)
- Place where the carrier took possession (Original Data Element #14)
- Country of Ultimate Destination (Original Data Element #16)
- Equipment Type Code (Original Data Element #17)
- Number of house bills of lading (Original Data Element #22)
- Split Shipment Indicator (Original Data Element #29)
- Portion of split shipment (Original Data Element #30)
- Mexican Pedimento Number (Original Data Element #32)

CBP also modified the Test by changing the following data element from mandatory to conditional:

- Marks and Numbers (Data Element #10)

CBP has continuously extended or renewed the Test to gauge the functionality and feasibility of implementing the requirement of providing EEM data to CBP prior to a train's departure. CBP believes that the Test has been successful and CBP is proposing to make the transmission of pre-departure EEM data mandatory for all cargo departing the United States in the rail environment.

The ACE Export Manifest for Rail Cargo Program

This proposed rule would mandate the transmission of EEM data for all cargo prior to departing the United States in the rail environment in lieu of paper submissions, see Section VII 'Proposed Requirements' above for discussion on the regulatory requirements of this proposed rule. CBP anticipates that providing this

requirement for the transmission of pre-departure EEM data would significantly improve CBP's ability to conduct proper cargo security, prevent smuggling, and aid in facilitating a more effective and efficient trade process. Under this proposed rule, the parties most likely to have the correct data on rail export cargo would be able to provide it to CBP through ACE. The experience and knowledge CBP gained during the Test influenced CBP to change some of the requirements for providing EEM data in this proposed rule.

CBP evaluated the time frames for electronic manifest data transmission during the Test, the most important data elements needed for risk assessment and screening cargo, and the unavailability to rail carriers of certain data elements at given time frames and decided to group the rail EEM data elements based on the deadlines for submission of data and on which party likely has the correct information to provide the export manifest data. The proposed rule would allow rail carriers, carrier's agents, NVOCCs, freight forwarders, customs brokers (CHB), or anyone with direct knowledge of the export manifest data to provide specific pre-departure export manifest data to CBP, using CBP's ACE as a data transmission portal. The proposed rule mandates that a party transmitting any specific EEM data must have a bond on file with CBP. Additionally, the party that transmits any EEM data electronically to CBP is also the responsible party for addressing any questions, issues, instructions or holds resulting from CBP's review of that specific data. Therefore, CBP would require that any party transmitting EEM data to CBP provide a telephone number and email address that the party monitors 24 hours per day and seven days a week to quickly address any instructions or holds that CBP issues.

To improve CBP's risk assessment and screening efforts using pre-departure EEM data, this proposed rule would require an initial filing of seven mandatory data elements, which must be transmitted to CBP by any eligible party at least 24 hours prior to the departure from the U.S. port of export. The rail carrier is responsible for providing the initial filing data elements to CBP if no other eligible party elects to transmit the data. Eligible parties should transmit all other pre-departure EEM data elements to CBP no later than two hours prior to departure from the U.S. port of export, except for data on empty containers which would be required upon assembly of the train. From CBP's experience during the Test, CBP does not anticipate that changing the time frames for data transmission in

this proposed rule would cause any data transmission issues for parties submitting the information.²¹

Depending on the party providing the EEM data, the required export data may be available at different points in time during the export rail transaction process. Some rail carriers would have the export manifest data available days in advance prior to 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 and 2-hour prior to departure deadlines.²² CBP anticipates that all rail carriers would likely obtain the necessary export data elements to provide the required transportation and cargo EEM data within the two-hour prior to departure deadline.²³ However, for some rail carriers acquiring the necessary data for the initial filing 24 hours prior to departure may require a change in business practices and additional coordination with other trade members or parties that have the required export manifest data. CBP does not believe that in such instances the export manifest data does not exist rather, the other trade members have not yet provided this information to the rail carrier.²⁴ CBP expects that in such instances the costs to rail carriers to obtain this information from other trade members a few hours earlier would be minimal. Additionally, if other trade members are reluctant to provide this information to rail carriers within the 24-hour prior to departure deadlines, the other trade members would be able to provide this data to CBP directly as participant in the rail EEM process.

CBP notes that during the Test, participants were already providing most of the data required in the initial filing well in advance of departure and within the 24 hours prior to departure time frame.²⁵ CBP expects that rail carriers and other trade members would

²¹ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on June 21, 2022.

²² CBP obtained feedback and information from Trade members on when in the export transaction process, the export manifest data is typically available for them to submit to CBP. Information obtained in February 2023.

²³ CBP obtained feedback and information from Trade members on when in the export transaction process, the export manifest data is typically available for them to submit to CBP. Information obtained in February 2023.

²⁴ Information provided during discussion with some Trade members in regard to the timeline for when export manifest data is available to provide to CBP and challenges to providing pre-departure data well in advance. Data obtained in February 2023.

²⁵ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on August 2, 2022.

have access to most export manifest data early in the planning stages of an export rail cargo transaction and would be able to comply with these time frames.

Additionally, participating parties would be able to transmit EEM data to CBP 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 time frames would provide CBP adequate time to perform proper risk assessment and identify any cargo CBP should examine, early enough in the supply chain to enhance security while minimizing disruption to the flow of goods. Upon submission of the initial filing, CBP would validate or notify the responsible party of any holds or DNLs. The party that transmits the data is responsible for providing answers and updates on the data to CBP but the ultimate responsibility to load, hold, or not load cargo falls on the rail carrier.

The seven data elements CBP selected for the initial filing were mandatory data elements in the Test; however, CBP revised the descriptions of these elements 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, listed as well are the data elements' corresponding descriptions during the Test:

- (1) Bill of lading number,
- (2) The numbers and quantities of the cargo laden aboard the train 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; the numbers or quantities of containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons [Test data element of Quantity of Cargo and Unit of Measure],
- (3) Total weight of cargo expressed in pounds or kilograms [Test data element of Weight of Cargo (may be expressed in either 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", and "STC" ["said to contain"]) are not acceptable) [Test data element of Cargo Description],
- (5) The shipper's complete name and address, or identification number, from the bills of lading (for each house bill in

a consolidated shipment) [Test data element of Shipper name and address],

(6) The consignee's complete name and address, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo will be delivered in a 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.) [Test data element of Consignee name and address], and

(7) AES Exemption Statement, as applicable [Test data element AES Exemption Statement (per shipment)].

In this proposed rule, CBP groups the remaining rail EEM data elements based on CBP's understanding of which parties may have the best knowledge of the export manifest data elements. CBP categorizes these remaining data elements as export manifest transportation data, export manifest cargo data, and empty container data. According to this proposed rule, the rail carrier or its agent is responsible for transmitting to CBP the EEM data on any empty container rail cars.²⁶ This data must be submitted electronically no later than the time of assembly of the train. For EEM transportation data, the rail carrier or its agent must also transmit this data at least two hours prior to departure from the U.S. port of export. The rail carrier or its agent is responsible for providing the following EEM transportation data elements to CBP in this proposed rule:

Mandatory Elements

- (1) Port of departure from the United States
- (2) Date of departure
- (3) Estimated time of departure
- (4) Carrier-assigned conveyance name, equipment number and trip number
- (5) Train Consist, which includes: (A) manifest number, (B) train number, (C) rail car order, and (D) empty containers (if applicable)
- (6) The rail carrier identification SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier by the National Motor Freight Traffic Association; see § 4.7a(c)(2)(iii) of this chapter)

²⁶ If applicable, empty container rail car data would be included in the Train Consist data element of the mandatory data elements for transportation data. Empty containers are listed in the train consist and do not require any additional data to be provided as per this proposed rule.

- (7) Container or equipment numbers (for containerized shipments) or Rail Car Numbers (for all other shipments)

Conditional Elements

- (1) 6-character Hazmat Code. (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)
- (2) Marks and numbers
- (3) Seal number (only required if container was sealed.)²⁷

Optional Elements

- (1) Mode of transportation (containerized rail cargo or non-containerized rail cargo)
- (2) Equipment type code
- (3) Place where the rail carrier takes possession of the cargo shipment or empty rail car

CBP provides additional flexibility in this proposed rule by allowing any eligible party with the most direct information to provide EEM cargo data to CBP two hours prior to departure from the U.S. port of export. However, the rail carrier or its agent may also elect to transmit the mandatory EEM cargo data and in the case that no other party elects to provide the required EEM cargo data, it is the rail carrier's responsibility to provide this EEM cargo data to CBP.²⁸ The following data elements comprise the CBP-requested EEM cargo data for rail EEM in this proposed rule. CBP notes that if the data was 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 (For empty rail cars, the shipper may be the railroad from whom the rail carrier received the empty rail car to transport.)
- (2) Consignee name and address (For empty rail cars, the consignee may be the railroad to whom the rail carrier is transporting the empty rail car.)
- (3) Port of lading
- (4) Port of unloading
- (5) Bill of lading type (Master, House, Simple or Sub)

²⁷ The seal numbers for all seals affixed to containers and/or rail cars 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).

²⁸ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on June 21, 2022.

- (6) Bill of lading numbers (Master, House, Simple or Sub)
- (7) AES Internal Transaction Number or In-bond number (per shipment)
- (8) Cargo description
- (9) Weight of cargo (may be expressed in either pounds or kilograms)
- (10) Quantity of cargo and unit of measure

Conditional Elements

- (1) In-bond type
- (2) Notify party name and address
- (3) Secondary notify party name and address

Optional Elements

- (1) Mexican Pedimento Number (only for shipments for export to Mexico)
- (2) Secondary notify party SCAC
- (3) Country of ultimate destination
- (4) Number of house bills of lading

After participants transmit the EEM cargo and transportation data to CBP via ACE, CBP would validate or notify the responsible party of any holds. Additionally, a CBP officer would review the finalized train consist prior to the train's departure from the U.S. port of export. CBP anticipates that obtaining this data through the integrated system would help CBP work with rail carriers and other parties to address almost all issues identified during the CBP review before the train reaches the U.S. port of export and possibly some before loading of the cargo. This would significantly reduce any delays at the U.S. port of exports from instances where CBP officers conduct review and address issues while the train is at the U.S. port of export. CBP anticipates that through the obtaining of pre-departure rail EEM data, CBP officers would be able to conduct the appropriate risk assessment and screening and complete their review of all export manifest data prior to a train's arrival at the U.S. port of export.²⁹

In the initial Test, CBP requested that 32 data elements be submitted two hours prior to the cargo loading. The experience gained during the Test has allowed CBP to revise which data elements should be mandatory, conditional, optional, and unnecessary. Of the original 32 data elements put forth in the initial Test, five data elements were determined by CBP to be unnecessary and CBP no longer requests these EEM data elements in this proposed rule. CBP lists these below.

- (1) Car Locator Message
- (2) Empty Indicator (yes/no)

²⁹ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on November 8, 2022.

- (3) Hazmat Indicator
- (4) Split Shipment Indicator (Yes/No)
- (5) Portion of split shipment (e.g., 1 of 10, 4 of 10, 5 of 10—Final, etc.)

As an enforcement tool, this proposed rule provides 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. CBP retains the enforcement discretion to assess 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 liquidated damages, compliance is CBP's goal and CBP aspires to work alongside rail carriers and other parties to ensure that trade members provide the proper data in a timely manner, so that CBP can properly review the data, conduct risk assessment of high-risk shipments, and enforce U.S. export laws and regulations on U.S. rail exports.³⁰

Time Periods of Analysis

This analysis primarily focuses on the potential impacts of this proposed rule after it would be in effect, but it also includes a discussion of the impacts during the Test that is in place before the proposed rule is finalized. The costs, cost savings and benefits of the 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 the rail EEM as a whole. To give the reader a full view of the effects of CBP's requiring rail EEM data through the entire span of time, CBP analyzes the effects of implementing rail EEM collection over two time periods comparing each time period to the baseline scenario that existed prior to the rail EEM test. First, CBP analyzes the effects from Test used for the collection of pre-departure manifest data on rail exports during the pilot period, fiscal years 2016–2025.³¹ Second, CBP analyzes the effects of the proposed rule when CBP assumes it

³⁰ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on June 21, 2022.

³¹ 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. CBP compares the costs, cost savings and benefits during the Test to the baseline scenario, CBP assumes these effects to be sunk and are not incremental to this rule.

would be implemented as a final rule which would mandate the transmission of EEM data in the rail 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 additional total projected costs, cost savings and benefits to the Federal Government, rail carriers and other trade members as a result of requiring the transmission of EEM data for trains departing the United States, compared to the baseline scenario. In the analysis for this proposed rule, CBP defines the pilot period as fiscal years 2016–2025 and the regulatory period as fiscal years 2026–2030. At the conclusion of the analysis, CBP includes tables showing the effects of the proposed rule across both periods—effectively showing the full results of the pilot and the proposed rule against the baseline (the world without the rail EEM test). While CBP provides information about the two time periods separately for full transparency and to make clear which costs are sunk and which are incremental to this proposed rule, CBP also sums the two time periods for a full accounting of the effects of the rail EEM program as a whole. Additionally, all references to years are for fiscal years unless otherwise noted.

Population Affected by Rule

CBP expects that this proposed rule would affect a number of different parties. During the regulatory period, as the transmitting of EEM data expands, CBP expects broader effects on rail carriers, other trade members (such as USPPIs, FPPIs, NVOCCs, freight forwarders, Customhouse Brokers (CHB), or other parties with knowledge of manifest data elements), CBP, and other government agencies that oversee U.S. exports. CBP expects that this proposed rule would affect all seven rail carrier companies currently exporting cargo from the United States by rail. Although CBP does not have the necessary data to provide an exact estimate for how many other trade members this proposed rule would affect, CBP acknowledges that this proposed rule could result in some minor effects to a large number of other trade members, specifically in case they elect to provide EEM cargo data directly to CBP via ACE. CBP expects that this proposed rule would also improve the facilitation of the export process at around 68 U.S. ports of export, currently conducting the exportation of goods from the United States in the rail environment.

Because the Test was limited in scope, the effects were largely experienced by a few rail carriers, possibly some other trade members and CBP during the pilot period. Although CBP only made the initial Test available to nine carriers, CBP then extended the test to all eligible parties; however, only two rail carriers actively participated in the Test. The two rail carriers participating in the rail EEM test have similar business characteristics to the remaining rail carriers that would be affected by this proposed rule. All are large carriers that operate internationally. Therefore, CBP anticipates that the effects on the rail carriers participating in the rail EEM Test accurately represents the effects that the remaining rail carriers would experience from this proposed rule. CBP requests comment on this matter.

Rail EEM Test Data and Export Rail Projections

CBP was able to identify the number of export manifest data transmissions and train consists transmitted electronically by participating rail carriers during the Test from 2016–2023. 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 had to provide estimates the final two years of the pilot period. These estimates are based on actual data in previous years. From 2016–2023 rail EEM test participants provided a total of 1,563,694 export manifest data transmissions and 10,308 train consists electronically to CBP via ACE.³² To estimate the number of export manifest data transmissions that would occur during the final two years of the pilot

period CBP used the average number of rail EEM data transmissions from 2017–2023 (211,225) and the average number of train consists submitted electronically to CBP from 2021–2023 (2,911).³³ According to CBP’s projections for the final two years of the pilot period and the actual data obtained (2016–2023), CBP expects that during the entire pilot period rail EEM test participants would submit around 1,986,143 export manifest data transmissions and 16,129 electronic train consists. Total electronic data transmissions to CBP from participants in the rail EEM test would be 2,002,276 during the pilot period.³⁴ Table 2 below displays CBP’s actual and estimated number of export manifest data transmissions and train consists submitted electronically to CBP during the pilot period.

Table 2. Rail EEM Test Data and Pilot Period Estimates

Pilot Period	EEM Data Transmissions	EEM Train Consists Submitted	Total Data Transmissions
2016	85,122	-	85,122
2017	218,235	308	218,543
2018	224,518	-	224,518
2019	219,413	159	219,572
2020	183,070	1,109	184,179
2021	200,963	2,601	203,564
2022	223,793	2,912	226,705
2023	208,580	3,219	211,799
2024*	211,225	2,911	214,137
2025*	211,225	2,911	214,137
Total	1,986,143	16,129	2,002,276

*Pilot period years with estimated not actual values.

Unfortunately, outside of the limited EEM data provided by Test participants, all other export rail data (excluding data for EEI requirements) submitted by rail carriers was on paper forms and therefore CBP was unable to obtain actual rail export volumes (by train or by train car). Therefore, CBP used train import volume data as a proxy for train export volume data to calculate the possible number of EEM data

transmissions as a result from this proposed rule during the regulatory period. CBP anticipates that the number of train cars entering the United States with rail imports is likely comparable to the number of train cars exiting the United States for rail exports.³⁵ CBP used existing internal data on inbound train cars to project the volume of outbound train cars during the final two years of the pilot period and the

regulatory period. Inbound train car volumes have been largely consistent from 2017–2023 and CBP anticipates that on average, rail volume should remain relatively constant in future years as compared to the volumes recorded over the past seven years.

CBP estimates that from 2016–2023 there were a total of around 35.6 million train cars departing the United States, or

³² Information provided by CBP’s Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022, and May 10, 2024. Data obtained from CBP’s ACE.

³³ CBP excluded 2016 from the average for export manifest data transmissions due to lack of participation in that year. CBP used only three years of data 2021–2023 for the electronic train consists

transmitted, because these were the only full years of data during the pilot period when all train consists were actually transmitted by participating rail carriers in the Test.

³⁴ This number represents the total number of electronic transmissions sent to CBP by rail EEM test participants (export manifest data transmissions + electronic train consists).

³⁵ Information provided by CBP’s Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 21, 2022. CBP used car volume instead of train volume because import volumes by train would be inaccurate since they tracked by rail car fee payments which are capped per year.

on average 4.4 million each year.³⁶ Because CBP anticipates that the outbound train volume will remain relatively constant during future years, CBP used the average number of estimated outbound train cars during 2017–2023 (4.19 million) for the number of expected outbound train cars for each future year.³⁷ Although CBP has data available on the number of train cars, CBP does not know how many actual trains would engage in exporting goods in the rail environment during the regulatory period. Therefore, CBP does not know exactly how many train consists rail carriers would submit requiring a CBP officer to review each year during the regulatory period. To provide an estimate for how many train departures would likely be involved in

exporting goods in the rail environment during the regulatory period, CBP used 2021, 2022 and 2023 Test data on the number of simple bills transmitted compared to the number of train consists transmitted. Over the course of these three years a total of 633,336 simple bills and 8,732 train consists were electronically transmitted to CBP as part of the Test, or on average approximately 72.5 simple bills per train consist.³⁸ CBP used this ratio of simple bills (train cars) to train consists (trains) and the expected outbound train cars to estimate the total number of trains that would transmit electronic train consists when exporting goods from the United States during future years.

CBP anticipates that each year during the regulatory period, approximately 4,191,807 train cars and 57,794 trains would depart the United States with export goods requiring the transmission of export manifest data. In total CBP expects that during the regulatory period, rail EEM participants would transmit approximately 21,248,006 data transmissions to CBP or around 4,249,601 annually. Table 3 below displays CBP's estimate for total outbound train cars and trains during 2016–2023 and projected outbound train cars and trains for the final two years of the pilot period and the regulatory period, and the estimated total EEM data transmissions during the regulatory period.

Table 3. Estimated Outbound Rail Volume and Regulatory Period Rail EEM Data Transmissions³⁹

Year	Total Cars	Estimated Cars per Train	Estimated Train Departures	Regulatory Period Data Transmissions
Pilot Period				
2016	5,776,802	72.5	79,647	
2017	4,061,164	72.5	55,993	
2018	4,189,839	72.5	57,767	
2019	4,423,305	72.5	60,986	
2020	4,026,695	72.5	55,518	
2021	4,217,447	72.5	58,148	
2022	4,304,395	72.5	59,346	
2023	4,119,807	72.5	56,801	
2024*	4,191,807	72.5	57,794	
2025*	4,191,807	72.5	57,794	
Total	43,503,069		599,793	
Regulatory Period				
2026	4,191,807	72.5	57,794	4,249,601
2027	4,191,807	72.5	57,794	4,249,601
2028	4,191,807	72.5	57,794	4,249,601
2029	4,191,807	72.5	57,794	4,249,601
2030	4,191,807	72.5	57,794	4,249,601
Total	20,959,037		288,969	21,248,006

*Pilot period years with estimated not actual values.

³⁶ Information 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 Borderstat and OMR databases on inbound rail statistics from FY 2017–FY 2023.

³⁷ Inbound rail volume decreased significantly between 2016 to 2017 and volume remained relatively the same between 2017–2023. Therefore, CBP omitted the 2016 inbound rail volumes for the

estimate for the regulatory period volume because CBP believes this would have skewed the annual volume upward.

³⁸ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022, and May 10, 2024. Data obtained from CBP's ACE. CBP used only three years of data 2021–2023, because these were the only full years of data during the pilot period when all train consists were actually

transmitted by participating rail carriers in the Test. Additionally, CBP notes that most of the time the ratio of a simple bill to train car is 1 to 1, however a simple bill could be submitted for multiple train cars or vice versa. Because CBP only knows the number of simple bills transmitted during the Test and not the number of train cars, CBP assumes in this analysis that the ratio of a simple bill to train car is 1 to 1, essentially the number of simple bills represents the number of train cars.

In addition to the number of export manifest data transmissions and train consists submitted electronically from 2016–2023, CBP also obtained information from the Test on the number of 2H Documentation and 1H Enforcement holds that were issued during these years. According to CBP internal data as part of the rail EEM test from 2016–2023 CBP issued a total of 31,202 2H Documentation holds and 795 1H Enforcement holds.⁴⁰ To determine the number of holds that would be issued by CBP in the final two years of the pilot period CBP used the percent of export manifest data transmissions submitted that resulted in a 2H Documentation or a 1H Enforcement hold. Based on the information obtained during the Test, on average a 2H Documentation hold

was issued on approximately 3.78 percent of all export manifest data transmissions and on average a 1H Enforcement hold was issued on 0.05 percent of all export manifest data transmissions.⁴¹

To estimate the number of holds issued in 2024 and 2025 CBP multiplied the percentage of EEM data transmissions resulting in a 2H Documentation hold (3.78%) and 1H Enforcement hold (0.05%) by the expected total number of rail EEM data transmissions during 2024 and 2025 (see Table 2). CBP anticipates that during the pilot period CBP would issue around 47,375 2H Documentation holds and around 1,049 1H Enforcement holds.

CBP expects that these holds would be issued at a similar frequency during

the regulatory period. Therefore, to estimate the number of CBP holds that would be issued during the regulatory period, CBP multiplied the percentage of data transmissions that were issued 2H Documentation holds (3.78%) and 1H Enforcement holds (0.05%) by the estimated number of total data transmissions (see Table 3), for each year of the regulatory period. According to CBP’s estimates, CBP would issue a total of 802,400 2H Documentation holds or on average 160,480 annually and around 11,137 1H Enforcement holds or on average 2,227 annually during the regulatory period. Table 4 displays CBP’s estimates for total holds that would be issued during the regulatory period.

Table 4. Actual and Estimated Holds Issued during 2016-2030

Year	Total EEM Data Transmissions	Percent of Data Transmissions with 2H Hold	Percent of Data Transmissions with 1H Hold	2H Holds Issued	1H Holds Issued	Total Holds Issued
Pilot Period						
2016	85,122				30	30
2017	218,543				37	37
2018	224,518				34	34
2019	219,572				41	41
2020	184,179			691	353	1,044
2021	203,564			3,779	115	3,894
2022	226,705			9,281	113	9,394
2023	211,799			17,451	102	17,553
2024*	214,135	3.78%	0.05%	8,087	112	8,199
2025*	214,135	3.78%	0.05%	8,087	112	8,199
Total	2,002,272			47,375	1,049	48,424
Regulatory Period						
2026	4,249,601	3.78%	0.05%	160,480	2,227	162,707
2027	4,249,601	3.78%	0.05%	160,480	2,227	162,707
2028	4,249,601	3.78%	0.05%	160,480	2,227	162,707
2029	4,249,601	3.78%	0.05%	160,480	2,227	162,707
2030	4,249,601	3.78%	0.05%	160,480	2,227	162,707
Total	21,248,006			802,400	11,137	813,537

*Pilot period years with estimated not actual values.

³⁹To estimate the number of total outbound train cars in future years, CBP used the average volume of train cars during the seven year period (2017–2023) = 4,191,807 annually.

⁴⁰Information provided by CBP’s Cargo and Conveyance Security, Office of Field Operations,

subject matter expert on December 6, 2022, and May 10, 2024. Data obtained from CBP’s ACE.

⁴¹Based on data from CBP’s ACE tracking the total number of holds issued during the rail EEM test. 2H holds were not initially issued as complete functionality of the Test was gradually implemented. CBP notes that 2H holds were only

generated starting in 2020 and to calculate the average percent of data transmission that had a 2H hold issued CBP only used 2020–2023 data. 1H Enforcement holds were being issued during the entire Test and therefore CBP calculated the average percent of data transmissions that had a 1H hold issued using data from 2016–2023.

CBP believes that it is possible that the total number of holds could be less than these estimates during the regulatory period as rail 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 did not issue any DNL holds during the Test and does not expect a significant number of DNL holds to be issued during the regulatory period. If DNL holds are issued this would be an additional cost to rail carriers, who are ultimately responsible for loading and not loading cargo.

Pilot Period

Costs

CBP expects that CBP, participating rail carriers, other trade members incur some costs during the pilot period when compared to the baseline.⁴² CBP's primary cost during the pilot period was from implementing the Test EEM data tool into ACE. ACE was already in place prior to the Test; therefore, CBP did not need to develop an entirely new system. However, there were some development and ongoing systems costs to CBP during the introduction and operation of the Test. Initially, CBP incurred systems costs of approximately \$608,000 to develop and implement the Test EEM tool into ACE.⁴³ During the pilot period, CBP incurs ongoing operations and maintenance costs associated with the Test, which costs CBP on average approximately \$101,350 each year. CBP estimates that total systems costs to CBP for developing and operating the Test would be approximately \$1.6 million during the pilot period.

CBP also incurs some time burdens while conducting additional review of EEM data when compared to the

baseline. As stated earlier, in the baseline scenario the rail carriers provided export rail data to CBP all at once in the finalized train consists at or prior to departure from the United States. Therefore, under the baseline scenario, CBP was unable to review export data until the finalized train consist was submitted. During the Test, participants provide EEM data on a flow basis, so CBP is able to review the data when participants transmitted the EEM data and does not have to wait for rail carriers to finalize all the data and submit it together in the train consist. When participants transmit the EEM data to CBP via ACE, the integrated system can identify potential high-risk cargo and issue a 1H Enforcement hold, which requires manual review from a CBP officer. As discussed earlier, 2H Documentation holds generated by ACE do not require any action or response from CBP officers, therefore CBP does not anticipate any time burden to CBP when a 2H Documentation hold is issued. CBP estimates that this additional review of each 1H Enforcement hold imposes an average time burden of approximately 5 minutes (0.083 hours) to CBP officers.⁴⁴ In addition to reviewing the EEM data transmitted, CBP officers also incur time burdens when addressing and resolving 1H Enforcement holds. Depending on the complexity of the 1H Enforcement hold, the time burden to CBP officers to address and resolve these holds varies from a few minutes to a few hours if a hold requires a CBP officer to manually examine cargo or a train car.⁴⁵ CBP does not know how many issued 1H Enforcement holds result in cargo examinations during the pilot period or if the Test result in additional examinations when compared to the baseline scenario. However, CBP notes that the majority of these 1H

Enforcement holds do not result in a cargo examination and CBP officers are able to address and resolve the majority of these holds in a few minutes.⁴⁶ CBP estimates that, on average, CBP officers incur an additional time burden of 10 minutes (0.167 hours) to address and resolve each 1H Enforcement hold.⁴⁷ In total, CBP expects on average a CBP officer incurs a time burden of approximately 15 minutes (0.25 hours) to review and resolve each 1H Enforcement hold.

During the pilot period, CBP estimates that rail carriers will transmit a total of 2,002,272 EEM data submissions as part of the Test, resulting in approximately 1,049 1H Enforcement holds issued which require additional review by a CBP officer.⁴⁸ CBP calculates the time burden to CBP officers during the pilot period by multiplying the estimated number of 1H Enforcement holds (1,049) by the expected average time burden to CBP officers to review, address and resolve the average 1H Enforcement hold (15 minutes, 0.25 hours). CBP expects that CBP officers incurs a time burden of approximately 262 hours (1,049 holds × 0.25 hours) during the pilot period. CBP estimates the costs to CBP officers by multiplying the total time burden (262 hours) by the average hourly loaded rate for a CBP officer (\$101.44) = \$26,608.⁴⁹ Table 5 shows CBP's estimate for the time and cost burden to CBP officers when reviewing and resolving 1H Enforcement holds during the pilot period.

⁴⁶ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on November 8, 2022.

⁴⁷ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on November 21, 2022. Data obtained from CBP's OMR database.

⁴⁸ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022 and May 10, 2024. Data obtained by CBP's ACE and based on CBP estimates for years 2024–2025.

⁴⁹ CBP bases this wage on the FY 2023 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.

⁴² Other trade members would include USPPIs, FPPIs, NVOCCs, freight forwarders, or other third parties with knowledge of manifest data elements.

⁴³ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on December 7, 2022. Rail EEM ACE cost estimates were provided by CBP's Office of Information and Technology and provided development and ongoing costs that increase at a fixed rate each year.

⁴⁴ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on August 2, 2022. 1H Enforcement holds can also be issued by CBP officers upon manual review of export manifest data.

⁴⁵ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on June 21, 2022.

Table 5. Estimated Time Burden and Costs to CBP from 1H Enforcement Holds during Pilot Period 2016-2025 (time in hours, costs in undiscounted 2023 U.S. Dollars)

Year	1H Enforcement Holds Issued	Average Time Burden	Total Time Burden	Wage Rate	Total Cost
2016	30	0.25	7.50	\$101.44	\$761
2017	37	0.25	9.25	\$101.44	\$938
2018	34	0.25	8.50	\$101.44	\$862
2019	41	0.25	10.25	\$101.44	\$1,039
2020	353	0.25	88.23	\$101.44	\$8,950
2021	115	0.25	28.74	\$101.44	\$2,916
2022	113	0.25	28.24	\$101.44	\$2,865
2023	102	0.25	25.49	\$101.44	\$2,586
2024*	112	0.25	28.05	\$101.44	\$2,846
2025*	112	0.25	28.05	\$101.44	\$2,846
Total	1,049		262		\$26,608

*Pilot period years with estimated not actual values.

In addition to CBP, rail carrier participants and some other trade members incur costs during the pilot period. The Test implements a few changes that affect rail carrier participants, such as providing advance EEM data within CBP-requested deadlines prior to cargo loading onto trains, transmitting the requested EEM data elements to CBP, and responding to and addressing any issued holds or questions from CBP about the data provided. So far during the pilot period, the participating rail carriers demonstrate very high levels of compliance with providing data within the requested deadlines of the Test, as approximately 94 percent of EEM data provided to CBP was transmitted on time.⁵⁰ From 2016–2023, the participating rail carriers electronically transmitted a total of 1,574,002 EEM data submissions, including 1,563,694 simple bills and 10,308 train consists, representing around 4 percent of all estimated export manifest data submissions.⁵¹

⁵⁰ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 21, 2022.

⁵¹ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022 and May 10, 2024. Data obtained from CBP's ACE, Borderstat and OMR databases. CBP notes that most of the time the ratio of a simple bill to train car is 1 to 1, however a simple bill could be submitted for multiple train cars or vice versa. Because CBP only knows the number of simple bills transmitted during the Test and not the number of train cars, CBP assumes in this analysis that the ratio of a simple bill to train car is 1 to 1, essentially the number of simple bills represents the number of train cars. CBP determined the number of total

Since CBP requests that rail carriers participating in the Test continue to provide the paper forms in addition to the EEM data, these rail carriers incur an additional time burden to submit the new electronic data during the Test. CBP estimates that on average rail carriers incur a time burden of approximately 40 minutes (0.667 hours) per train to transmit the EEM data.⁵² Unfortunately, CBP does not have data on the exact number of total trains for which the participating rail carriers provide electronic data during the pilot period.⁵³ Therefore, to provide an estimate, CBP used 2021–2023 data from the Test on the number of simple bills transmitted compared to the number of train consists transmitted.⁵⁴

export manifest data submissions during the pilot period by accounting for if all export manifest data were transmitted electronically and by assuming one simple bill per estimated departing train car and one train consist per departing train, based on the volume of inbound train cars and CBP's estimate for the number of simple bills (train cars) per train.

⁵² Information was obtained from feedback and discussions with Trade members on the potential impacts of providing EEM data in addition to the paper forms. Data obtained in February 2023.

⁵³ Rail EEM test participants didn't start providing the train consists electronically to CBP on a consistent basis until 2021, therefore CBP does not know how many actual trains had electronic data transmitted to CBP earlier in the pilot period.

⁵⁴ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022, and May 10, 2024. Data obtained from CBP's ACE. CBP used only three years of year of data 2021–2023, because these were the only full years of data during the pilot period when all train consists were actually transmitted by participating rail carriers in the Test.

Over the course of these years rail carriers electronically transmitted to CBP a total of 633,336 simple bills and 8,732 train consists as part of the Test, or on average approximately 72.5 simple bills per train consist. CBP used this ratio of simple bills (train cars) to train consists (trains) and the total estimated number of simple bills that would be transmitted during each year of the pilot period (2016–2025) to estimate the total number of trains for which rail carriers will transmit electronic export manifest data to CBP. According to CBP's estimates, there will be approximately 27,384 trains that will have EEM data transmitted to CBP when departing the United States. Assuming that the Test participants will transmit EEM data for approximately 27,384 trains, CBP estimates that these rail carrier participants incur a time burden of 18,256 hours for transmission purposes (27,384 trains × 0.667 hours). To estimate the time burden costs, CBP multiplied the time burden hours by the average hourly loaded wage rate for exporters (\$35.62).⁵⁵ CBP estimates that,

⁵⁵ 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. Accessed August 21, 2023. The total compensation to wages and salaries ratio is equal to the total compensation cost per hour worked for Office and Administrative Support occupations (\$32.52) divided by the wages and salaries cost per hour worked for the same occupation category (\$22.01). See "Table 2. Employer Costs for Employee Compensation for civilian workers by occupational and industry group." Bureau of Labor Statistics, "Employer Costs

Continued

during the pilot period when submitting the EEM data to CBP, Test participants incur a total cost of around \$650,273 or on average \$65,027 annually. Table 6

below displays CBP’s estimate for the number of trains that depart the United States and provide EEM data, the estimated time burden and costs to rail

carriers during each year of the pilot period.

Table 6. Estimated Time Burden and Costs to Rail Carriers when Providing EEM to CBP during Pilot Period 2016-2025 (undiscounted 2023 U.S. Dollars)

Year	Simple Bills Transmitted	Estimated Simple Bills per Train	Estimated Train Departures	Time Burden per Train Departure	Total Time Burden	Wage Rate	Total Cost
2016	85,122	72.5	1,174	0.67	782	\$35.62	\$27,869
2017	218,235	72.5	3,009	0.67	2,006	\$35.62	\$71,451
2018	224,518	72.5	3,096	0.67	2,064	\$35.62	\$73,508
2019	219,413	72.5	3,025	0.67	2,017	\$35.62	\$71,837
2020	183,070	72.5	2,524	0.67	1,683	\$35.62	\$59,938
2021	200,963	72.5	2,771	0.67	1,847	\$35.62	\$65,796
2022	223,793	72.5	3,086	0.67	2,057	\$35.62	\$73,271
2023	208,580	72.5	2,876	0.67	1,917	\$35.62	\$68,290
2024*	211,225	72.5	2,912	0.67	1,941	\$35.62	\$69,156
2025*	211,225	72.5	2,912	0.67	1,941	\$35.62	\$69,156
Total	1,986,143		27,384		18,256		\$650,273

*Pilot period years with estimated not actual values.

CBP expects that rail carriers participating in the Test and other trade members also face time burdens and costs when responding to 2H Documentation holds and 1H Enforcement holds. According to CBP internal data and estimates for 2024 and 2025, during the pilot period, CBP will issue a total of 47,375 2H Documentation holds and 1,049 1H Enforcement holds. CBP has not issued any DNL instructions during the Test.⁵⁶ By the end of 2023, rail carriers have shown high rates of compliance and responsiveness to CBP holds during the Test, with over 99.8% of holds being resolved and cargo released.⁵⁷ CBP expects that the time burden to respond

to each hold depends on the complexity of the issue and if the hold results in an examination of cargo which would be more time consuming. When responding to holds, if a rail carrier does not have the necessary information and needs to obtain the data from another trade member, that would also impose a time burden on the other trade member. CBP believes that on average the overall time burden to trade (rail carriers and other trade members) when reviewing and addressing these holds is approximately 12.5 minutes (0.21 hours) per hold.⁵⁸ Based on CBP Test data and estimates for 2024 and 2025, there will be a total of 48,424 holds issued during the pilot period (see Table 4) and CBP

estimates these holds will impose a time burden to trade of around 10,088 hours (48,424 holds × 0.21 hours per hold). CBP estimated the cost to trade by multiplying the total expected hours spent reviewing and addressing holds (10,088) by the average hourly loaded wage rate for exporters (\$35.62). CBP expects that during the pilot period reviewing and addressing holds issued by CBP cost trade approximately \$359,350 or on average \$35,935 annually. Table 7 shows CBP estimates for the total number of holds issued, the estimated time burden and costs to rail carriers during each year of the pilot period.

for Employee Compensation—December 2022.” Released March 17, 2023. Available at <https://www.bls.gov/news.release/archives/ecec03172023.pdf>. Accessed August 29, 2023. 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 [⁵⁶ Information provided by CBP’s Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022, and May 10, 2024.](https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDMsM10sImRhdGEiOltbImNhdGVnb3JpZXMlLCJTdXJ2ZXkiXSxbIk5JUEFjVGFibGVjTGZdClslEzIl0sWyJCaXJzdF9ZZWFyIiwuMjAxNiJdLFsiTGZzdF9ZZWFyIiwuMjAxNyJdLFsiU2NhbgUuLlwiLl0sWyJlZXRpZXMlLCJBIll1dQ==. Accessed September 20, 2023.</p>
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⁵⁷ Information provided by CBP’s Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 21, 2022, and May 10, 2024. Data obtained from CBP’s ACE.

⁵⁸ 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.

Table 7. Estimated Time Burden and Costs to Rail Carriers Responding to CBP Issued Holds during Pilot Period 2016-2025 (time in hours, costs in undiscounted 2023 U.S. Dollars)

Year	2H Documentation Holds Issued	1H Enforcement Holds Issued	Average Time Burden	Total Time Burden	Wage Rate	Total Cost
2016		30	0.21	6.3	\$35.62	\$223
2017		37	0.21	7.7	\$35.62	\$275
2018		34	0.21	7.1	\$35.62	\$252
2019		41	0.21	8.5	\$35.62	\$304
2020	691	353	0.21	217.5	\$35.62	\$7,747
2021	3,779	115	0.21	811.3	\$35.62	\$28,897
2022	9,281	113	0.21	1957.1	\$35.62	\$69,711
2023	17,451	102	0.21	3656.9	\$35.62	\$130,258
2024*	8,087	112	0.21	1708.1	\$35.62	\$60,841
2025*	8,087	112	0.21	1708.1	\$35.62	\$60,841
Total	47,375	1,049		10,088		\$359,350

*Pilot period years with estimated not actual values.

From the Test, CBP does not know to what extent obtaining pre-departure EEM data improves CBP's enforcement, resulting in identifying additional high-risk cargo or other compliance issues, beyond what CBP would have identified prior to the Test. CBP notes that for all pre-departure EEM that was transmitted to the Test, CBP was able to use ATS for risk assessment compared to the baseline scenario where CBP was only able to use ATS on a very limited number of export cargo data in the rail environment.⁵⁹ If CBP identifies more high-risk cargo as a result of the Test, that may result in larger time burdens on rail carriers to respond to and address CBP requests for cargo examination.

During the pilot period, rail carriers that voluntarily participate in the Test, incur costs to adjust and maintain their IT systems to interact with CBP's ACE and provide the required pre-departure EEM data to CBP. The EEM data requirements are very similar to data

requirements for advance electronic import manifest data required during the import process.⁶⁰ Because rail carriers have already developed systems for those electronic processes at import, Test participants do not need to develop entirely new IT systems to transmit EEM data for the Test, but rather rail carriers make adjustments to their already existing internal systems.⁶¹ As rail carriers already have systems to interface with ACE for import filings, among other things, systems needed to be modified rather than developed. In addition, rail carrier employees who file information for imports are typically the same who file for export. The cost of adjusting and maintaining internal systems to support providing EEM data to CBP can vary depending on the rail carrier or trade member. Therefore, CBP provides a range of estimates for the internal system costs to the average Test participant during the pilot period. CBP anticipates that the annual internal systems costs required to participate in

the Test could range from \$10,000 to \$60,000 each year.⁶² CBP used the midpoint within the range, \$35,000, as CBP's primary estimate for annual internal systems costs to the average rail carrier participating in the Test. As alternate estimates, CBP used a low estimate of \$10,000 and the high estimate of \$60,000 for the annual internal systems costs per year. According to CBP's primary estimate, the two Test participants will incur approximately \$700,000 in total costs to adjust and maintain their internal systems for providing electronic export manifest data to CBP during the pilot period. CBP's alternate low and high estimate show that internal systems total costs to the two rail carriers will be between \$200,000 and \$1,200,000 during the pilot period. Table 8 displays CBP's range of cost estimates for annual internal systems costs to the two rail carrier participants during the pilot period.

⁵⁹ CBP can only use ATS on electronically transmitted data; therefore, because the majority of export manifest data provided to CBP prior to this proposed rule was submitted in paper and or via email, CBP was not able to use ATS to screen any cargo associated with these paper forms.

⁶⁰ Data obtained from feedback provided by Trade members on similarities between providing

electronic import manifest data and the requested EEM. Data obtained in December 2022 and February 2023.

⁶¹ Data obtained from feedback provided by Trade members on potential necessary development, adjustments and maintenance of existing internal systems to support providing EEM to CBP via ACE.

Data obtained in December 2022 and February 2023.

⁶² Data was obtained from feedback from Trade members on the potential costs to internal systems to support providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023.

Table 8. Estimated Systems Costs to Rail Carriers during Pilot Period 2016-2025 (undiscounted 2023 U.S. Dollars)

Year	Primary Estimate (\$35,000)	Low Estimate (\$10,000)	High Estimate (\$60,000)
2016	70,000	20,000	120,000
2017	70,000	20,000	120,000
2018	70,000	20,000	120,000
2019	70,000	20,000	120,000
2020	70,000	20,000	120,000
2021	70,000	20,000	120,000
2022	70,000	20,000	120,000
2023	70,000	20,000	120,000
2024	70,000	20,000	120,000
2025	70,000	20,000	120,000
Total	700,000	200,000	1,200,000

CBP estimates that total overall costs from the Test during the pilot period will be approximately \$3.6 million or on average \$335,767. Total estimated costs to CBP and trade as a result of the Test

are displayed below in Table 9. CBP estimates that during the pilot period CBP will incur costs of approximately \$1.6 million or on average \$164,805 annually. According to CBP’s primary

estimate for total costs to trade from participating in the Test during the pilot period, costs will be approximately 1.7 million or on average \$170,962 annually.

Table 9. Estimated Total Costs during Pilot Period 2016-2025 (undiscounted 2023 U.S. Dollars)

Year	CBP Systems Costs	CBP Review and Address Holds	Total CBP Costs	Trade Costs to Provide EEM	Trade Review & Address Holds	Trade Systems Costs	Total Trade Costs	Total Costs
2016	\$700,868	\$761	\$701,629	\$27,869	\$223	\$70,000	\$98,092	\$799,721
2017	\$94,690	\$938	\$95,628	\$71,451	\$275	\$70,000	\$141,726	\$237,354
2018	\$96,489	\$862	\$97,351	\$73,508	\$252	\$70,000	\$143,761	\$241,112
2019	\$98,322	\$1,039	\$99,361	\$71,837	\$304	\$70,000	\$142,141	\$241,503
2020	\$100,190	\$8,950	\$109,140	\$59,938	\$7,747	\$70,000	\$137,685	\$246,825
2021	\$102,094	\$2,916	\$105,010	\$65,796	\$28,897	\$70,000	\$164,693	\$269,703
2022	\$104,034	\$2,865	\$106,899	\$73,271	\$69,711	\$70,000	\$212,982	\$319,881
2023	\$106,115	\$2,586	\$108,701	\$68,290	\$130,258	\$70,000	\$268,548	\$377,249
2024*	\$108,237	\$2,846	\$111,083	\$69,156	\$60,841	\$70,000	\$199,997	\$311,080
2025*	\$110,402	\$2,846	\$113,247	\$69,156	\$60,841	\$70,000	\$199,997	\$313,245
Total	\$1,621,440	\$26,608	\$1,648,048	\$650,273	\$359,350	\$700,000	\$1,709,623	\$3,357,671

*Pilot period years with estimated not actual values.

Cost Savings

CBP anticipates that the implementation of the Test also provides cost savings during the pilot period. As CBP expected, obtaining EEM data through the Test is a more

efficient process than obtaining export data from paper forms. As stated earlier, CBP officers manually review all finalized train manifests prior to a train’s departure from the United States, regardless of whether rail carriers

submit the train manifests in paper or electronic form. During the pilot period, when CBP receives electronic finalized train manifests from participating rail carriers the time burden to review those manifests decreased substantially

compared to reviewing the paper consists. Additionally, CBP officers are able to conduct and complete their review of a transmitted electronic train consist prior to that train's arrival to the U.S. port of export.⁶³ CBP's review of these train consists requires on average 35 minutes (0.583 hours) when submitted electronically compared to an average of 2.5 hours when they were submitted to CBP on paper forms.⁶⁴ To

estimate the total time savings, CBP multiplied the average time savings of reviewing a train consist transmitted electronically (2.5 hours – 35 minutes = 1.92 hours) by the total number of estimated train consists that will be transmitted electronically during the pilot period (16,129, see Table 2). CBP estimates that the Test will generate time savings of approximately 30,915 hours to CBP officers. CBP then

multiplied the estimated time savings (30,915 hours) by the average hourly loaded rate for a CBP officer (\$101.44) to estimate the total cost savings of approximately \$3.1 million to CBP during the pilot period. Table 10 shows CBP's estimates for the time savings and cost savings to CBP officers from swifter review of electronic train consists for each year of the pilot period.

Table 10. Estimated Time and Cost Savings to CBP From Improved Review of Electronic Train Consists during Pilot Period 2016-2025 (time in hours, cost savings in undiscounted 2023 U.S. Dollars)

Year	Train Consists Transmitted Electronically	Average Time Savings per Electronic Train Consists	Total Time Savings	Wage Rate	Total Cost Savings
2016		1.92		\$101.44	\$0
2017	308	1.92	590	\$101.44	\$59,883
2018		1.92		\$101.44	\$0
2019	159	1.92	305	\$101.44	\$30,914
2020	1,109	1.92	2,126	\$101.44	\$215,619
2021	2,601	1.92	4,985	\$101.44	\$505,704
2022	2,912	1.92	5,581	\$101.44	\$566,170
2023	3,219	1.92	6,170	\$101.44	\$625,859
2024*	2,911	1.92	5,579	\$101.44	\$565,911
2025*	2,911	1.92	5,579	\$101.44	\$565,911
Total	16,129		30,915		\$3,135,973

*Pilot period years with estimated not actual values.

CBP anticipates that rail carriers may also experience time and cost savings from the Test resulting in a more efficient export process at the U.S. port of export. Rail carriers support CBP's transition to EEM data because rail carriers acknowledge that the former process of providing export information on paper forms is inefficient and unnecessarily burdensome to all parties involved. Additionally, the existing export process using paper forms is inconsistent with the import process which has already transitioned to electronic data transmission. Rail carriers have experienced a more efficient import process as a result, and they acknowledge the potential for improvements to the export process from providing electronic data.

CBP's review of electronic train consists is significantly quicker than

train consists in paper form. In the baseline scenario, CBP does not know how often rail carriers sent finalized train consists by email in advance of departure and to what extent CBP officers were able to fully conduct their review of the paper train consist prior to the train's arrival to the U.S. port of export. If CBP officers, prior to the Test, were unable to start their review of a train's consist before the train reached the U.S. port of export and the train was held at the U.S. port of export until CBP officers conducted a review of the train consist, then participants in the Test experience a time savings similar to that estimated above for CBP's officers during CBP's review process (1.92 hours) when transmitting an electric train consist. However, CBP does not know in the baseline scenario the extent to which rail carriers sent finalized pre-

departure data via email to CBP providing CBP officers enough time to review the paper train consists prior to the train's arrival to the U.S. port of export. Therefore, during the pilot period CBP does not know exactly how much time savings rail carriers experience from a swifter CBP review of electronic train consists at the U.S. port of export. To estimate the potential time savings to rail carrier participants during the pilot period from quicker CBP processing time, CBP provides a range of time savings under a few situations that could occur in the baseline scenario depending on the amount of review CBP officers complete before the train's arrival to the U.S. port of export.

In Scenario 1, where CBP officers did not begin the review of paper train consists until the train arrived at the

⁶³ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on November 8, 2022. With electronic transmitted data, the system assists in

much of the cargo screening and review of the data allowing CBP to conduct a quicker and more thorough review of export manifest data.

⁶⁴ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on August 2, 2022.

port, rail carriers participating in the Test would experience on average a time savings of 1.92 hours per train from a more efficient CBP review using electronic train consists, assuming no 1H Enforcement holds, or other issues CBP identified during the review of the consist. In Scenario 2, during the baseline, where rail carriers sent finalized train consists by email pre-departure and CBP officers were able to complete their review of these paper train consists prior to all trains arriving at the U.S. port of export, rail carriers participating in the Test would likely not experience any time savings from transmitting electronic train consists. CBP anticipates that in this scenario CBP officers were able to fully complete their review of the paper or electronic train consist prior to the train's arrival to the U.S. port of export avoiding any delays to departure from CBP officers conducting their review at the U.S. port

of export. CBP is uncertain to what extent these time savings are experienced by rail carriers during the pilot period; however, CBP believes that it would likely be between the 1.92 hours and zero hours per train. For the purposes of this analysis, CBP uses Scenario 3, which is the mid-point between the two values (0.96 hours), as the primary estimate for time savings per electronic train consist reviewed during the pilot period. CBP also considered a Scenario 4 which assumes CBP officers were able to complete 25 percent of the review of finalized train consists prior to a train's arrival at the U.S. port of export during the baseline.

For illustrative purposes, CBP presents these potential time savings to rail carriers in range estimates based on how much review CBP officers completed prior to a train's arrival to the port in the baseline. CBP multiplied the average time savings per train by the

estimated number of electronic train consists transmitted to CBP (16,129, see Table 2) during the pilot period to estimate the total potential time savings from expedited CBP processing at the U.S. port of export. To calculate the cost savings CBP multiplied these potential time savings by the average hourly loaded wage rate for exporters (\$35.62). CBP's primary estimate for time savings and costs savings to rail carriers from swifter CBP review of train consists will be approximately 15,484 hours and \$551,546. Table 11 displays CBP's primary estimate along with range estimates for potential time savings and cost savings to rail carriers at the U.S. port of export during the pilot period depending on if during the baseline CBP officers were able to complete 0 percent of their review of train consists, 25 percent of their review and 100 percent of their review prior to a train's arrival at the U.S. port of export.⁶⁵

Table 11. Estimated Time and Cost Savings to Rail Carriers from Improved CBP Review during Pilot Period 2016-2025 (time in hours, costs in undiscounted 2023 U.S. dollars)

	Time Savings Per Consist	Total Train Consists	Total Time Savings	Wage Rate	Total Cost Savings
Scenario 1 (0 percent)	1.92	16,129	30,968	\$34.81	\$1,103,092
Scenario 2 (100 percent)	0	16,129	-	\$34.81	\$0
CBP's Primary Estimate: Scenario 3 (50 percent)	0.96	16,129	15,484	\$34.81	\$551,546
Scenario 4 (25 percent)	0.48	16,129	7,742	\$34.81	\$275,773

CBP expects that participating rail carriers also experience additional time savings from the Test when compared to the baseline when making corrections to submitted data.⁶⁶ Making updates and corrections to data transmitted electronically is significantly more efficient than making updates and corrections to emailed paper forms. Additionally, the Test allows participants to transmit data when it becomes available, and the Test allows them to continuously edit and update data in ACE on a flow basis. CBP estimates that during the pilot period

making such corrections when transmitting EEM data save Test participants on average 15 minutes (0.25 hours) per train.⁶⁷ To calculate the time savings, CBP used the estimate discussed earlier for total trains that had electronic data submitted during the pilot period (27,384 see Table 6) multiplied by the expected time savings per train (0.25 hours). CBP estimates that the total time savings to rail carriers from making data corrections in the electronic environment will be approximately 6,846 hours during the pilot period. CBP multiplied the

estimated time savings by the average hourly loaded wage rate for exporters (\$35.62) and anticipates the total cost savings to rail carrier participants from making data corrections in the electronic environment will be approximately \$243,852 or on average \$24,385 annually during the pilot period. Table 12 shows CBP's estimate for time savings and cost savings to rail carrier participants while making data corrections to EEM compared to paper forms during the pilot period.

⁶⁵To provide additional possible outcomes CBP also includes Scenario 4 which assumes CBP officers were able to complete 25 percent of the review of finalized train consists prior to a train's arrival at the U.S. port of export.

⁶⁶Information was obtained from feedback and discussions with Trade members on the potential effects of providing EEM data. Data obtained in February 2023.

⁶⁷Information was obtained from feedback and discussions with Trade members on the potential effects of providing EEM data. Data obtained in February 2023.

Table 12. Estimated Time and Cost Savings to Rail Carriers from Making Corrections to EEM Data during the Pilot Period 2016-2025 (time in hours, costs in undiscounted 2023 U.S. Dollars)

Year	Trains Departed providing EEM	Average Time Savings per Train	Total Time Savings	Wage Rate	Total Cost Savings
2016	1,174	0.25	293	\$35.62	\$10,451
2017	3,009	0.25	752	\$35.62	\$26,794
2018	3,096	0.25	774	\$35.62	\$27,566
2019	3,025	0.25	756	\$35.62	\$26,939
2020	2,524	0.25	631	\$35.62	\$22,477
2021	2,771	0.25	693	\$35.62	\$24,674
2022	3,086	0.25	771	\$35.62	\$27,477
2023	2,876	0.25	719	\$35.62	\$25,609
2024*	2,912	0.25	728	\$35.62	\$25,933
2025*	2,912	0.25	728	\$35.62	\$25,933
Total	27,384		6,846		\$243,852

*Pilot period years with estimated not actual values.

CBP anticipates there would be a savings to rail carriers during the Test when CBP identifies issues before trains are loaded and assembled. In the baseline scenario, when CBP identifies a high-risk cargo, the cargo has usually already been loaded onto the train, requiring a burdensome and time-consuming process to detach or unload the cargo from an assembled train. CBP estimates that to physically detach a freight car from an assembled train typically costs around \$3,000 and can result in a delay of up to two hours.⁶⁸

This includes the freight and labor costs to safely decouple a train car from a built train. Under this rule, the pre-departure EEM data transmitted to CBP would improve CBP's ability to identify high-risk cargo before it is loaded onto a train, avoiding the costly action of deconstructing trains and unloading cargo for examination. CBP does not track the number of cargo examinations and was unable to generate an estimate for the average number of cargo examinations each year, but feedback received from trade members suggests

that such examinations are not a frequent occurrence.⁶⁹

CBP estimates that during the pilot period total cost savings as a result of the Test will be approximately \$3.9 million or on average \$393,137 annually. CBP expects that trade will experience a total cost savings of approximately \$795,398 or on average \$79,539 annually. Table 13 displays CBP's estimates for cost savings to CBP, trade and total overall cost savings during the pilot period as a result of the Test.

⁶⁸Information was obtained from feedback and discussions with Trade members on the potential costs and time burden to remove a train car from a constructed train in order for CBP to conduct an

examination of the cargo or container. Data obtained in February 2023.

⁶⁹Information was obtained from feedback and discussions with Trade members on the frequency

of cargo examinations prior to the Test and during the Test suggesting such an occurrence was fairly uncommon. Data obtained in February 2023.

Table 13. Estimated Cost Savings from Rail EEM during the Pilot Period 2016-2025 (undiscounted 2023 U.S. Dollars)

Year	CBP Cost Savings	Trade Cost Savings from Improved CBP Review	Trade Cost Savings from Making Corrections to EEM Data	Total Cost Savings to Trade	Total Overall Cost Savings
2016	\$0	\$0	\$10,451	\$10,451	\$10,451
2017	\$59,883	\$10,532	\$26,794	\$37,326	\$97,210
2018	\$0	\$0	\$27,566	\$27,566	\$27,566
2019	\$30,914	\$5,437	\$26,939	\$32,376	\$63,290
2020	\$215,619	\$37,922	\$22,477	\$60,399	\$276,018
2021	\$505,704	\$88,942	\$24,674	\$113,615	\$619,319
2022	\$566,170	\$99,576	\$27,477	\$127,053	\$693,223
2023	\$625,859	\$110,074	\$25,609	\$135,683	\$761,543
2024*	\$565,911	\$99,531	\$25,933	\$125,464	\$691,376
2025*	\$565,911	\$99,531	\$25,933	\$125,464	\$691,376
Total	\$3,135,973	\$551,546	\$243,852	\$795,398	\$3,931,371

*Pilot period years with estimated not actual values.

Note: CBP cost savings and trade cost savings from improved CBP review are based on the estimated number of electronic train consists transmitted as seen in Table 2. Trade cost savings from making corrections to EEM data are based on CBP's estimate for the number of trains that provided EEM data to CBP during the Test as seen in Table 6.

CBP requests feedback and comments from rail carriers and other trade members on the costs and cost savings to rail carriers and other trade members during the Test pilot period discussed above and any other costs or cost savings to rail carriers and other trade members that CBP did not address in this analysis.

Benefits

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 in or departs the United States in all environments (sea, air, rail, and truck). The Test was developed and

implemented as a way for CBP to test a feasible process to meet its requirements as per the Trade Act. In addition to meeting its statutory requirements, CBP likely experiences benefits during the pilot period. CBP does not have the data available to quantify these benefits and therefore will discuss these benefits qualitatively. The primary benefit of requiring pre-departure EEM data is improving CBP's security efforts and its ability to use ATS to identify high-risk cargo prior to departing the United States, while minimizing the disruption to the export process. In the baseline, CBP officers usually manually review train consists at the time of departure without using CBP's ATS, so CBP cannot take advantage of the ATS risk assessment during the rail exit process. All EEM data transmitted to CBP as part

of the Test are screened by CBP using ATS prior to departure, providing a more robust review and improving CBP's security efforts. Additionally, the gained efficiencies from obtaining data in an integrated system allow CBP to review export rail data more efficiently prior to departure and provide CBP officers the ability to allocate more time to mission-critical activities of cargo security and safety.

Net Impact

CBP has provided its primary estimates for the total costs and cost savings from the Test during the pilot period, displayed in Table 14. CBP estimates that the net cost savings will be approximately \$573,700 or on average \$57,370 annually.

Table 14. Estimated Net Cost Savings during Pilot Period 2016-2025 (undiscounted 2023 U.S. Dollars)

Year	CBP Costs	Trade Costs	Total Costs	CBP Cost Savings	Trade Cost Savings	Total Cost Savings	Net Cost Savings
2016	\$701,629	\$98,092	\$799,721	\$0	\$10,451	\$10,451	-\$789,270
2017	\$95,628	\$141,726	\$237,354	\$59,883	\$37,326	\$97,210	-\$140,144
2018	\$97,351	\$143,761	\$241,112	\$0	\$27,566	\$27,566	-\$213,546
2019	\$99,361	\$142,141	\$241,503	\$30,914	\$32,376	\$63,290	-\$178,213
2020	\$109,140	\$137,685	\$246,825	\$215,619	\$60,399	\$276,018	\$29,193
2021	\$105,010	\$164,693	\$269,703	\$505,704	\$113,615	\$619,319	\$349,616
2022	\$106,899	\$212,982	\$319,881	\$566,170	\$127,053	\$693,223	\$373,342
2023	\$108,701	\$268,548	\$377,249	\$625,859	\$135,683	\$761,543	\$384,294
2024*	\$111,083	\$199,997	\$311,080	\$565,911	\$125,464	\$691,376	\$380,296
2025*	\$113,247	\$199,997	\$313,245	\$565,911	\$125,464	\$691,376	\$378,131
Total	\$1,648,048	\$1,709,623	\$3,357,671	\$3,135,973	\$795,398	\$3,931,371	\$573,700

*Pilot period years with estimated not actual values.

Table 15 displays CBP’s primary estimate for quantifiable net cost savings from the Test adjusted for discounting. As shown, CBP expects that this

proposed rule will result in total net cost savings to CBP, rail carriers and other trade members during the pilot period of around \$343,946 using a two

percent discount rate. CBP estimates that annualized net cost savings will be around \$38,290 using a two percent discount rate.

Table 15. Total Monetized Present Value and Annualized Net Cost Savings of Pilot Period 2016-2025 (2023 U.S. Dollars)

	2% Discount Rate
Present Value Net Cost Savings	\$343,946
Annualized Net Cost Savings	\$38,290

Regulatory Period

For the regulatory period, CBP estimated the future costs, cost savings, and benefits to rail carriers, the Federal Government, and other trade members as a result of requiring EEM data in the rail environment. CBP anticipates the effects of the proposed rule would be similar to those experienced during the pilot period but on a larger scale as the proposed rule would make transmission of pre-departure EEM data mandatory for all U.S. exports in the rail environment.

Costs

CBP anticipates that this proposed rule would result in costs to both CBP and trade members during the regulatory period. CBP will bear technology and opportunity costs by expanding the existing test to a requirement for all rail carriers. CBP does not anticipate it will incur any costs to develop new systems during the regulatory period because CBP

completed the system development and implementation of the rail EEM data tool application into ACE during the pilot period. CBP does expect to incur some ongoing systems operations and maintenance costs associated with the rail EEM data application in ACE. Over the course of the regulatory period, CBP estimates that ongoing systems costs in ACE would be approximately \$586,026 or on average \$117,205 each year.⁷⁰

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. CBP estimates that a total of 11,137 1H Enforcement holds would be issued during the regulatory period (see Table 4 above). CBP expects that the time

burden to a CBP officer to manually review a 1H Enforcement hold on average is about 5 minutes (0.083 hours). CBP also anticipates that CBP officers will 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.⁷¹ CBP expects that the majority of these 1H Enforcement holds issued would not result in a cargo examination.⁷² CBP estimates that the average time burden incurred by CBP officers during the regulatory period for addressing and resolving 1H Enforcement holds is the

⁷⁰Information provided by CBP’s Cargo and Conveyance Security, Office of Field Operations, on December 7, 2022. Rail EEM ACE cost estimates were provided by CBP’s Office of Information and Technology, ongoing costs are expected increase at a fixed rate each year.

⁷¹Information provided by CBP’s Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 21, 2022.

⁷²Information provided by CBP’s Cargo and Conveyance Security, Office of Field Operations, subject matter expert on November 8, 2022.

same as during the pilot period, 10 minutes (0.167 hours).⁷³ Combined, CBP expects that that on average the total time burden to CBP officers during the regulatory period to review, address and resolve a 1H Enforcement hold is approximately 15 minutes (0.25 hours). CBP estimates that the proposed rule would result in 1H Enforcement holds that would cause an additional time

burden to CBP officers of approximately 2,784 hours (11,137 1H Enforcement holds × 0.25 hours per hold). CBP calculated the costs to CBP officers in the regulatory period, by multiplying the total time burden (2,784) hours by the average hourly loaded rate for a CBP Officer (\$101.44) = \$282,433. Table 16 shows CBP estimates for total costs to CBP during the regulatory period

including ongoing systems and maintenance costs and the time burden and cost to CBP officers from additional review of 1H Enforcement holds during the regulatory period. Over the regulatory period this proposed rule would cost CBP approximately \$868,459 or on average \$173,691 annually.

Table 16. Estimated Time Burden and Costs to CBP during the Regulatory Period 2026-2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
1H Enforcement Holds	2,227	2,227	2,227	2,227	2,227	11,137
Time Burden per Hold	0.25	0.25	0.25	0.25	0.25	
Time Burden	557	557	557	557	557	2,784
Time Burden Costs	\$56,487	\$56,487	\$56,487	\$56,487	\$56,487	\$282,433
Rail EEM System O&M Costs	\$112,610	\$114,862	\$117,159	\$119,502	\$121,892	\$586,026
Total Costs	\$169,096	\$171,349	\$173,646	\$175,989	\$178,379	\$868,459

CBP does not expect that this proposed rule would result in additional cargo examinations when compared to the baseline. 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.⁷⁴ 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. If there are more manual examinations of cargo as a result of 1H Enforcement holds when compared to the baseline, then the time burden to CBP officers during the regulatory period could be larger than CBP expected. Unfortunately, CBP does not have data on how many 1H Enforcement holds typically result in a cargo examination. However, because the EEM data is provided in advance of departure CBP would likely be able to issue holds before trains reach the U.S. port of export and possibly before cargo is loaded, limiting the time burden and costs of conducting these cargo examinations when compared to the baseline scenario.

CBP anticipates that this proposed rule would result in costs to trade members in the form of both systems and opportunity costs. CBP expects that the remaining rail carriers (five) that did not participate in the Test would incur costs to adjust and maintain their IT systems to provide the electronic export manifest data directly to CBP via ACE. CBP anticipates that the cost of adjusting and maintaining internal systems can vary depending on the rail carrier or trade member and therefore CBP provides a range of estimates for the annual internal system costs to the rail EEM participants during the regulatory period. CBP anticipates that the annual internal systems costs would range from the low end \$10,000 to as high as \$60,000 each year.⁷⁵ For the primary estimate during the regulatory period CBP used the same estimate as proposed during the pilot period, \$35,000 in internal system costs to the average rail EEM participant to maintain its internal systems each year. To provide a range of cost estimates, CBP also provides estimates if maintaining the internal systems cost the average Rail EEM participant \$10,000 each year or \$60,000 each year. CBP expects that at least the seven rail carriers will incur these systems costs each year of the

regulatory period; however, CBP does not know how many other trade members would also elect to participate and provide the EEM cargo data directly to CBP via ACE thus incurring systems costs. CBP notes that it is voluntary for the other trade members to provide the EEM cargo data. If no other party provides this EEM cargo data, then it must be provided by rail carriers. 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 participate if it resulted in a net cost. To estimate the cost to rail carriers from operating and maintaining their internal systems to support participation in providing EEM data, CBP multiplied the average annual cost by the number of expected rail carrier participants each year (seven). According to CBP's primary estimate for operating and maintaining internal systems, rail EEM participants would incur costs of approximately \$1.2 million or on average \$245,000 annually. Under CBP's low estimate, rail EEM participants would incur costs of around \$350,000 or \$70,000 annually and the high estimate shows internal systems costs of approximately \$2.1

⁷³ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on November 21, 2022.

⁷⁴ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on December 15, 2022.

⁷⁵ Data obtained from feedback and discussions with Trade members on the potential costs associated with internal systems to support providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023.

million or \$420,000 annually. Table 17 displays CBP's estimates of internal systems costs to trade members during the regulatory period.

Table 17. Estimated Internal Systems Costs to Trade during Regulatory Period 2026-2030 (undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Primary Estimate	\$245,000	\$245,000	\$245,000	\$245,000	\$245,000	\$1,225,000
Low Estimate	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$350,000
High Estimate	\$420,000	\$420,000	\$420,000	\$420,000	\$420,000	\$2,100,000

The proposed rule adjusted data elements and deadlines for the transmission of EEM data from what CBP established during the Test. Rail EEM participants (rail carriers and other trade members such as USPPIs, FPPIs, NVOCCs, freight forwarders, CHB, or other third-parties with knowledge of manifest data elements) would provide the initial filing data elements to CBP 24 hours prior to the cargo and train departing the U.S. port of export. As stated earlier, during the Test CBP considered what data elements were most important, CBP's needs, and what trade members could provide, given the time frames recommended and CBP adjusted the required data elements for this proposed rule. CBP expects that most rail carriers would have access to most export manifest data early in the planning stages of an export rail cargo transaction and would be able to comply with the new deadlines imposed by the proposed rule. CBP notes that some rail carriers will have the export manifest data available days in advance prior to 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 and 2-hour prior to departure deadlines.⁷⁶ CBP anticipates that all parties that would participate in transmitting EEM data to CBP would have the necessary export data elements to provide the required EEM data within the two-hour prior to departure deadline.⁷⁷ However, for some rail carriers acquiring the necessary data for the initial filing 24 hours prior to departure may require a change in

⁷⁶ CBP obtained feedback and information from Trade members on when in the export transaction process, the export manifest data is typically available for them to submit to CBP. Information obtained in February 2023.

⁷⁷ Data obtained from feedback and discussions with Trade members on the timeline for when export manifest data elements are made available and can be provided to CBP. Data was obtained in February 2023.

business practices and additional coordination with other trade members or parties that have the required export information. CBP does not believe that in such instances the export manifest data does not exist; rather, the other trade member has not yet provided this information to the rail carrier.⁷⁸ Based on input from the trade community, CBP expects that in such instances the net costs to rail carriers to obtain this information earlier from other trade members would be minimal. Additionally, if other trade members are reluctant to provide this information to the rail carriers within the 24-hour prior to departure deadlines the other trade members would be able to provide this data to CBP directly as a rail EEM participant.

The transition from a paper form process to an electronic data process could also result in parties that provide EEM data adjusting business practices. CBP expects any costs related to adjusting business practices would be minimal and should not have a large effect on rail carriers and other trade members, specifically because they likely already have such practices developed to provide manifest data for rail imports.⁷⁹ Additionally, participation in directly providing the rail EEM data to CBP by other trade members is voluntary; CBP expects that these parties would likely only directly provide data to CBP if the benefits outweighed the costs to their company. CBP requests comments from rail carriers and trade members on the

⁷⁸ Information provided during discussion with some Trade members in regard to the timeline for when export manifest data is available to be provided to CBP and challenges to providing pre-departure data well in advance. Data obtained in February 2023.

⁷⁹ CBP requested feedback from Trade members on the potential costs from adjusting business practices 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.

potential costs during the regulatory period related to internal system adjustments, operation and maintenance needed to support transmitting pre-departure EEM data to CBP via ACE. CBP also requests comment on any other costs to trade members associated with transitioning from paper forms to the transmission of EEM data that CBP did not address in this analysis.

CBP expects that rail carriers and other trade members that provide EEM data to CBP would incur time burdens and costs while responding to CBP-issued holds. During the regulatory period, the party that provides the EEM data to CBP is 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. To estimate the time burden to trade to review and resolve the average hold (including both 2H Documentation holds and 1H Enforcement holds) during the regulatory period CBP used the same time burden estimate as proposed during the pilot period of approximately 12.5 minutes (0.21 hours) to trade when reviewing and resolving each 2H Documentation and 1H Enforcement hold.⁸⁰

CBP does not expect that such holds would result in CBP officers conducting additional cargo examinations when compared to the baseline. Cargo examinations conducted after cargo has

⁸⁰ 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.

been loaded onto the train is a burdensome and time-consuming process and would result in a larger time burden to resolve holds that result in an examination. CBP does not track the number of cargo examinations and was unable to generate an estimate for the average number of cargo examinations each year, but feedback received from trade members suggests that cargo examinations are not a frequent occurrence.⁸¹ Although CBP does not anticipate examinations would increase as a result of this proposed rule, if CBP did conduct more examinations when compared to the baseline then time burden costs to trade members to review and resolve holds could be higher than what CBP provides

in this analysis. Additionally, CBP does not track and was unable to estimate the number of holds issued that would result in 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

will review and resolve around 813,537 holds (see Table 4) resulting in a total time burden of approximately 169,487 hours or on average 33,897 hours annually. CBP calculated the costs to trade from reviewing and resolving these holds by multiplying the total hours of time burden by the average hourly loaded wage rate for exporters (\$35.62). CBP anticipates that overall costs to trade from reviewing and resolving holds as a result of this proposed rule would be around \$6.0 million or on average \$1.2 million annually. Table 18 shows CBP's regulatory period estimates for time burden and costs to trade associated with the review and resolution of holds issued by CBP.

Table 18. Estimated Time Burden and Costs to Trade from Issued Holds during the Regulatory Period 2026-2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
2H Documentation Holds	160,480	160,480	160,480	160,480	160,480	802,400
1H Enforcement Holds	2,227	2,227	2,227	2,227	2,227	11,137
Total Holds	162,707	162,707	162,707	162,707	162,707	813,537
Average Time Burden	0.21	0.21	0.21	0.21	0.21	
Total Time Burden	33,897	33,897	33,897	33,897	33,897	169,487
Wage Rate	\$35.62	\$35.62	\$35.62	\$35.62	\$35.62	
Total Costs	\$1,207,424	\$1,207,424	\$1,207,424	\$1,207,424	\$1,207,424	\$6,037,119

Note: totals may not sum due to rounding.

The proposed rule prohibits rail carriers from transporting cargo with a hold across the border until the issues have been addressed and the hold has been lifted. Upon notification of a hold being issued on a specific cargo the party responsible for providing that information to CBP would need to contact CBP for specifics and further instructions regarding the hold. If CBP requires a manual examination of cargo, the rail carrier must coordinate with CBP to identify a place where a proper examination of cargo can be conducted. CBP would prohibit a train's departure from a U.S. port of export if there are any unresolved holds issued for cargo currently loaded onto a train. Parties that do not address a CBP-issued hold on specific cargo or freight cars before

the required deadlines could face enforcement actions. Because CBP experienced very high rates of compliance during the Test (the compliance rate was over 99.8%), CBP expects excellent rates of compliance during the regulatory period.⁸² As stated earlier, CBP's primary goal is compliance and CBP intends to work with parties providing the EEM data during this process to minimize the disruption of the flow of goods.

This proposed rule would also require a party providing the EEM data to CBP to have a bond on file with CBP. Carriers and other potential filers generally are all subject to other bond requirements that would qualify them to submit EEM data to CBP.⁸³ Therefore, CBP expects that any costs to rail

carriers or other trade members from being required to have a bond to provide export manifest data electronically to CBP would be negligible. Rail carriers and other trade members could also incur some costs to meet the requirement of this proposed rule of having someone available 24 hours a day 7 days a week to respond to questions and issues that may arise from CBP's review for EEM data transmitted. CBP anticipates that any additional staffing costs to participants would be negligible because they typically have someone working at all times for other business operations that can respond to CBP questions and issues.

Rail carriers and other trade members may also be subject to claims for liquidated damages of \$5,000 for each

⁸¹ Information was obtained from feedback and discussions with Trade members on the frequency of cargo examinations prior to the Test and during the Test suggesting such an occurrence was fairly uncommon. Data obtained in February 2023.

⁸² Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on August 2, 2022.

⁸³ CBP anticipates that any of the following bonds would be appropriate depending upon the party filing, 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.

Because the transmission of EEM data would be mandatory for all cargo trains departing across approximately 68 U.S. ports of export as a result of this proposed rule, rail carriers and other trade members would likely experience some time and cost savings during the regulatory period. CBP notes that during the pilot period when Test participants transmitted all EEM within the required deadlines, CBP officers are able to complete their review of those train consists prior to that train's arrival to the U.S. port of export. CBP anticipates this would also be the case during the regulatory period.⁸⁴ Therefore, the time savings to rail carriers during the regulatory period from a swifter CBP processing of an electronic train consist is dependent on how much review of a paper train consist CBP completed before the train arrives at the U.S. port of export in the baseline. CBP defines a few potential scenarios depending on when rail carriers provided export data to CBP prior to this proposed rule. In Scenario 1 rail carriers prior to this proposed rule did not provide export data pre-departure to CBP—meaning CBP officers were unable to start their review of the train consist until the train is at the U.S. port of export—in this scenario CBP anticipates these rail carriers would experience the same amount of time savings per train as CBP officers: 1.92 hours per outbound train.

For Scenario 2, rail carriers who, prior to this proposed rule, provided pre-departure export data and the finalized train consists to CBP in advance such that CBP officers were able to conduct and complete their review of this information before the train arrived at the U.S. port of export, these rail carriers would likely not experience any time savings from the expedited CBP review of train consists. As CBP does not have data prior to this proposed rule on how many trains submit pre-departure export data to CBP in time for CBP to review it, CBP anticipates that the time savings to rail carriers from the expedited review of electronic train consists would be somewhere between 1.92 hours to 0 hours per departing train. Similar to the pilot period estimate, CBP determined to use the midpoint between these two values (0.96 hours) as Scenario 3 and as CBP's primary estimate for the time savings to rail carriers per outbound train during the regulatory period. CBP also provides the potential time savings from Scenario 4 which assumes CBP officers were able to complete 25 percent of the review of finalized train consists prior to a train's arrival at the U.S. port of export.

Because of this uncertainty for the actual amount of time savings to rail carriers from this process CBP provides a range of potential time savings to rail carriers during the regulatory period using the same alternate estimates provided in the pilot period portion of this analysis, assuming CBP officers

completed 0 percent of their review of train consists in Scenario 1 (1.92 hours of time savings per train), 100 percent of their review in Scenario 2 (0 hours of time savings per train), 50 percent of their review in Scenario 3 (0.96 hours of time savings per train), and 25 percent of their review in Scenario 4 (0.48 hours of time saving per train) before the train arrives at the U.S. port of export. CBP estimated the time savings to rail carriers by multiplying the average time savings per train by the forecasted number of outbound trains (see Table 3) during each year of the regulatory period. CBP then calculated a range of potential cost savings each year of the regulatory period by multiplying the estimated time savings by the average hourly loaded wage rate for exporters (\$35.62). Under CBP's primary estimate, time savings to rail carriers during the regulatory period from swifter CBP review of electronic train consists would be approximately 277,410 hours or on average 55,482 hours annually. Cost savings to rail carriers would be approximately \$9.88 million during the regulatory period or on average \$1.98 million annually. According to CBP's range of estimates, cost savings to rail carriers from shorter review time of train consists could be anywhere from \$0 to \$19.8 million or at most on average \$3.95 million annually. Table 21 displays CBP's primary estimate and alternative range estimates for these potential time savings and cost savings to rail carriers and other trade members.

⁸⁴ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on November 8, 2022.

Table 21. Estimated Time and Cost Savings to Rail Carriers from Improved CBP Review during the Regulatory Period 2026-2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Scenario 1 (time savings per train 1.92 hours)						
Train Consists Transmitted	57,794	57,794	57,794	57,794	57,794	288,969
Time Savings	110,964	110,964	110,964	110,964	110,964	554,820
Wage Rate	\$35.62	\$35.62	\$35.62	\$35.62	\$35.62	
Cost Savings	\$3,952,538	\$3,952,538	\$3,952,538	\$3,952,538	\$3,952,538	\$19,762,688
Scenario 2 (time savings per train 0 hours)						
Train Consists Transmitted	54,559	54,559	54,559	54,559	54,559	272,797
Time Savings	0	0	0	0	0	0
Wage Rate	\$35.62	\$35.62	\$35.62	\$35.62	\$35.62	
Cost Savings	\$0	\$0	\$0	\$0	\$0	\$0
Scenario 3 CBP's Primary Estimate (time savings per train 0.96 hours)						
Train Consists Transmitted	57,794	57,794	57,794	57,794	57,794	288,969
Time Savings	55,482	55,482	55,482	55,482	55,482	277,410
Wage Rate	\$35.62	\$35.62	\$35.62	\$35.62	\$35.62	
Cost Savings	\$1,976,269	\$1,976,269	\$1,976,269	\$1,976,269	\$1,976,269	\$9,881,344
Scenario 4 (time savings per train 0.48 hours)						
Train Consists Transmitted	57,794	57,794	57,794	57,794	57,794	288,969
Time Savings	27,741	27,741	27,741	27,741	27,741	138,705
Wage Rate	\$35.62	\$35.62	\$35.62	\$35.62	\$35.62	
Cost Savings	\$988,134	\$988,134	\$988,134	\$988,134	\$988,134	\$4,940,672

CBP expects that rail carriers and other trade members that decide to provide EEM cargo data would also experience some other time and costs savings as a result of this proposed rule. During the regulatory period, rail carriers would transmit EEM data to CBP and would no longer submit finalized train consists in paper form to CBP either via email or at the U.S. port of export. Eliminating the time burden and cost to provide the paper form train consists would be a cost savings of this proposed rule, but parties would now incur the time and cost to provide the EEM data. CBP expects providing the EEM data takes less time than providing the data on paper forms and rail EEM participants would experience a time savings when providing EEM data.⁸⁵

⁸⁵ Information was obtained from feedback and discussions with Trade members on the potential

During the regulatory period, CBP estimates that eliminating paper forms and providing the EEM data would help rail carriers and other trade members to automate the process for providing export manifest data to CBP and would generate a time savings of approximately 20 minutes (0.333 hours) on average for each train exporting goods out of the United States.⁸⁶

CBP used the number of total outbound trains estimated above 288,969 (see Table 3) for the number of trains that would potentially be affected and experience this time savings during the regulatory period. According to CBP

effects of providing EEM data instead of paper forms. Data obtained in February 2023.

⁸⁶ Information was obtained from feedback and discussions with Trade members on the potential effects of providing EEM data instead of paper forms. Data obtained in February 2023.

calculations, trade members would experience a total of 96,323 hours (288,969 trains × 0.333 hours) in time savings from a more efficient process of providing the electronic export manifest data when compared to the baseline. To provide an estimate for the total cost savings from this process, CBP multiplied the total expected time savings (96,323 hours) by the average hourly loaded wage rate for exporters (\$35.62). CBP estimates that these cost savings to trade during the regulatory period would be approximately \$3.43 million or on average \$686,204 annually. Additionally, during the regulatory period CBP expects that rail EEM participants will experience time savings when making corrections and/or updates to electronically transmitted data in ACE when compared to making corrections and updates to paper forms

in the baseline scenario. CBP uses the same time savings estimate used in the pilot period of 15 minutes (0.25 hours) per train for the time savings experienced by rail EEM participants during the regulatory period. CBP multiplied this time savings per train by the expected number of outbound trains during each year of the regulatory period (57,794 trains, see Table 3). CBP estimates that rail EEM participants would experience a time savings of

approximately 72,242 hours on average and 14,448 each year from being able to make updates and corrections to EEM data in ACE when compared to paper forms. To provide an estimate for the total cost savings from this process, CBP multiplied the total expected time savings during the regulatory period (72,242 hours) by the average hourly loaded wage rate for exporters (\$35.62). CBP estimates that these cost savings to trade during the regulatory period

would be approximately \$2.57 million or on average \$514,653 annually. Table 22 displays CBP estimates for time savings to rail EEM participants from transitioning to transmitting EEM data and making corrections and updates to electronic data in ACE. Overall, CBP estimates that transitioning to EEM data transmission would save rail EEM participants approximately \$6.0 million or on average \$1.2 million annually.

Table 22. Estimated Time and Cost Savings to Trade from Transmitting EEM during the Regulatory Period 2026-2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Total Outbound Trains	57,794	57,794	57,794	57,794	57,794	288,969
Time Savings to Submit EEM per Train	0.333	0.333	0.333	0.333	0.333	
Total Time Savings to Submit EEM	19,265	19,265	19,265	19,265	19,265	96,323
Wage Rate	\$35.62	\$35.62	\$35.62	\$35.62	\$35.62	
Total Cost Savings from Submitting EEM	\$686,204	\$686,204	\$686,204	\$686,204	\$686,204	\$3,431,022
Time Savings to Make Corrections per Train	0.250	0.250	0.250	0.250	0.250	
Total Time Savings to Make Corrections	14,448	14,448	14,448	14,448	14,448	72,242
Wage Rate	\$35.62	\$35.62	\$35.62	\$35.62	\$35.62	
Total Cost Savings from Making Corrections	\$514,653	\$514,653	\$514,653	\$514,653	\$514,653	\$2,573,267
Total Cost Savings	\$1,200,858	\$1,200,858	\$1,200,858	\$1,200,858	\$1,200,858	\$6,004,289

Note: totals may not sum due to rounding.

CBP also expects that rail carriers would experience time and cost savings if the pre-departure EEM data results in CBP identifying a high-risk cargo prior to that cargo being loaded or added to a train, thereby avoiding the costly burden of identifying high-risk cargo after the train has been constructed. CBP did not track how often such examinations occur prior to this proposed rule and CBP was unable to provide an estimate for how often such examinations occur, but CBP expects that they are fairly uncommon.⁸⁷ Additionally, CBP does not anticipate this rule would result in additional examinations compared to the baseline. CBP estimates that the cost to rail

carriers to remove a car from a constructed train for CBP examination is approximately \$3,000 per occurrence and results in a delay of up to two hours.⁸⁸ This includes the freight and labor costs to safely decouple a train car from a built train. Rail carriers would avoid these costs if CBP receives pre-departure data and is able to issue holds and examine these cargo or train cars before constructed to the train. Additionally, moving to transmission of EEM data would reduce the space required to store and file paper form manifest documents generating savings to rail 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, does not consider the costs to be substantial.

CBP estimates that total cost savings as a result of this proposed rule would be approximately \$72.1 million or on average \$14.4 million annually during the regulatory period. In total, CBP anticipates that trade members will experience a cost savings of \$15.9 million or on average \$3.2 million during the regulatory period, while CBP would experience cost savings of around \$56.2 million or on average \$11.2 million annually. Table 23 below displays CBP's estimates for total cost savings to CBP and trade during each year of the regulatory period. CBP requests feedback and comments from rail carriers and trade members on

⁸⁷ Information was obtained from feedback and discussions with Trade members on the frequency of cargo examinations prior to the Test and during the Test suggesting such an occurrence was fairly uncommon. Data obtained in February 2023.

⁸⁸ Information was obtained from feedback and discussions with Trade members on the potential costs and time burden to remove a train car from a constructed train in order for CBP to conduct an examination of the cargo or container. Data obtained in February 2023.

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 23. Estimated Total Cost Savings during Regulatory Period 2026-2030 (undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
CBP Review of Train Consists	\$11,236,646	\$11,236,646	\$11,236,646	\$11,236,646	\$11,236,646	\$56,183,231
Trade Cost Savings from Improved CBP Review	\$1,976,269	\$1,976,269	\$1,976,269	\$1,976,269	\$1,976,269	\$9,881,344
Trade Savings from Providing EEM	\$686,204	\$686,204	\$686,204	\$686,204	\$686,204	\$3,431,022
Trade Cost Savings from Making Corrections to EEM Data	\$514,653	\$514,653	\$514,653	\$514,653	\$514,653	\$2,573,267
Total Trade Cost Savings	\$3,177,127	\$3,177,127	\$3,177,127	\$3,177,127	\$3,177,127	\$15,885,633
Total Cost Savings	\$14,413,773	\$14,413,773	\$14,413,773	\$14,413,773	\$14,413,773	\$72,068,864

Benefits

CBP expects that parties involved in U.S. rail exports would likely experience benefits as a result of this proposed rule during the regulatory period. Unfortunately, CBP does not have the data available to quantify these benefits and therefore will discuss these 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 rail 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 rail environment. Additionally, transitioning to electronic data would reduce the use of paper for all parties involved and bring the outbound rail process level with existing inbound rail processing technology. The deadlines for submitting EEM data and the gained efficiencies from moving from paper forms to electronic data transmission using an integrated system would provide CBP more time to review the necessary detailed export data prior to a train's departure, allowing CBP officers to allocate more time to

mission-critical activities. CBP also anticipates this proposed rule would generate benefits to the Federal Government through improved coordination and communication among CBP, the Department of Commerce, and other Government agencies with export jurisdiction, while enforcing U.S. export laws and regulations. In addition, CBP would be compliant in the rail environment with the Trade Act, which requires 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 anticipates that the cost savings generated from this proposed rule would outweigh the costs during the regulatory period. In addition, this rule generates meaningful unquantified security benefits. During the regulatory period, CBP anticipates that this proposed rule would generate net cost savings to both CBP and trade members. 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 rail EEM and therefore the actual net cost savings could be more or less than what CBP's

primary estimates project in this analysis. Additionally, CBP acknowledges that for other trade members, participating directly in providing rail EEM data to CBP is voluntary and CBP expects that they would only do so if it were beneficial to their company and the benefits or cost savings outweigh the costs. Because CBP does not have data on how many of these other trade members would decide to directly participate in providing rail EEM data during the regulatory period the actual costs and cost savings from this proposed rule could be higher than what CBP has provided during the regulatory period of this analysis. For this reason, CBP presents a range of estimates. CBP estimates that, during the regulatory period, CBP, rail carriers, and other trade members bear costs of approximately \$8.1 million or an average of \$1.6 million per year. Meanwhile, CBP estimates a total cost savings to CBP, rail carriers and other trade members of approximately \$72.1 million during the regulatory period, or an average of \$14.4 million per year. This results in a net cost savings of approximately \$63.9 million, or an average of \$12.8 million per year. Table 24 displays CBP's estimates for costs and cost savings to CBP and trade members during each year of the regulatory period.

Table 24. Estimated Net Cost Savings to CBP and Trade during Regulatory Period 2026-2030 (undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Costs						
CBP	\$169,096	\$171,349	\$173,646	\$175,989	\$178,379	\$868,459
Trade Members	\$1,452,424	\$1,452,424	\$1,452,424	\$1,452,424	\$1,452,424	\$7,262,119
Total Costs	\$1,621,520	\$1,623,773	\$1,626,070	\$1,628,413	\$1,630,803	\$8,130,578
Cost Savings						
CBP	\$11,236,646	\$11,236,646	\$11,236,646	\$11,236,646	\$11,236,646	\$56,183,231
Trade Members	\$3,177,127	\$3,177,127	\$3,177,127	\$3,177,127	\$3,177,127	\$15,885,633
Total Cost Savings	\$14,413,773	\$14,413,773	\$14,413,773	\$14,413,773	\$14,413,773	\$72,068,864
CBP Net Cost Savings	\$11,067,550	\$11,065,298	\$11,063,000	\$11,060,657	\$11,058,267	\$55,314,772
Trade Member Net Cost Savings	\$1,724,703	\$1,724,703	\$1,724,703	\$1,724,703	\$1,724,703	\$8,623,514
Total Net Cost Savings	\$12,792,252	\$12,790,000	\$12,787,703	\$12,785,360	\$12,782,970	\$63,938,286

Note: totals may not sum due to rounding.

Table 25. Total Monetized Present Value and Annualized Costs in Regulatory Period 2026-2030 (2023 U.S. dollars)

	2% Discount Rate
Present Value Cost	\$7,366,587
Annualized Cost	\$1,626,024

Table 25 shows the discounted total quantified costs during the regulatory period from this proposed rule. As shown, the total costs over the 5-year

regulatory period of analysis would be around \$7.4 million using a two percent discount rate. Expected annualized costs from this proposed rule are about

1.6 million using a two percent discount rate.

Table 26. Total Monetized Present Value and Annualized Cost Savings in Regulatory Period 2026-2030 (2023 U.S. dollars)

	2% Discount Rate
Present Value Cost Savings	\$67,938,735
Annualized Cost Savings	\$14,413,773

Table 26 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 rule will provide cost savings to CBP, rail carriers and other trade members of around \$68.0 million using a two percent discount rate. Annualized

cost savings from this proposed rule would be approximately \$14.4 million.

Table 27. Total Monetized Present Value and Annualized Net Cost Savings of Regulatory Period 2026-2030 (2023 U.S. dollars)

	2% Discount Rate
Present Value Net Cost Savings	\$60,274,537
Annualized Net Cost Savings	\$12,787,749

Table 27 displays CBP's primary estimate for quantifiable net cost savings from the implementation of rail EEM. As shown, CBP expects that this proposed rule would result in total net cost savings to CBP, rail carriers and other trade members of around \$60.3 million using a two percent discount rate. CBP estimates that annualized net cost savings are approximately \$12.8 million using a two percent discount rate.

Total Impact of the Proposed Rail EEM Program

CBP anticipates that over the entire 15-year time period of analysis 2016–

2030, the proposed rail EEM program would result in overall net cost savings compared to the baseline (before the rail EEM test was introduced). Initially as the rail 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 2016–2030 the rail EEM program would result in total costs of \$11,488,249 or on average \$765,883 annually. Additionally, the rail EEM program would result total cost savings of \$76,000,235 or on average \$5,066,682 annually between 2016–2030. CBP estimates that total net cost savings from the rail EEM program during the period of analysis 2016–2030 would be \$64,511,986 or on average \$4,300,799 annually when compared to the baseline. Table 28 displays CBP's estimates for total costs, cost savings and net cost savings as a result of this proposed rule from 2016–2030.

Table 28. Estimated Cost, Cost Savings, and Net Cost Savings from Rail EEM 2015-2030 (undiscounted 2023 U.S. dollars)

Year	Costs			Cost Savings			Net Cost Savings		
	CBP	Trade Members	Total	CBP	Trade Members	Total	CBP	Trade Members	Total
2016	\$701,629	\$98,092	\$799,721	\$0	\$10,451	\$10,451	(\$701,629)	(\$87,641)	(\$789,270)
2017	\$95,628	\$141,726	\$237,354	\$59,883	\$37,326	\$97,210	(\$35,745)	(\$104,399)	(\$140,144)
2018	\$97,351	\$143,761	\$241,112	\$0	\$27,566	\$27,566	(\$97,351)	(\$116,195)	(\$213,546)
2019	\$99,361	\$142,141	\$241,503	\$30,914	\$32,376	\$63,290	(\$68,448)	(\$109,765)	(\$178,213)
2020	\$109,140	\$137,685	\$246,825	\$215,619	\$60,399	\$276,018	\$106,479	(\$77,286)	\$29,193
2021	\$105,010	\$164,693	\$269,703	\$505,704	\$113,615	\$619,319	\$400,694	(\$51,078)	\$349,616
2022	\$106,899	\$212,982	\$319,881	\$566,170	\$127,053	\$693,223	\$459,272	(\$85,929)	\$373,342
2023	\$108,701	\$268,548	\$377,249	\$625,859	\$135,683	\$761,543	\$517,159	(\$132,865)	\$384,294
2024	\$111,083	\$199,997	\$311,080	\$565,911	\$125,464	\$691,376	\$454,829	(\$74,533)	\$380,296
2025	\$113,247	\$199,997	\$313,245	\$565,911	\$125,464	\$691,376	\$452,664	(\$74,533)	\$378,131
2026	\$169,096	\$1,452,424	\$1,621,520	\$11,236,646	\$3,177,127	\$14,413,773	\$11,067,550	\$1,724,703	\$12,792,252
2027	\$171,349	\$1,452,424	\$1,623,773	\$11,236,646	\$3,177,127	\$14,413,773	\$11,065,298	\$1,724,703	\$12,790,000
2028	\$173,646	\$1,452,424	\$1,626,070	\$11,236,646	\$3,177,127	\$14,413,773	\$11,063,000	\$1,724,703	\$12,787,703
2029	\$175,989	\$1,452,424	\$1,628,413	\$11,236,646	\$3,177,127	\$14,413,773	\$11,060,657	\$1,724,703	\$12,785,360
2030	\$178,379	\$1,452,424	\$1,630,803	\$11,236,646	\$3,177,127	\$14,413,773	\$11,058,267	\$1,724,703	\$12,782,970
Total	\$2,516,507	\$8,971,742	\$11,488,249	\$59,319,203	\$16,681,031	\$76,000,235	\$56,802,696	\$7,709,289	\$64,511,986
Average	\$167,767	\$598,116	\$765,883	\$3,954,614	\$1,112,069	\$5,066,682	\$3,786,846	\$513,953	\$4,300,799

Table 29. Total Monetized Present Value and Annualized Costs of Rail EEM 2016-2030 (2023 U.S. dollars)

	2% Discount Rate
Present Value Cost	\$9,330,571
Annualized Cost	\$726,156

Table 29 shows the discounted total quantified costs from the rail EEM program from 2016–2030 compared to the baseline scenario. As shown, the

total costs over the 15-year period of analysis would be \$9,330,571 using a two percent discount rate. Expected total annualized costs from this

proposed rule are \$726,156 using a two percent discount rate.

Table 30. Total Monetized Present Value and Annualized Cost Savings of Rail EEM 2016-2030 (2023 U.S. dollars)

	2% Discount Rate
Present Value Cost Savings	\$59,120,631
Annualized Cost Savings	\$4,601,091

Table 30 shows the discounted total quantified costs savings as a result of this proposed rule from 2016–2030. As shown, the total cost savings over the

15-year period of analysis would be \$59,120,631 using a two percent discount rate. Expected total annualized cost savings from this proposed rule

would be \$4,601,091 using a two percent discount rate.

Table 31. Total Monetized Present Value and Annualized Net Cost Savings of Rail EEM 2016-2030 (2023 U.S. dollars)

	2% Discount Rate
Present Value Net Cost Savings	\$49,790,060
Annualized Net Cost Savings	\$3,874,935

Table 31 shows the discounted total quantified net cost savings during the regulatory period from this proposed rule. As shown, the total net cost savings over the 15-year period of analysis compared to the baseline would be \$49,790,060 using a two percent discount rate. Expected total

annualized net cost savings from this proposed rule would be \$3,874,935 using a two 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) (thousands of \$2023)

2% Discount Rate	
Costs	
Annualized monetized costs	\$1,626,024
Annualized quantified, but non-monetized costs	None
Qualitative (non-quantified) costs	<p>If additional cargo examinations occur estimated cost to CBP would be around \$101.44 per additional exam.</p> <p>Rail carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process.</p> <p>Securing a Bond is required to participate.</p> <p>Rail carriers and voluntary participants must have someone available 24 hours a day 7 days a week to respond to CBP questions about data transmitted.</p> <p>Liquidated damages, \$5,000 for each violation up to max of \$100,000 per departure.</p>
Cost Savings	
Annualized monetized cost savings	\$14,413,773
Annualize quantified, but non-monetized cost savings	None
Qualitative (non-quantified) cost savings	<p>Reduce paper, printing and storage costs related to paper forms.</p> <p>Rail carriers may avoid CBP cargo examinations on already constructed trains, resulting in delays (up to 2 hours) and costs (\$3,000 per occurrence).</p>
Benefits	
Annualized monetized benefits	None
Annualized quantified, but non-monetized benefits	None
Qualitative (non-quantified) benefits	<p>Improve CBP's security efforts on rail exports, electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all rail exports.</p> <p>Gained efficiencies from trade by switching from paper to electronic data transmission.</p> <p>Improved communication among Federal Agencies with export jurisdiction.</p>

Accounting Statement 2: Rail EEM Program (Fiscal Years 2016-2030) (Discounted 2023 U.S. dollars)

2% Discount Rate

Costs	
Annualized monetized costs	\$726,156
Annualized quantified, but non-monetized costs	None
Qualitative (non-quantified) costs	<p>If additional cargo examinations occur estimated cost to CBP would be around \$101.44 per additional exam.</p> <p>Rail carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process.</p> <p>Securing a Bond is required to participate.</p> <p>Rail carriers and voluntary participants must have someone available 24 hours a day 7 days a week to respond to CBP questions about data transmitted.</p> <p>Liquidated damages, \$5,000 for each violation up to max of \$100,000 per departure.</p>
Cost Savings	
Annualized monetized cost savings	\$4,601,091
Annualize quantified, but non-monetized cost savings	None
Qualitative (non-quantified) cost savings	<p>Reduce paper, printing and storage costs related to paper forms.</p> <p>Rail carriers may avoid CBP cargo examinations on already constructed trains, resulting in delays (up to 2 hours) and costs (\$3,000 per occurrence).</p>
Benefits	
Annualized monetized benefits	None
Annualized quantified, but non-monetized benefits	None
Qualitative (non-quantified) benefits	<p>Improve CBP's security efforts on rail exports, electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all rail exports.</p> <p>Gained efficiencies from trade by switching from paper to electronic data transmission.</p> <p>Improved communication among Federal Agencies with export jurisdiction.</p>

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).

CBP acknowledges that this proposed rule, requiring pre-departure transmission of EEM data, could potentially affect a large number of small U.S. entities. CBP expects that all seven rail carrier companies that engage in exporting goods from the United States in the rail environment and an unknown number of other trade members (such as USPPIs, FPPIs, NVOCCs, freight forwarders, CHB, or other third parties with knowledge of export manifest data elements) at approximately 68 U.S. ports of export would be affected by this proposed rule. CBP notes that of the seven rail carriers affected by this proposed rule, two carriers are Canadian companies and the other five companies are large companies according to the U.S. Small Business Administration's size standards for small businesses.⁸⁹ Therefore, CBP does not anticipate that this proposed rule would affect any small U.S. entity rail carriers. The scope of impact on small U.S. entities depends largely on how many other trade members elect to provide electronic manifest cargo data voluntarily to CBP as a result of this proposed rule. This proposed rule does not require other trade members to provide electronic manifest cargo to CBP, and CBP expects that they would only do so if their benefits outweigh the costs. CBP expects that even if this proposed rule affects a significant number of small U.S. entities, such entities would not incur significant net costs. CBP expects that this proposed rule would save businesses time and money by transitioning from a paper process to a more efficient electronic process. CBP anticipates that providing rail export data electronically would generate time savings to those submitting data to CBP, when making any corrections to data

⁸⁹ CBP compared the five U.S. companies with the given U.S. Small Business Administration's size standards for small businesses based on the associated NAICS classification listed in Hoovers Online Company Reports, available at <http://subscriber.hoovers.com/H/home/index.html>.

submitted electronically, and would reduce paper, and printing costs. According to CBP's calculations on the impacts from this proposed rule on average the estimated cost to provide a single rail EEM data transmission to CBP is approximately \$0.34, meanwhile the estimated cost savings per data transmission is around \$0.75, resulting in a net savings per data transmission.⁹⁰ CBP does not know how many of these trade members will choose to submit this data to CBP or how often, so CBP is unable to estimate the annual savings to these trade members as a result of this rule. Overall, as discussed above, this rule would result in average annual total filing costs to trade members of \$1,452,424 and savings of \$3,177,127. We note that these costs and savings will be split between rail carriers (which are not small businesses) and other trade members (which may be small businesses). CBP anticipates that cost savings outweigh costs for parties affected; hence, CBP does not expect small U.S. entities would experience net costs as a result of this proposed rule. Therefore, CBP certifies that this proposed rule would not have a significant economic impact on a substantial number of small U.S. entities. CBP requests comments from the public on CBP's certification that this proposed rule would not have a significant economic impact on a substantial number of small U.S. entities.

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. This collection already provides estimated burdens to the public for voluntarily participating in the Rail EEM test. CBP anticipates that this proposed rule would result in an additional time burden to

⁹⁰ According to CBP's estimates each year during the regulatory period total costs to trade members would be \$1,452,424, the total cost savings to trade would be \$3,177,127 and the total expected rail EEM data transmissions each year are expected to be around 4,249,601. CBP calculated the average cost per rail EEM data submission by dividing the total cost by the estimated number of rail EEM data transmission (\$1,452,424/4,249,602 = \$0.34) and the average cost savings per rail EEM data submission by dividing the total cost saving by the estimated number of rail EEM data transmission (\$3,177,127/4,249,601 = \$0.75).

respondents that would provide rail EEM directly to CBP. This proposed rule establishes new requirements for trade members to provide rail EEM data to CBP prior to a train departing from a U.S. port of export. CBP notes that prior to providing EEM data, rail carriers typically incurred time burdens to provide some export data to CBP that were not originally included on this information collection or any other information collection as the data was not a statutory or regulatory requirement. Trade members have expressed that providing export data to CBP as part of the rail EEM did provide a reduction in time burden compared to the prior process, but because the original time burden to provide export data to CBP prior to rail EEM was not included in this information collection CBP estimates that the time burden to the public from this proposed rule would be insignificant.

As a result of this proposed rule, CBP estimates that at least all seven major rail carriers that currently engage in exporting goods out of the United States in the rail environment would be affected. Collection 1651-0001 would be revised to reflect the changed burden hours for requiring trade members to provide rail EEM data to CBP prior to departure of the train 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 from submitting rail EEM data to CBP:

Estimated number of respondents annually: 7.

Average responses per respondent: 598,830.

Total responses: 4,191,807.

Estimated time burden per respondent: 5,506 hours.

Total added time burden: 38,545 hours.

CBP estimates that this added time burden would increase the cost to the public by \$1,372,986 and adjust the total cost to the public for this information collection to \$611,127,188.

CBP also expects that this new information collection requirement would result in a decrease in the annual cost to the Federal Government through the automated review of rail EEM data by ATS. CBP officers would experience a reduced time burden from reviewing only 0.05 percent of all rail EEM responses provided by the public. This revision to the total number of responses reviewed by CBP for this information collection decreased by 12,803 responses resulting in a reduced

time burden of around 1,067 hours and cost reduction of around \$77,884 annually.

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.91 CBP has issued a Privacy Impact Assessment (PIA) for the Automated Commercial Environment (ACE),92 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.

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.93

E. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted for inflation),

91 See the DHS Privacy Policy web page, available at https://www.dhs.gov/privacy-policy-guidance.

92 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.

93 See DHS/CBP-001 Import Information System, 81 FR 48826 (July 26, 2016), available at https://www.federalregister.gov/documents/2016/07/26/2016-17596/privacy-act-of-1974-department-of-homeland-security-us-customs-and-border-protection-dhschp-001; and DHS/CBP-020 Export Information Systems (EIS), 80 FR 53181 (September 02, 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-dhschp-020.

and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

IX. 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 his delegate).

List of Subjects

19 CFR Part 113

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

19 CFR Part 123

Canada, Customs duties and inspection, Freight, International Boundaries, Mexico, Motor Carriers, Railroads, Reporting and recordkeeping requirements, Vessels.

For the reasons stated in the preamble, parts 113 and 123 of title 19, Code of Federal Regulations (19 CFR parts 113 and 123), are proposed to be amended as set forth below:

PART 113—CBP Bonds

■ 1. The general authority section for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

■ 2. Amend § 113.62 by adding paragraph (k)(3) 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) * * *

(3) If the principal elects to provide advance outbound information to CBP electronically, the principal agrees to provide such information in the manner and in the time period required under § 123.93 of this chapter. 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. * * * * *

* * * * *

■ 3. Amend § 113.63 by revising and republishing paragraph (g) to read as follows:

§ 113.63 Basic custodial bond conditions.

* * * * *

(g) Agreement to comply with electronic entry and/or advance cargo information filing requirements. (1) The

principal agrees to comply with all Importer Security Filing requirements set forth in part 149 of this chapter including but not limited to providing security filing information to CBP in the manner and in the time period prescribed by regulation. If the principal defaults with regard to any obligation, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 per violation.

(2) If the principal elects to provide advance outbound information to CBP electronically, the principal agrees to provide such information in the manner and in the time period required under § 123.93 of this chapter. 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. * * * * *

■ 4. Amend § 113.64 by revising and republishing paragraph (d) to read as follows:

§ 113.64 International carrier bond conditions.

* * * * *

(d) Agreement to provide advance cargo information. (1) The incoming carrier agrees to provide advance cargo information to CBP in the manner and in the time period required under §§ 4.7 and 4.7a of this chapter. If the incoming 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.

(2) The outbound carrier agrees to transmit advance outbound information to CBP electronically, in the manner and in the time period required under § 123.93 of this chapter. If the outbound 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 departure. * * * * *

* * * * *

PART 123—CBP RELATIONS WITH CANADA AND MEXICO

■ 1. The general authority section for part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1415, 1431, 1433, 1436, 1448, 1624, 2071 note.

■ 2. Revise and republish § 123.0 to read as follows:

§ 123.0 Scope.

This part contains special regulations pertaining to Customs procedures at the

Canadian and Mexican borders. Included are provisions governing report of arrival, manifesting, unloading and lading, instruments of international traffic, shipments in transit through Canada or Mexico or through the United States, commercial traveler's samples transiting the United States or Canada, baggage arriving from Canada or Mexico including baggage transiting the United States or Canada or Mexico, and electronic information for rail and truck cargo in advance of arrival or departure. Aircraft arriving from or departing for Canada or Mexico are governed by the provisions of part 122 of this chapter. The arrival of all vessels from, and clearance of all vessels departing for, Canada or Mexico are governed by the provisions of part 4 of this chapter. Fees for services provided in connection with the arrival of aircraft, vessels, vehicles and other conveyances from Canada or Mexico are set forth in § 24.22 of this chapter. Regulations pertaining to the treatment of goods from Canada or Mexico under the North American Free Trade Agreement are contained in part 181 of this chapter. The requirements for the United States Postal Service to transmit advance electronic information for inbound international mail shipments are set forth in § 145.74 of this chapter.

■ 3. Revise the heading of Subpart J to read as follows:

Subpart J—Advance Information for Cargo Arriving or Departing by Rail or Truck

■ 4. Add section 123.93 to Subpart J to read as follows:

§ 123.93 Electronic information for rail conveyance and cargo required in advance of export.

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 1415), for any train departing the United States, U.S. Customs and Border Protection (CBP) must receive electronically from the rail carrier, or other eligible filer as specified in paragraph (c), certain information concerning the train and cargo, as enumerated in paragraphs (d), (e), and (f) of this section. CBP must receive this information, known as outbound electronic rail manifest data, no later than the time frames prescribed in paragraph (b) of this section. The transmission of the required data must occur through the Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system. Any examination referrals must be resolved in accordance with the provisions and time frames prescribed in paragraph (g) of this

section. Any Do-Not-Load (DNL) or Hold instructions must be addressed in accordance with the provisions prescribed in paragraph (h) of this section.

(b) *Time frame for transmitting data.*

(1) *Initial filing.* The required initial filing data enumerated in paragraph (d) of this section must be transmitted as early as practicable, but no later than 24 hours prior to departure of the train from the United States.

(2) *Subsequent Filing.* The required subsequent filing will include the data identified below:

(i) *Export manifest cargo data.* Export manifest cargo data other than initial filing data must be transmitted no later than two hours prior to departure of the train from the United States.

(ii) *Export manifest transportation data.* Export manifest transportation data other than initial filing data must be transmitted no later than two hours prior to departure of the train from the United States.

(iii) *Empty container data.* Data related to empty containers must be transmitted no later than the time of assembly of the train.

(3) *Updates.* The party who transmits data must update it 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.

(c) *Parties filing cargo and conveyance data.* (1) *Outbound carrier.* The outbound carrier is responsible for transmitting export manifest transportation data and empty container data. If no other eligible party elects to transmit the initial filing data or export manifest cargo data, the outbound carrier must transmit it. If another eligible party elects to transmit either the initial filing data or export manifest cargo data, the outbound carrier may also choose to do so.

(2) *Other filers.* In addition to the outbound carrier for whom participation is mandatory, one of the following parties meeting the qualifications of paragraph (a) of this section that require transmission of information through ACE or any other CBP-authorized electronic data interchange system may elect to transmit to CBP the initial filing data and/or the export manifest cargo data for outgoing cargo listed in paragraph (d) of this section:

(i) The U.S. Principal Party in Interest (USPPI), as defined by the provisions of section 30.1 of the Foreign Trade Regulations (FTR) of the Department of Commerce, Bureau of the Census (15 CFR 30.1), or its authorized agent;

(ii) The Foreign Principal Party in Interest (FPPI) or its authorized agent

with the FPPI being defined by the provisions of section 30.1 of the Foreign Trade Regulations (FTR) of the Department of Commerce, Bureau of the Census, (15 CFR 30.1); or

(iii) Any other party with direct knowledge of the export information, 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) of this chapter, or a freight forwarder as defined in § 112.1 of this chapter.

(3) *Nonparticipation by other party.* If another party specified in paragraph (c)(2) of this section does not transmit advance export information to CBP, the party that arranges for and/or delivers the cargo to the outbound carrier must fully disclose and present to the outbound carrier the cargo information listed in paragraph (d) of this section. The outbound carrier must transmit this information to CBP in accordance with this section.

(4) *Bond required.* A party transmitting any of the information described in this subsection must have at least one of the following bonds on file with CBP: a CBP Basic Importation and Entry Bond containing the provisions found in § 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 § 113.64 of this chapter.

(5) *Required information in possession of third party.* Any entity, other than the outbound carrier or a party described in paragraph (c)(2) of this section, in possession of data required to be transmitted to CBP under this section must fully disclose and present the required data to either the outbound carrier or other electronic filer, as applicable, which must transmit such data to CBP.

(6) *Party receiving information believed to be accurate.* Where the party electronically transmitting the data required in paragraph (d) 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 information comprises the initial filing which is mandatory and may be made

by any party identified in paragraph (c)(1) or (c)(2) of this section:

(1) Bill of lading number;

(2) The numbers and quantities of the cargo laden aboard the train 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; numbers or quantities of 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," 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 consignee's complete name and address, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo will 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.); and

(7) The Automated Export System (AES) Exemption Statement, as applicable.

(e) *Export manifest transportation data.* (1) *Mandatory data.* The following transportation data is mandatory and must be transmitted by the rail carrier or its agent:

(i) Port of departure from the United States;

(ii) Date of departure;

(iii) Estimated time of departure;

(iv) Carrier-assigned conveyance name, equipment number and trip number;

(v) Train Consist, which includes:

(A) Manifest number;

(B) Train number;

(C) Rail car order; and

(D) Empty containers;

(vi) The rail carrier identification SCAC code (the unique Standard Carrier

Alpha Code assigned for each carrier by the National Motor Freight Traffic Association; see § 4.7a(c)(2)(iii) of this chapter); and

(vii) Container or equipment numbers (for containerized shipments) or rail car Numbers (for all other shipments).

(2) *Conditional data.* The following transportation data is conditional and must be transmitted by the rail carrier or agent if applicable:

(i) 6-character Hazmat Code. 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;

(ii) Marks and numbers; and

(iii) Seal number (only required if container was sealed). The seal numbers for all seals affixed to containers and/or rail cars 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.* The following transportation data is optional and may be transmitted by the rail carrier or its agent:

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

(ii) Equipment type code; and

(iii) Place where the rail carrier takes possession of the cargo shipment or empty rail car.

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

(i) Shipper name and address (for empty rail cars, the shipper may be the railroad from whom the rail carrier received the empty rail car to transport);

(ii) Consignee name and address (for empty rail cars, the consignee may be the railroad to whom the rail carrier is transporting the empty rail car);

(iii) Port of Lading;

(iv) Port of Unlading;

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

(vi) Bill of Lading Numbers (Master, House, Simple or Sub);

(vii) AES Internal Transaction Number or In-bond Number (per shipment);

(viii) Cargo description;

(ix) Weight of cargo (may be expressed in either pounds or kilograms); and

(x) Quantity of cargo and unit of measure.

(2) *Conditional data.* The following export manifest cargo data is conditional and must be transmitted if applicable:

(i) In-bond type;

(ii) Notify party name and address; and

(iii) Secondary notify party name and address.

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

(i) Mexican Pedimento Number (only for shipments for export to Mexico);

(ii) Secondary notify party Standard Carrier Alpha Code (SCAC);

(iii) Country of ultimate destination; and

(iv) Number of house bills of lading.

(g) *Examination referrals.* (1) *Potential referrals.* There are two types of referrals that may be issued by CBP after a risk assessment of an outbound export manifest data transmission.

(i) *Referral for information.* A referral for information 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; or

(ii) *Referral for screening.* A referral for screening will be issued if the potential risk of the cargo is deemed high enough to warrant enhanced screening.

(2) *Rail export referral resolution.* All outbound rail export data transmitters must respond to and take the necessary action to address all referrals, no later than prior to departure of the train. The appropriate protocols and time frame for taking the necessary action to address these referrals must be followed as directed. The parties responsible for taking the necessary action to address outbound rail export data referrals are as follows:

(i) *Referral for information.* The data transmitter is responsible for taking the necessary action to address a referral for information. The last party to file the outbound rail manifest data for which referral is sought is responsible for such action.

(ii) *Referral for screening.* If the outbound rail export manifest transmitter is the rail carrier, it may address a referral for screening directly. If the outbound rail export manifest transmitter is a party other than the

outbound rail carrier, it may choose to address the referral for screening directly while informing the outbound carrier of the referral. If the outbound rail export manifest transmitter chooses not to address the referral for screening, it must notify the outbound rail carrier of the referral for screening. Upon such notification, the outbound rail carrier is responsible for taking the necessary action to address the referral.

(3) *Prohibition on transporting cargo with unresolved referrals.* The outbound rail carrier may not transport cargo destined for departure from the United States until all referrals issued pursuant to this section with respect to such cargo have been resolved.

(h) *Do-Not-Load (DNL)/Hold instructions.* (1) A Do-Not-Load (DNL) instruction will be issued if it is determined that the cargo or rail car may contain a potential threat to the train and its vicinity.

(2) A Hold instruction will be issued, even after loading, if it is determined that further examination of the cargo or rail car is required.

(3) All outbound rail manifest data transmitters must provide a telephone number and email address that is monitored 24 hours/7 days a week in case a Do-Not-Load (DNL) instruction is issued. All transmitters and/or outbound rail carriers, as applicable, must respond and fully cooperate when

the entity is reached by phone and/or email when a Do-Not-Load (DNL) or Hold instruction is issued. The party with physical possession of the cargo will be required to carry out the Do-Not-Load (DNL) or Hold protocols and the directions provided by law enforcement authorities.

(4) The outbound rail carrier may not transport cargo with a Do-Not-Load (DNL) or Hold instruction.

Alejandro N. Mayorkas,
Secretary of Homeland Security.

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