**COAC Advance Cargo Information Subcommittee**

**Rail Workgroup**

**REPORT AND RECOMMENDATIONS**
**March 14, 2003**

Background

Pursuant to its statutory authority, the United States Customs Service (USCS)[1] promulgated final rules for ocean carriers, which were published on October 31, 2002 in the *Federal Register.*[2] In that notice, USCS asked COAC to convene a special subcommittee to advise USCS on operational issues arising out of implementation of the advance manifest rule for ocean commerce. COAC convened a subcommittee, whose recommendations were presented, endorsed and adopted by the full COAC at the January 24, 2003 COAC meeting.

Under Section 343 of the Trade Act of 2002 (Public Law 107 – 210), as modified by Section 108(b) of the Maritime Transportation Security Act of 2002 (Public Law 107-295), the Department of Homeland Security is authorized to promulgate regulations providing for the transmission to Customs, through an electronic interchange system, of information pertaining to cargo to be brought into or to be sent from the United States, prior to the arrival or departure of the cargo. The cargo information required by these regulations shall be such information as determined to be reasonably necessary to ensure cargo safety and security pursuant to those laws enforced and administered by Customs. The target date for promulgation of the regulations is October 1, 2003. (The relevant statutory language, including the parameters for these regulations, is provided at Tab A.)

*Strawmen.* USCS issued "strawmen" proposals for the advance cargo information requirements for inbound and outbound rail traffic to serve as a basis for discussion at a public meeting convened by USCS on January 21, 2003 in Washington, DC. USCS proposed to require transmission of data 24 hours in advance of a train's departure from its foreign point of origin, with data to be transmitted via the Rail Automated Manifest System (AMS) at all direct U.S. rail crossings. For outbound traffic, USCS proposed utilization of the Automated Export System (AES) as the mechanism for receiving export cargo information prior to export from the U.S. USCS would require all rail cargo information for exports to be electronically transmitted to USCS and accepted

[1] On March 1, 2003, USCS became part of the Bureau of Customs and Border Protection (CBP) in the Department of Homeland Security. This overview will refer to CBP with respect to matters applicable on or after March 1.

[2] *Presentation of Vessel Cargo Declaration to Customs Before Cargo is Laden Aboard Vessel at Foreign Port for Transport to the United States, Federal Register,* vol. 67, October 31, 2002, pp. 66318 – 66333. A technical correction to the final rule was published in the *Federal Register* on January 14, 2003 (vol. 68, p. 1801) regarding when a transmission of the required cargo declaration must be made by an eligible NVOCC. USCS also issued on January 9, 2003, a Notice of Proposed Rulemaking in *Confidentiality Protection for Vessel Cargo Manifest Information, Federal Register,* vol. 68, pp. 1173 – 1175.

by AES no later than 8 hours prior to lading; these data consist of both commodity and manifest information.

*Modal Working Groups.* At the January 24, 2003 COAC meeting, COAC offered to convene workgroups to address each of the additional transportation modes for which Customs is required to issue advance manifest rules. U.S. Customs Commissioner Bonner accepted COAC's offer and directed that the recommendations of each workgroup be provided to Customs by no later than March 14, 2003, for its consideration in formulating proposed rules.

The rail workgroup included non-COAC members as technical advisers. Workgroup participants include representatives of large and small rail carriers, individual shippers and shipper associations, and transportation intermediaries. In addition, Customs officials participated in the workgroup's discussions and provided valuable assistance, for which the rail workgroup would like to express its gratitude.

Key Principles of Rail Operations

1. North American railroads provide three major types of cross-border rail transportation service:

   a. Traffic originated at rail hubs – these trains of carload or domestic intermodal shipments are assembled at major rail yards for block movement across the border.

   b. Rail traffic that is picked up by transborder trains en route to the border; such traffic generally is low-risk, high-volume traffic.

   c. International intermodal shipments that arrive by container vessel at Canadian ocean ports for block movement to the United States.

2. A reasonably small number of rail carriers provide cross-border rail transportation service. In addition to the seven largest North American rail carriers (*i.e.,* the Class I carriers), several short-line carriers are involved in cross-border transportation.

3. There are distinctions between cross-border rail operations at the U.S./Canada and U.S./Mexico borders. At the U.S./Canada border, a single rail carrier operating on both sides of the border will typically assemble and handle trains from points within the United States or Canada for movement across the border. At the U.S./Mexico border, trains often are completed and interchanged between the two carriers at the border crossing point.

4. The rail industry is, for the most part, highly automated. Due to the wide participation by carriers in Rail AMS, electronic manifest information for the vast majority of rail traffic crossing at the U.S. borders is transmitted to

Customs well in advance of train arrival at the border. The manifest information is currently available to Customs in AMS almost immediately after the rail carriers receive the bill of lading information from the shipper.

5. In addition to the generally high level of security associated with rail operations, the railroad industry has undertaken specific security-related activities in the wake of the terrorist attacks of September 11, 2001. The industry created five task forces – dealing with information technology and communications; physical infrastructure; operations; hazardous materials; and military movements – to develop a through risk analysis of the industry and to develop a comprehensive plan for dealing with those risks. Every major railroad was represented, with assistance from outside security experts as well. Analyses examined and prioritized all rail assets, identified vulnerabilities, and defined threats in order to assess the risks, and the teams then developed more than 100 countermeasures to strengthen security.

   The railroad industry's security plan establishes four alert levels and describes a progressive series of actions to thwart terrorist threats to railroad personnel and facilities. It also includes additional countermeasures that will be applied in the areas of operations; information technology and communications; and police. The industry also has established an operations center to coordinate railroad security on a 24/7 basis.

   Also, at the request of the U.S. Department of Transportation, the Association of American Railroads established an Information Sharing and Analysis Center (ISAC), which operates 24/7, to promote physical and cyber security in the surface transportation sector.

   In addition to the railroads' security efforts, CBP has advised that they plan to install VACIS devices at major northern rail border crossings to conduct non-intrusive inspections of the contents of railrcars and intermodal equipment; such equipment currently is in operation at southern border crossings. The use of this equipment will result in the screening of the vast majority of all transborder rail shipments.

Summary of Recommendations

The workgroup's major recommendations are summarized below. A more detailed matrix showing specific recommendations is attached at Tab B.

1. Data Element Coordination

   To ensure the timely provision of advance data required by U.S. government agencies, as well as to minimize operational difficulties for carriers, the workgroup believes all data elements to be required by U.S. government agencies – both within and outside of the Department of Homeland Security –

for traffic entering and exiting the U.S. must be coordinated by a single entity, preferably CBP using rail AMS.

2. Timing Requirements

Considering the repetitive, lower-risk nature of rail traffic, the fact that it moves over a fixed guideway to predetermined points of entry and exit, the use of the existing framework of Rail AMS will allow the flow of legitimate cargo to continue while addressing Customs' border security mandates, and not introducing unnecessary costs to rail carriers and their customers.

Overall, the data quality for manifest information that railroads transmit to Customs rail AMS is very high. It is important to note, however, that rail carriers do not generate the manifest information; rather, data quality is dependant on the rail shipper providing that information on the rail bill of lading.

The workgroup recommends the following time frame for provision of advance manifest data to CBP:

a. Carload traffic – 4 hours in advance of arrival at the border for inbound traffic, with information required no more than 1 hour in advance of arrival at the border for outbound traffic.

b. Intermodal ocean containers from Canadian seaports – 4 hours in advance of arrival at the border.

3. Exemptions

Rail AMS participation allows for transborder reporting railroads to electronically transmit manifest information to CBP well in advance of shipment arrival at the border. To accommodate time-sensitive traffic, the workgroup recommends the following exemptions from the 4-hour advance manifest recommendation for inbound traffic:

a. truck-competitive traffic (*e.g.,* automotive and intermodal traffic originated in North America) – timing requirements for such traffic should be aligned with those specified for trucks to the maximum extent possible;

b. carload traffic picked up by trains moving between railroad hubs and the border from shippers who are C-TPAT or Known Shipper Program participants (or who are likely to become such participants); and

c. hybrid service (*e.g.,* RoadRailer-type service and Canadian Pacific Railway Company's Expressway service).

For these types of traffic, the workgroup recommends that CBP require electronic transmission of manifest data 1 hour in advance of arrival at the border. For the majority of this traffic, as with the traffic subject to the proposed 4-hour requirement above, the cargo data will be transmitted to CBP well in advance of a train's arrival at the border. The workgroup's chief concern with respect to this traffic is that the rail industry is not placed at a competitive disadvantage with respect to the trucking industry.

4. Data Requirements

The workgroup recommends that CBP utilize current data systems when possible and that CBP not require railroads to make extensive modifications to existing systems only to have them replaced by ACE in two years.

The workgroup also notes that railroads rely extensively on Automated Line Release (ALR) to expedite the border process for low-risk shipments, with the majority of transborder rail traffic clearing U.S. Customs using this release option. The type of rail customer that participates in ALR is a known transborder shipper that tenders highly repetitive, high volume loads to the rail carrier and also tends to be one who qualifies for C-TPAT. Such shippers typically have already established rigorous internal control processes to control theft and pilferage. The ALR (C4) code for a given transborder shipment/customer is included on the rail AMS advance manifest in addition to required transacting party and commodity details. This full manifest information is available electronically to CBP immediately upon receipt of the EDI bill of lading by the rail carrier.

The workgroup notes that the "strawman" put forward in January called for the removal of BRASS (line release processing) for motor carriers. For railroads, however, BRASS provides the internal mechanics for ALR; therefore, disconnecting it would mean this functionality would be lost in rail AMS. Eliminating BRASS would have a significant negative impact on all rail carriers who participate in rail AMS by increasing workload for all parties and increasing the time required for rail release processing.

5. Time Frame for CBP Response

The workgroup believes CBP should commit to a specific time frame to respond to carriers; CBP should notify carriers of customs holds within one hour after transmission of advance manifest information (currently known as a 309) to CBP.

To minimize interruptions to the smooth flow of screened traffic, importing rail carriers need to receive a hold message from CBP as soon as possible. CBP's notification of customs holds should take place using a documented, electronic process with all notifications sent directly to the rail carrier.

6. Treatment of Northern/Southern Border Traffic

The workgroup believes that, where possible, advance manifest requirements should be the same for traffic crossing the U.S./Canada and U.S./Mexico borders. Data reporting requirements for rail traffic should be made as uniform as possible for both borders and should not change from one port to another on the same border. The workgroup encourages CBP to work with Canadian and Mexican Customs officials to share data that already are being reported by rail carriers to one of the three Customs agencies; specifically the import declaration for one NAFTA country should satisfy the export requirements of another.

7. Enforcement Implementation/Phase-in

The workgroup notes that Customs provided a transition period for enforcement of the 24-hour advance manifest requirements for ocean commerce. Specifically, enforcement of the rules published in the *Federal Register* on October 31, 2002 did not begin until February 2, 2003 and, at that time, only with respect to cargo descriptions. The workgroup urges CBP to similarly provide adequate lead time for rail industry requirements and to consider similar transition periods, as appropriate, for the rail sector, especially for non-automated carriers. In addition, CBP needs to address issues with Permit Ports where current rules do not allow automation of the port.

8. AMS Reliability/CBP Staffing

It is essential that CBP's computer systems operate quickly and reliably, so that rail operations, and those of the larger supply chain are not disrupted. The majority of northern and southern border crossings currently are staffed on a 24/7 basis, and the workgroup recommends that CBP staff continue to be available 24/7 to receive and review manifests. CBP also should specify procedures to be followed if AMS is not functioning properly when a carrier attempts to file, with specific backup procedures to be followed if AMS is not functioning properly when a carrier attempts to file, with specific backup procedures identified in the event of unplanned outages of either CBP's electronic system or those of rail carriers. CBP should utilize current process for planned outages.