

U.S. Customs and Border Protection

19 CFR Parts 12, 113, 122, 141, 178, and 192

CBP Dec. 18–05

RIN 1651–AB04

AIR CARGO ADVANCE SCREENING (ACAS)

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

ACTION: Interim final rule; request for comments.

SUMMARY: To address ongoing aviation security threats, U.S. Customs and Border Protection (CBP) is amending its regulations pertaining to the submission of advance air cargo data to implement a mandatory Air Cargo Advance Screening (ACAS) program for any inbound aircraft required to make entry under the CBP regulations that will have commercial cargo aboard. The ACAS program requires the inbound carrier or other eligible party to electronically transmit specified advance cargo data (ACAS data) to CBP for air cargo transported onboard U.S.-bound aircraft as early as practicable, but no later than prior to loading of the cargo onto the aircraft. The ACAS program enhances the security of the aircraft and passengers on U.S.-bound flights by enabling CBP to perform targeted risk assessments on the air cargo prior to the aircraft's departure for the United States. These risk assessments will identify and prevent high-risk air cargo from being loaded on the aircraft that could pose a risk to the aircraft during flight.

EFFECTIVE DATE: This interim final rule is effective June 12, 2018.

Comment date: Comments must be received by August 13, 2018.

ADDRESSES: Please submit any comments, identified by docket number [USCBP–2018–0019], by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Border Security Regulations Branch, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

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.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Craig Clark, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs and Border Protection, by telephone at 202-344-3052 and email at craig.clark@cbp.dhs.gov.

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I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim final rule. The Department of Homeland Security (DHS) and CBP also invite comments that relate to the economic, environmental, or federalism effects that might result from this interim final rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim final rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Executive Summary

Terrorist attacks on international aviation, particularly while the aircraft is in flight, are a very real threat. In the past few years, terrorists have made several significant attempts to attack commercial aircraft. These attempts include the Christmas Day 2009 attempt to bring down a U.S.-bound passenger plane via the use of plastic explosives hidden in a terrorist's underwear, the explosion aboard Russian Metrojet Flight 9268 above Egypt's Sinai Peninsula in October 2015, and the attempted onboard suicide attack on a commercial aircraft in February 2016 after takeoff in Mogadishu, Somalia. These incidents underscore the persistent threat to commercial aviation and emphasize the importance of aviation security.

The Department of Homeland Security (DHS) was established, in part, to prevent such attacks, and to ensure aviation safety and security. It is essential that DHS constantly adapt its policies and regulations and use shared intelligence to address these terrorist threats since terrorists continue to seek out and develop innovative ways to thwart security measures. Global terrorist organizations such as Al Qaeda and the Islamic State of Iraq and the Levant (ISIL), as well as their offshoots and associates, remain committed to targeting international commercial airline operations in order to maximize the effects of their terror campaigns. They aim to exploit any security vulnerability.

In October 2010, a new aviation security vulnerability was exposed. Terrorists placed concealed explosive devices in cargo onboard two aircraft destined to the United States. The explosive devices were expected to explode mid-air over the continental United States, which could have caused catastrophic damage to the aircraft, the passengers, crew, and persons and property on the ground. In materials published by a terrorist organization shortly after the October 2010 incident, it was noted that due to the increased passenger screening implemented after the Christmas Day 2009 attempt, the terrorist organization decided to employ explosive devices sent via air cargo. While the 2010 potential terrorist attack was thwarted by multiple foreign governments working together to share intelligence and intercept the shipments before they detonated, the explosive devices were flown aboard several flights before they were discovered. Recently, Australian authorities thwarted a plot to place an Improvised Explosive Device (IED) on an Etihad Airways flight, using components that had been shipped to Australia by an Islamic State in Syria (ISIS) commander via air cargo. Additionally, DHS has received specific, classified intelligence that certain terrorist organizations seek to exploit vulnerabilities in international air cargo security to cause damage to infrastructure, injury, or loss of life in the United States or onboard aircraft. DHS must ensure that terrorists cannot exploit vulnerabilities in air cargo supply chain security to introduce dangerous cargo that could cause catastrophic effect to the aircraft.

In order to deter and disrupt terrorist threats to U.S.-bound aircraft via air cargo, DHS must ensure that high-risk cargo is identified prior to the aircraft's departure for the United States. Within DHS, two components, U.S. Customs and Border Protection (CBP) and the Transportation Security Administration (TSA), have responsibilities for securing inbound air cargo bound for the United States. CBP and TSA employ a layered security approach to secure inbound air cargo,

including using various risk assessment methods to identify high-risk cargo and to mitigate any risks posed.

For the reasons discussed below, DHS believes that the current regulatory requirements should be enhanced to address the ongoing threats to in-flight aviation security, particularly concerning air cargo. DHS is making regulatory changes to ensure that DHS has the necessary tools to address these threats and ensure the safety of U.S.-bound flights.

TSA regulations require carriers to apply security measures, including screening, to all cargo inbound to the United States from the last point of departure. *See* 49 CFR parts 1544 and 1546. Through TSA's regulatory framework, TSA issues security programs for carriers to adopt at last points of departure for cargo inbound to the United States. These security programs require aircraft operators and foreign air carriers to determine the appropriate level of screening (baseline versus enhanced) to apply to each cargo shipment in accordance with risk-based criteria contained within their TSA security program. TSA regulations require the carrier to perform enhanced air cargo screening on cargo deemed high-risk prior to the cargo departing for the United States.¹ TSA has authority to impose penalties for violations of these regulations pursuant to 49 U.S.C. 144(d) and 49 CFR part 1503.

CBP performs an additional risk assessment to identify inbound cargo that may pose a security risk using advance air cargo data and intelligence related to specific air cargo. Under current CBP regulations, an inbound air carrier or other eligible party must transmit specified advance air cargo data to CBP for any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard.² *See* 19 CFR 122.48a. In most cases, advance data pertaining to air cargo must be transmitted to CBP four hours prior to arrival of the aircraft in the United States. For specified short flights, the advance data must be transmitted to CBP no later than the time of departure of the aircraft.³ Upon receipt of the advance air

¹ The screening methods are contained within the carrier's respective security program. The specific security measures are Sensitive Security Information, the public disclosure of which is prohibited by law to the extent that such disclosure would be detrimental to transportation security. *See* 49 U.S.C. 114(r), 49 CFR part 1520.

² 19 CFR 122.41 requires that all aircraft coming into the United States from a foreign area must make entry, subject to specified exceptions.

³ *See* 19 CFR 122.48a(b) which provides that CBP must electronically receive the required advance air cargo data no later than the time of departure of the aircraft for the United States from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda; or no later than four hours prior to the arrival of the aircraft in the United States for aircraft departing for the United States from any other foreign area.

cargo data, CBP analyzes the data using its Automated Targeting System (ATS) and other relevant intelligence at each U.S. port of entry to identify potential threats. Upon the arrival of the cargo at the U.S. port of entry, CBP inspects all air cargo identified as high-risk to ensure that dangerous cargo does not enter the United States.

Under the current CBP regulatory time frames for transmitting air cargo data, CBP may not be able to identify high-risk cargo such as unauthorized weapons, explosives, chemical and/or biological weapons, WMDs, or other destructive substances or items in the cargo until it is already en route to the United States. This is because the 19 CFR 122.48a time frames do not provide CBP adequate time to perform targeted risk assessments on the air cargo *before* the aircraft departs for the United States. Terrorists have already exploited this security vulnerability by placing explosive devices aboard aircraft destined to the United States. Explosives and/or weapons contained in air cargo could potentially be detonated during flight. Such a terrorist attack could result in destruction of the aircraft, serious injuries or death to passengers and crew, and potential ground-level victims or targets.

To address this situation, CBP and TSA determined that, in order to best identify high-risk air cargo, it is essential to perform a risk assessment earlier in the air cargo supply chain, prior to the aircraft's departure. This risk assessment must be based on real-time data and intelligence available to determine if the cargo posed a risk to the aircraft in flight. CBP and TSA concluded that such a risk assessment should be performed at a centralized location and with input from both CBP and TSA, rather than at individual U.S. ports of entry. As a result, CBP and TSA formed a joint CBP–TSA targeting operation in a centralized location to allow collaboration between the DHS components. The joint CBP–TSA targeting operation utilizes CBP's ATS and other available intelligence as a risk targeting tool to leverage data and information already collected in order to secure international inbound air cargo. This allows CBP and TSA to address specific threat information in real time.

In addition, CBP, in collaboration with TSA and the air cargo industry, began operating a voluntary Air Cargo Advance Screening (ACAS) pilot in December 2010 to collect certain advance air cargo data earlier in the supply chain. Pilot participants voluntarily provide CBP with a subset of the 19 CFR 122.48a data, (referred to hereafter as the "ACAS pilot data") as early as practicable prior to loading the cargo onto the aircraft. This allows sufficient time for targeting before the departure of the aircraft. Based on the ACAS

pilot data, when CBP determines that cargo is high-risk, that cargo will require screening pursuant to TSA-approved screening methods for high-risk cargo.⁴

The ACAS pilot has been successful in enabling CBP to identify a substantial amount of high-risk cargo. Significantly, CBP has identified a substantial number of air cargo shipments that have potential ties to terrorism and, therefore, may represent a threat. When this high-risk cargo is identified, enhanced cargo screening is performed pursuant to TSA-approved or accepted security programs.

During the ACAS pilot, air cargo that may have only received baseline screening per the carriers' TSA-approved or accepted security programs could be identified as high-risk through ACAS, triggering enhanced screening under the air carrier's security program requirements. Through joint agency management and information sharing, the ACAS pilot uses tactical and real-time data to enhance the security of the air cargo supply chain. However, because the pilot is voluntary, it does not completely address the existing security vulnerability.

To address the continuing security threats, DHS is amending the CBP regulations to add a new section, 19 CFR 122.48b, to implement a mandatory ACAS program. CBP's objective for the ACAS program is to obtain the most accurate data at the earliest time possible with as little impact to the flow of commerce as possible. The new ACAS requirements apply to any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard. These are the same aircraft that are subject to the current 19 CFR 122.48a requirements. Under the amendments, an inbound air carrier and/or other eligible ACAS filer⁵ must transmit specified air cargo data (hereafter referred to as "ACAS data") to CBP earlier in the supply chain so that CBP, can perform the necessary risk assessments prior to the aircraft's departure for the United States. The ACAS data must be transmitted as early as practicable, but no later than prior to loading of the cargo onto the aircraft.

Under the new time frame, CBP will have sufficient time before the aircraft departs to analyze the data, identify if the cargo has a nexus to terrorism, and, with TSA, take the necessary action to thwart a potential terrorist attack or other threat. Just like the ACAS pilot, the ACAS program will allow CBP to issue referrals and/or Do-Not-Load (DNL) instructions. Specifically, under the ACAS program, CBP will

⁴ The ACAS pilot utilizes TSA authority to require enhanced screening for air cargo identified as high-risk pursuant to TSA-approved screening methods.

⁵ See Section IV.B. for more information about the parties that may voluntarily provide the ACAS data and the eligibility requirements for these parties.

issue ACAS referrals when clarifying information and/or enhanced screening of high-risk cargo is needed to mitigate any risk. Referrals for screening will be issued pursuant to CBP authorities and resolved using TSA-approved or accepted security programs. The ACAS program will enable CBP to issue DNL instructions when a combination of ACAS data and intelligence points to a threat or terrorist plot in progress. As with the pilot, this rule and corresponding TSA-approved or accepted security program requirements will enhance the ability to prevent air cargo that may contain a potential bomb, improvised explosive device, or other material that may pose an immediate, lethal threat to the aircraft and/or its vicinity from being loaded aboard the aircraft and will allow law enforcement authorities to coordinate with necessary parties. Under the new regulations, CBP will be able to take appropriate enforcement action against ACAS filers who do not comply with the ACAS requirements. Upon issuance of changes to security program requirements under 49 CFR parts 1544 and 1546, TSA will enforce implementation of enhanced screening methods in response to an ACAS referral.

The new 19 CFR 122.48b specifies the general ACAS requirements, the eligible filers, the ACAS data, the time frame for providing the data to CBP, and the responsibilities of the filers, and explains the process regarding ACAS referrals and DNL instructions. The ACAS data is a subset of the data currently collected under 19 CFR 122.48a and is generally the same data that is currently collected in the ACAS pilot. However, the new regulation adds a new conditional data element, the master air waybill number, which is not required in the ACAS pilot. This data element will provide the location of the high-risk cargo and will allow CBP to associate the cargo with an ACAS submission.

CBP is also amending 19 CFR 122.48a to reference the ACAS requirements and to incorporate a few additional changes. Specifically, CBP is amending 19 CFR 122.48a to revise the definition of one of the data elements (consignee name and address) to provide a more accurate and complete definition, and to add a new data element requirement, the flight departure message (FDM), to enable CBP to determine the timeliness of ACAS submissions. CBP is also amending the applicable bond provisions in 19 CFR part 113 to incorporate the ACAS requirements.

In order to provide the trade sufficient time to adjust to the new requirements and in consideration of the business process changes that may be necessary to achieve full compliance, CBP will show restraint in enforcing the data submission requirements of this rule for twelve months after the effective date. While full enforcement will

be phased in over this twelve month period, willful and egregious violators will be subject to enforcement actions at all times. In accordance with TSA regulations, inbound air carriers will be required to comply with their respective TSA-approved or accepted security program, including the changes being implemented for purposes of the ACAS program.

The chart below includes a summary of the current 19 CFR 122.48a advance air cargo data requirements, the requirements under the ACAS pilot, and the regulatory changes that are being promulgated by this rulemaking.

SUMMARY OF ACAS CHANGES TO CBP REQUIREMENTS

	Current requirements (19 CFR 122.48a)	ACAS pilot	ACAS IFR (new 19 CFR 122.48b requirements in addition to the current requirements in 19 CFR 122.48a)
Timing of Data Submission.	Time of departure or 4 hours prior to arrival depending on port of departure.	At the earliest point practicable prior to loading of the cargo onto the aircraft. No changes to the timing of 19 CFR 122.48a requirements.	As early as practicable, but no later than prior to loading of the cargo onto the aircraft. No changes to the timing of 19 CFR 122.48a requirements.
Data	17 data elements ⁶ Mandatory: <ul style="list-style-type: none"> • Air waybill number(s)—master and house, as applicable. • Shipper name and address. • Consignee name and address. • Cargo description. • Total quantity based on the smallest external packing unit. • Total weight of cargo. • Trip/flight number. • Carrier/ICAO code. • Airport of arrival. • Airport of origin. • Scheduled date of arrival. 	6 data elements (subset of 19 CFR 122.48a data elements) transmitted at the lowest air waybill level ⁷ . Mandatory: <ul style="list-style-type: none"> • Air waybill number. • Shipper name and address. • Consignee name and address. • Cargo description. • Total quantity based on the smallest external packing unit. • Total weight of cargo. 	6 mandatory data elements (subset of 19 CFR 122.48a data elements and same as ACAS pilot) at the lowest air waybill level, plus one conditional and one optional data element. Mandatory: <ul style="list-style-type: none"> • Air waybill number. • Shipper name and address. • Consignee name and address. • Cargo description. • Total quantity based on the smallest external packing unit. • Total weight of cargo.

⁶ 19 CFR 122.48a specifies, based on the type of shipment, what data the inbound air carrier must transmit to CBP and what data other eligible filers may transmit to CBP. For non-consolidated shipments, the inbound air carrier must transmit to CBP the 17 data elements (11 mandatory, 6 conditional) applicable for the air waybill record. For consolidated shipments, the inbound air carrier must transmit to CBP the 17 data elements (11 mandatory, 6 conditional) that are applicable to the master air waybill, and the inbound air carrier must transmit a subset of the data (7 mandatory, 1 conditional) for all associated house air waybills, unless another eligible filer transmits this data to CBP. For split shipments, the inbound air carrier must submit an additional subset of this data (9 mandatory, 3 conditional) for each house air waybill.

⁷ The six ACAS data elements have been referred to by the trade as “7+1” data by considering “shipper name and address” and “consignee name and address” to be four data elements instead of two. As this data is included in 19 CFR 122.48a as two data elements, CBP will continue to refer to “six ACAS data elements” and not “7+1.”

	Current requirements (19 CFR 122.48a)	ACAS pilot	ACAS IFR (new 19 CFR 122.48b requirements in addition to the current requirements in 19 CFR 122.48a)
Eligible Filers ...	<p>Conditional:</p> <ul style="list-style-type: none"> • Consolidation identifier. • Split shipment indicator. • Permit to proceed information. • Identifier of other party which is to submit additional air waybill information. • In-bond information. • Local transfer facility. <p>Inbound air carriers, other filers eligible under 19 CFR 122.48a⁸.</p>	Inbound air carriers, other filers eligible under 19 CFR 122.48a, and freight forwarders.	<p>Conditional:</p> <ul style="list-style-type: none"> • Master air waybill number. <p>Optional:</p> <ul style="list-style-type: none"> • Second notify party. Addition of the Flight Departure Message (FDM) to the current 19 CFR 122.48a data elements.
Bond requirements	All 19 CFR 122.48a filers are required to have an appropriate bond.	Parties are not required to have a bond to participate in pilot.	All ACAS filers are required to have an appropriate bond. Eligible filers include inbound air carriers, other eligible 19 CFR 122.48a filers, ⁹ and freight forwarders.

SUMMARY OF ACAS IMPACT ON TSA REQUIREMENTS

	Current requirements (49 CFR parts 1544 and 1546)	ACAS pilot	ACAS IFR (new 19 CFR 122.48b)
TSA Screening	Per TSA regulations, inbound air carriers are required to comply with the baseline and enhanced air cargo screening protocols contained within their respective TSA security programs ¹⁰ .	Per TSA regulations, inbound air carriers are required to comply with the baseline and enhanced screening methods contained within their respective TSA security programs; under the ACAS pilot, enhanced screening methods as outlined in the carrier's security program apply to all ACAS referrals for screening.	Per TSA regulations, inbound air carriers are required to comply with the screening methods contained within their respective TSA-approved or accepted security programs. These security programs already include requirements to implement enhanced screening procedures for certain cargo, including cargo designated as elevated risk cargo because it meets any of the criteria set forth in the security programs. TSA will implement corresponding changes in these programs requiring implementation of enhanced screening methods for ACAS referrals.

⁸ Other filers eligible under 19 CFR 122.48a include Automated Broker Interface (ABI) filers (importers and brokers), Container Freight Stations/deconsolidators, Express Consignment Carrier Facilities, and air carriers that arranged to have the inbound air carrier transport the cargo to the United States.

⁹ The inbound air carrier and other eligible 19 CFR 122.48a filers will already have a CBP bond to file the 19 CFR 122.48a data and that bond will be expanded under the ACAS program through no action on their part. This is because CBP is amending the various CBP bonds to incorporate the ACAS requirements as a condition of the bonds.

¹⁰ Note that TSA screening occurs prior to the aircraft's departure for the United States. Under 19 CFR 122.48a, CBP usually identifies high-risk cargo on the basis of the submitted data when the aircraft is in flight and CBP performs inspections of air cargo identified as high-risk upon its arrival at a U.S. port of entry.

III. Background and Purpose

The Homeland Security Act of 2002 established DHS to prevent terrorist attacks within the United States and to reduce the vulnerability of the United States to terrorism. *See* Public Law 107–296, 116 Stat. 2142. Terrorist threats to the aviation transportation system continue to represent a meaningful risk given the expressed intentions of terrorists, their persistent attempts to thwart security and target aviation, and the perceived fiscal and human consequences of a successful attack. In response to these aviation threats, DHS has created a comprehensive, coordinated policy for securing air cargo entering, transiting within, and departing the United States.

Within DHS, two components, CBP and TSA, have responsibilities for securing inbound air cargo bound for the United States. Under the current regulatory framework, TSA has responsibility for ensuring the security of the nation's transportation of cargo by air into the United States while CBP has responsibility for securing the nation's borders by preventing high-risk cargo from entering the United States. CBP and TSA's current regulatory requirements are described below.

A. Current Regulatory Requirements

1. CBP Regulatory Requirements

Section 343(a) of the Trade Act of 2002, Public Law 107–210, 116 Stat. 981 (August 6, 2002), as amended (Trade Act) (19 U.S.C. 2071 note), authorizes CBP to promulgate regulations providing for the mandatory transmission of cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation. The required cargo information is that which is reasonably necessary to enable high-risk cargo to be identified for purposes of ensuring cargo safety and security pursuant to the laws enforced and administered by CBP.

On December 5, 2003, CBP published a final rule in the **Federal Register** (68 FR 68140) to effectuate the provisions of the Trade Act. Among other amendments, a new § 122.48a (19 CFR 122.48a) was added to title 19 of the CFR to implement advance reporting requirements for cargo brought into the United States by air. As provided in 19 CFR 122.48a, for any inbound air carrier required to make entry under 19 CFR 122.41 that will have commercial cargo aboard,¹¹ CBP must electronically receive certain data regarding that cargo through

¹¹ Under 19 CFR 122.41, subject to specified exceptions, all aircraft coming into the United States from a foreign area must make entry.

a CBP-approved EDI system no later than the time of departure of the aircraft for the United States (from specified locations) or four hours prior to arrival in the United States for all other locations.

Under 19 CFR 122.48a, the following advance air cargo data is required to be transmitted to CBP no later than the specified time frames:

- (1) Air waybill number(s) (master and house, as applicable)
- (2) Trip/flight number
- (3) Carrier/ICAO (International Civil Aviation Organization) code
- (4) Airport of arrival
- (5) Airport of origin
- (6) Scheduled date of arrival
- (7) Total quantity based on the smallest external packing unit
- (8) Total weight
- (9) Precise cargo description
- (10) Shipper name and address
- (11) Consignee name and address
- (12) Consolidation identifier (conditional)
- (13) Split shipment indicator (conditional)
- (14) Permit to proceed information (conditional)
- (15) Identifier of other party which is to submit additional air waybill information (conditional)
- (16) In-bond information (conditional)
- (17) Local transfer facility (conditional)

Paragraph (d) of 19 CFR 122.48a specifies, based on the type of shipment, what data the inbound carrier must transmit to CBP and what data other eligible filers may elect to transmit to CBP. There are different requirements for consolidated and non-consolidated shipments. A consolidated shipment consists of a number of separate shipments that have been received and consolidated into one shipment by a party such as a freight forwarder for delivery as a single shipment to the inbound carrier. Each of the shipments in the consolidated shipment has its own air waybill, referred to as the house air waybill (HAWB). The HAWB provides the information specific to the individual shipment that CBP needs for targeting purposes. The HAWB does not include the flight and routing information for the consolidated shipment. Generally speaking, a master air waybill (MAWB) is an air waybill that is generated by the inbound carrier for a consolidated shipment. For consolidated shipments, the inbound carrier must transmit to CBP the above cargo data that is applicable

to the MAWB, and the inbound carrier must transmit a subset of the above data for all associated HAWBs, unless another eligible filer transmits this data to CBP. For non-consolidated shipments, the inbound carrier must transmit to CBP the above cargo data for the air waybill record. For split shipments, *i.e.*, shipments that have been divided into two or more smaller shipments, either sent together or separately, the inbound carrier must transmit an additional subset of this data for each HAWB.

The method and time frames for presenting the data are specified in 19 CFR 122.48a(a) and (b). These provisions specify that CBP must electronically receive the above data through a CBP-approved EDI system no later than the time of the departure of the aircraft for the United States from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda; or no later than four hours prior to the arrival of the aircraft in the United States for aircraft departing for the United States from any other foreign area.

CBP uses a risk assessment strategy to target cargo that may pose a security risk. Upon receipt of the advance air cargo data in the specified time frames, CBP analyzes the data at the U.S. port of entry where the cargo is scheduled to arrive utilizing ATS to identify potential threats. Upon the arrival of the cargo at the U.S. port of entry, CBP inspects all air cargo identified as high-risk to ensure that dangerous cargo does not enter the United States.

2. TSA Requirements

With respect to air cargo security, TSA is charged, among other things, with ensuring and regulating the security of inbound air cargo, including the screening of 100% of international air cargo inbound to the United States on passenger aircraft. This screening mandate, established by the Implementing Recommendations of the 9/11 Commission Act (9/11 Act) of August 2007, requires that TSA ensure all cargo transported onboard passenger aircraft operating to, from, or within the United States is physically screened at a level commensurate with the screening of passenger checked baggage. To achieve this, TSA is authorized to issue security requirements for U.S. and foreign air carriers at non-U.S. locations for flights inbound to the United States.¹²

¹² TSA regulations are found in 49 CFR chapter XII (parts 1500 through 1699). Parts 1544 and 1546 are specific to U.S. aircraft operators (*i.e.*, domestic or U.S. flagged air carriers) and foreign air carriers. Sections 1544.205(f) and 1546.205(f) provide that U.S. aircraft operators and foreign air carriers, respectively, must ensure that cargo loaded onboard an

TSA's regulatory framework consists of security programs that TSA issues and the air carriers adopt to carry out certain security measures, including screening requirements for cargo inbound to the United States from non-U.S. locations. Details related to the security programs are considered Sensitive Security Information (SSI),¹³ and are made available to carriers as necessary. Within this framework, TSA has the flexibility to modify its air cargo screening requirements as needed based on changing security environments, intelligence, and emergency situations through Emergency Amendments/ Security Directives (EAs/SDs). Carriers may also request amendments to their respective security programs in response to changing market and industry conditions.¹⁴ Additionally, carriers may request TSA approval to follow recognized National Cargo Security Program (NCSP) Recognition procedures in lieu of their TSA security programs.

NCSP Recognition is a key component of TSA's effort to achieve 100% screening of inbound cargo. NCSP Recognition is TSA's process that recognizes a partner country's air cargo supply chain security system as being commensurate with TSA's domestic and international air cargo security requirements. NCSP Recognition reduces the burden on industry resulting from applying essentially duplicative measures under two different security programs (*i.e.*, TSA's and the host country's programs), among other benefits. When approved by TSA, air carriers are able to follow the air cargo security measures of an NCSP recognized country in lieu of specific measures required by their security program.

TSA regulations and security programs require carriers to perform screening procedures and security measures on all cargo inbound to the United States. TSA requires aircraft operators and foreign air carriers to determine the appropriate level of screening (baseline versus enhanced) to apply to the cargo, in accordance with the cargo acceptance methods and risk determination criteria contained within their TSA security programs. The difference between baseline and aircraft outside the U.S., destined to the U.S., is screened in accordance with the requirements in their security program. Sections 1544.101 and 1546.101 require that certain U.S. aircraft operators, and certain foreign air carriers landing or taking off in the U.S., must adopt and implement a security program in the form and with the content approved or accepted by TSA pursuant to the provisions in §§ 1544.103 and 1546.103. In addition, when TSA determines pursuant to § 1544.305 that additional security measures are necessary, it will issue Security Directives to U.S. aircraft operators. TSA may also issue Emergency Amendments to the security programs of U.S. aircraft operators and foreign air carriers as provided in §§ 1544.105(d) and 1546.105(d).

¹³ "Sensitive Security Information" or "SSI" is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

¹⁴ Amendment procedures are in §§ 1544.105(b), (c), and (d) and 1546.105(b), (c), and (d).

enhanced screening is the level to which the cargo must be screened and the procedures by which the specific screening technology must be applied as outlined in the carrier's security program.

Baseline air cargo screening requirements (standard screening) depend on multiple factors, outlined in the carrier's security program. Baseline screening procedures for passenger air carriers require that 100% of cargo loaded onboard the aircraft must be screened by TSA-approved methods. These TSA-approved methods are set forth in the carrier's security program. Baseline screening procedures for all-cargo operations of inbound air cargo are different from the baseline screening procedures applied to air cargo in passenger operations because of the differing level of risk associated with all-cargo flights. The baseline screening measures applied to cargo on an all-cargo aircraft are dependent on the types of cargo, among other factors. Enhanced security screening measures are for higher risk cargo. Cargo that the carrier determines is higher risk pursuant to the risk determination criteria in their security program must be screened via TSA-approved enhanced screening methods as set forth in the carrier's security program.

TSA periodically inspects carriers' cargo facilities to ensure compliance with the required measures of the carriers' security programs. If TSA determines that violations of the requirements have occurred, appropriate measures will be taken and penalties may be levied.

B. Air Cargo Security Risks

A terrorist attack on an international commercial flight via its air cargo continues to be a very real threat. DHS has received specific, classified intelligence that certain terrorist organizations seek to exploit vulnerabilities in international air cargo security to cause damage to infrastructure, injury, or loss of life in the United States or onboard aircraft. Enhancements to the current CBP regulations and TSA security programs will help address the in-flight risk and evolving threat posed by air cargo. While TSA requires carriers to perform air cargo screening in accordance with their security program prior to the cargo departing for the United States, ACAS enables an analysis of data and intelligence pertaining to a particular cargo shipment. As a result, additional high-risk cargo may be identified. Under current CBP regulations, a 19 CFR 122.48a filer is not required to transmit data to CBP until the aircraft departs for the United States or four hours prior to arrival in the United States. While this requirement provides CBP with the necessary data to target high-risk cargo prior to the aircraft's arrival in the United States, it does not allow sufficient time for targeting prior to the cargo being loaded onto a U.S.-

bound aircraft. Therefore, additional time to target air cargo shipments would increase the ability of CBP and TSA to identify high-risk cargo that otherwise might not be identified until it was already en route to the United States.

As explained in detail in the Executive Summary, terrorists have already exploited this security vulnerability by placing explosive devices aboard aircraft destined to the United States. After the October 2010 incident in which explosive devices concealed in two shipments of Hewlett-Packard printers addressed for delivery to Jewish organizations in Chicago, Illinois were discovered in cargo onboard aircraft destined to the United States, CBP and TSA determined that these evolving terrorist threats require a more systematic and targeted approach to identify high-risk cargo. With the existing security vulnerability, unauthorized weapons; explosive devices; WMDs; chemical, biological or radiological weapons; and/or other destructive items could be placed in air cargo on an aircraft destined to the United States, and potentially, be detonated in flight. The resulting terrorist attack could cause destruction of the aircraft, loss of life or serious injuries to passengers and crew, additional casualties on the ground, and disruptions to the airline industry.

Since terrorists continue to seek out and develop innovative ways to thwart security measures, it is essential that CBP and TSA adapt their policies and use shared intelligence to address these evolving terrorist threats. To address the terrorist threat in 2010, CBP and TSA determined that it was essential to combine efforts to establish a coordinated policy to address aviation security. After consulting industry representatives and international partners, they decided that a risk-based assessment strategy utilizing real-time data and intelligence to target high-risk cargo earlier in the supply chain was essential. Such a strategy would deter terrorists from placing high-risk, dangerous cargo on an aircraft, enable CBP and TSA to detect explosives, WMDs, chemical and/or biological weapons before they are loaded aboard aircraft, and reduce the threat of a terrorist attack from occurring in-flight.

Specifically, CBP and TSA determined that certain advance air cargo data needs to be transmitted to CBP at the earliest point practicable in the supply chain, before the cargo is loaded onto the aircraft. This earlier time frame would provide sufficient time to target and identify high-risk cargo so that the relevant parties can take action as directed to mitigate the risk prior to the aircraft's departure. It was concluded that TSA's screening authority could be utilized to mitigate these risks. Therefore, in 2010, CBP and TSA established a joint CBP-TSA targeting operation and launched an

ACAS pilot to collect the necessary data from pilot participants earlier in the process. The ACAS pilot is discussed in detail in Section III.C.

The joint CBP–TSA targeting operation utilizes CBP’s ATS and other available intelligence as a dynamic risk targeting tool to leverage the data and information already collected in order to secure inbound air cargo. This allows CBP and TSA to address specific threat information in real time and identify any cargo that has a nexus to terrorism. This cooperative targeting, in combination with the existing CBP and TSA air cargo risk assessment measures, increases the security of the global supply chain. The CBP–TSA joint targeting operation continues to operate today and together with the ACAS pilot, and now this rule, serves as an important additional layer of security to address the new and emerging threats to air cargo.

C. ACAS Pilot

To collect advance air cargo data earlier in the supply chain, CBP, in collaboration with TSA and the air cargo industry, established the ACAS pilot in December 2010.¹⁵ The pilot was created to explore the feasibility of collecting data on inbound air cargo prior to loading, to determine the time frame under which participants could provide reasonably reliable and accurate data, and to test the technological aspects of transmitting the ACAS data and the operational logistics of resolving ACAS referrals.

Many different entities are participating in the pilot including express consignment air courier companies, passenger carriers, all-cargo carriers, and freight forwarders. Pilot participants volunteer to

¹⁵ On October 24, 2012, CBP published a general notice in the **Federal Register** (77 FR 65006) announcing the formalization and expansion of the ACAS pilot. Since then, CBP has published several additional **Federal Register** notices. The email address for the submission of applications and comments was corrected in 77 FR 65395 (Oct. 26, 2012); the application period was reopened for 15 days in 77 FR 76064 (Dec. 26, 2012); and the date of the close of the reopened application period was corrected in 78 FR 315 (Jan. 3, 2013). On April 23, 2013, CBP published a notice in the **Federal Register** (78 FR 23946) extending the ACAS pilot period through October 26, 2013, and reopening the application period through May 23, 2013. On October 23, 2013, CBP published a notice in the **Federal Register** (78 FR 63237) extending the ACAS pilot program through July 26, 2014, and reopening the application period to accept applications from new ACAS pilot participants through December 23, 2013. On July 28, 2014, CBP published a notice in the **Federal Register** (79 FR 43766) extending the ACAS pilot program through July 26, 2015, and reopening the application period to accept applications from new ACAS pilot participants through September 26, 2014. On July 27, 2015, CBP published a notice in the **Federal Register** (80 FR 44360) extending the ACAS pilot program through July 26, 2016, and reopening the application period to accept applications from new ACAS pilot participants through October 26, 2015. On July 22, 2016, CBP published a notice in the **Federal Register** (81 FR 47812) extending the ACAS pilot program through July 26, 2017. On July 24, 2017, CBP published a notice in the **Federal Register** (82 FR 34319) extending the ACAS pilot program through July 26, 2018.

electronically provide CBP with a specified subset of 19 CFR 122.48a data (ACAS pilot data) as early as possible prior to loading of the cargo onto an aircraft destined to the United States.

To determine what data would be effective to target, identify, and mitigate high-risk cargo prior to loading, CBP evaluated the advance air cargo data that is currently transmitted under 19 CFR 122.48a. While the 19 CFR 122.48a data and the ACAS pilot data are used in conjunction to ensure the safety and security of air cargo throughout the supply chain, they are collected at different time frames for different risk assessments. The 19 CFR 122.48a data is used to evaluate risk prior to arrival at a U.S. port of entry to prevent high-risk cargo from entering the United States. ACAS pilot data is essential to ensure that high-risk cargo that poses a risk to the aircraft during flight is not loaded. Accordingly, CBP evaluated each 19 CFR 122.48a data element to determine whether the data would be effective in assessing the cargo's risk prior to loading of the cargo onto the aircraft, and whether the data was consistently available and predictable early in the lifecycle of the cargo in the global supply chain. CBP also consulted with the industry about what data would be available and predictable at an earlier time frame. CBP concluded that some of the 19 CFR 122.48a data, including the mandatory flight and routing information, was too unpredictable to effectively target high-risk cargo under the earlier time frame.

CBP determined that six of the mandatory 19 CFR 122.48a data elements, when viewed together, met its criteria and would be included in the ACAS pilot. This subset of 19 CFR 122.48a is the ACAS pilot data. The ACAS pilot data elements are: Air waybill number, total quantity based on the smallest external packing unit, total weight of cargo, cargo description, shipper name and address, and consignee name and address.¹⁶ These data elements must be provided to CBP at the lowest air waybill level (*i.e.*, house air waybill level for consolidated shipments or regular air waybill level for non-consolidated shipments).

CBP determined that the data described above would enable the agency to more effectively conduct database searches aimed at identifying possible discrepancies and high-risk cargo. When taken together, the six data elements would provide CBP with pertinent information about the cargo and enable CBP to better evaluate the cargo's threat level prior to loading.

¹⁶ The six ACAS data elements have been referred to by the trade as "7+1" data by considering "shipper name and address" and "consignee name and address" to be four data elements instead of two. As this data is included in 19 CFR 122.48a as two data elements, CBP will continue to refer to "six ACAS data elements" and not "7+1."

While the ACAS pilot data only consists of six elements, CBP encourages participants to provide any additional available data. Any additional available data that is provided enhances the accuracy of the targeting.

Upon receipt of the ACAS pilot data, the joint CBP–TSA targeting operation utilizes CBP’s ATS and other intelligence to analyze the ACAS data to better identify cargo that has a nexus to terrorism and poses a high security risk. CBP issues an ACAS referral for any air cargo identified as high-risk and specifies what action the ACAS filer needs to take to address the referral and mitigate the risk. There are two types of referrals that may be issued after a risk assessment of the ACAS pilot data: Referrals for information and referrals for screening. The mitigation of these referrals depends on the directions provided by CBP and/or TSA. A referral for information is usually mitigated when the ACAS filer provides clarifying information related to the required ACAS pilot data. Referrals for screening are issued pursuant to CBP authorities and resolved using TSA-approved or accepted security programs.¹⁷ A referral for screening is mitigated by confirmation that enhanced screening has been performed pursuant to the appropriate TSA-approved screening methods contained in the carrier’s security program.¹⁸ The inbound air carrier is prohibited from loading cargo onto the aircraft destined for the United States until all ACAS referrals are resolved on that cargo.

Based on the risk assessment, if CBP and TSA determine that the cargo may contain a potential bomb, improvised explosive device, or other material that may pose an immediate, lethal threat to the aircraft and/or its vicinity, CBP issues a DNL instruction. Cargo receiving a DNL instruction must not be transported. Such cargo requires adherence to the appropriate protocols and directions provided by the applicable law enforcement authority.

The ACAS pilot has proven to be extremely beneficial. Most importantly, it has enabled CBP to identify numerous instances of high-risk cargo prior to the cargo being loaded onto an aircraft destined to the United States. Although to date CBP has not had to issue a DNL

¹⁷ TSA’s involvement in ACAS is authorized under 49 U.S.C. 114(f) and (m), and 44901(g), as amended by the Implementing Recommendations of the 9/11 Commission Act, Public Law 110–53, 121 Stat. 266 (Aug. 3, 2007), and under authority of the Secretary of Homeland Security, as delegated to the Assistant Secretary of Homeland Security for TSA, under the Homeland Security Act of 2002, as amended (6 U.S.C. 112(b)).

¹⁸ Under the ACAS pilot, industry participants regulated by TSA have been and will continue to be required to follow TSA’s screening protocols as outlined in their respective security programs and applicable SDs/EAs. This includes baseline screening requirements for air cargo, as well as enhanced security screening measures for higher risk cargo. ACAS results may require that the carriers conduct enhanced screening procedures on certain cargo that otherwise would have received only baseline screening.

instruction, CBP has identified a significant number of air cargo shipments that have potential ties to terrorism and, therefore, may represent a threat to aviation security. In each instance, enhanced cargo screening pursuant to the TSA-approved screening methods was required to ensure that the cargo presented no risk to the safety and security of the aircraft.

Another benefit of the ACAS pilot is that an ACAS referral may require enhanced screening on cargo that otherwise would have received only baseline screening pursuant to TSA-approved screening methods in the carrier's security program. The ACAS pilot program is an additional layer of security in DHS's air cargo security approach. An additional benefit of the pilot is that it has allowed the industry to test the collection of the ACAS pilot data in the earlier time frame and the technological capacity to collect and transmit the data electronically.

Despite the benefits, the pilot has certain limitations which stem from the fact that it is a voluntary program. Because the pilot is voluntary, not all inbound air carriers participate; thus, there is a data collection gap. Also, because the pilot is voluntary, not all ACAS pilot data is transmitted in a timely manner and not all ACAS referrals are resolved prior to departure. This means that high-risk cargo may be transported aboard U.S.-bound aircraft, placing the aircraft, passengers and crew at risk. Finally, because the pilot is voluntary, CBP cannot take enforcement action against participants who fail to transmit ACAS data in a timely manner, do not address an ACAS referral, or otherwise fail to comply with the requirements. While ACAS pilot participants usually transmit ACAS data in a timely manner, and take the necessary action to comply with ACAS referrals and other requirements, voluntary compliance is not always sufficient to ensure aviation security. Due to these limitations, air cargo continues to pose a security threat that can be exploited by terrorists. Therefore, CBP is establishing a mandatory ACAS program.

IV. Mandatory ACAS Program

To fulfill the Trade Act mandate to ensure air cargo safety and security, CBP is establishing a mandatory ACAS program that will require the submission of certain advance air cargo data earlier than is required under 19 CFR 122.48a. This will enable CBP to identify, target and mitigate high-risk cargo before the cargo is transported aboard an aircraft destined to the United States. CBP's objective for the ACAS program is to obtain the most accurate data at the earliest time possible with as little impact to the flow of commerce as possible. CBP believes that the ACAS program, in conjunction with the current

CBP 19 CFR 122.48a regulations and TSA's updated security programs, will significantly enhance air cargo safety and security as mandated by the Trade Act.

In order to implement ACAS as a mandatory program, CBP must adhere to the parameters applicable to the development of regulations under section 343(a) of the Trade Act. While aviation security and securing the air cargo supply chain are paramount, these Trade Act parameters require CBP to give due consideration to the concerns of the industry and the flow of commerce. These parameters include, among others, provisions requiring consultation with the industry and consideration of the differences in commercial practices and operational practices among the different parties. In addition, the parameters require that the information collected pursuant to the regulations be used for ensuring cargo safety and security, preventing smuggling, and commercial risk assessment targeting, and require CBP to balance the impact on the flow of commerce with the impact on cargo safety and security. The parameters also require that the obligations imposed must generally be upon the party most likely to have direct knowledge of the required information and if not, then mandate that the obligations imposed take into account ordinary commercial practices for receiving data and what the party transmitting the information reasonably believes to be true. In developing the ACAS regulations, CBP considered all of the parameters. The adherence to these parameters is noted throughout the document.

Throughout the development of the ACAS pilot and this interim final rule, CBP consulted extensively with the air cargo industry about their business practices and how to best formulate the ACAS program to take these business practices into consideration in developing a regulatory program that addressed the security concerns. As a result of these industry consultations, CBP has been able to develop ACAS regulations that, in accordance with the parameters of the Trade Act, balance the impact on the flow of commerce with the impact on cargo safety and security and take into consideration existing standard business practices and interactions among stakeholders. This allows CBP to target data earlier while minimizing negative impacts on operations, the air cargo business model, and the movement of legitimate goods.

In developing these regulations, CBP also considered international efforts to develop advance air cargo information security programs. The ACAS program is part of a global effort to develop advance cargo information programs with agreed-upon international standards that collect and analyze the information prior to loading. CBP has participated in the World Customs Organization (WCO) Technical Experts

Group Meeting on Air Cargo Security, the WCO/ICAO Joint Working Group on Advance Cargo Information and the WCO SAFE¹⁹ Working Groups meetings to inform foreign governments and trade associations on the progress of the ACAS pilot and to shape discussions on establishing global customs guidelines on air advance cargo information as well on identifying areas for collaboration between Customs and Aviation Security (AVSEC) authorities on air cargo security. In June 2015, the mandatory ACAS data established in this rule was incorporated into the WCO SAFE Framework of Standards.²⁰ CBP believes that the ACAS program is consistent with these international programs.

In developing the program, CBP also considered the results of the ACAS pilot. While the ACAS pilot has been operating successfully, CBP has noted a few areas for improvement. The ACAS program addresses these shortcomings. They include minor changes to the definition of consignee name and address, adding the MAWB number as a conditional data element, requiring the submission of the FDM, and adding enforcement provisions. These issues are discussed in more detail in Sections IV.D., I., and J. below.

To implement the ACAS program, CBP is adding a new section, 19 CFR 122.48b, titled Air Cargo Advance Screening (ACAS), and making certain revisions to 19 CFR 122.48a. Additionally, CBP is revising the relevant bond provisions in 19 CFR part 113 to incorporate the ACAS requirements.

A. New 19 CFR 122.48b, Air Cargo Advance Screening (ACAS)

The new ACAS regulation provides that, pursuant to section 343(a) of the Trade Act, for any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard, CBP must electronically receive from the inbound air carrier and/or another eligible ACAS filer the ACAS data no later than the specified ACAS time frame.²¹ The required ACAS data must be transmitted to CBP through a CBP-approved EDI as early as practicable, but no later than prior to loading of the cargo on the aircraft. The ACAS data will be used to determine whether the cargo is high-risk and may result in the issuance of an ACAS referral or a DNL instruction. Any ACAS referral must be resolved prior to departure of the aircraft. Any

¹⁹ Acronym for Framework of Standards to Secure and Facilitate Global Trade (“SAFE Framework of Standards”).

²⁰ The shipper name and address (referred to as the consignor per the WCO guidelines), consignee name and address, cargo description, piece count, weight and the air waybill number.

²¹ As provided in 19 CFR 122.41, subject to specified exceptions, all aircraft coming into the United States from a foreign area must make entry.

cargo that is issued a DNL instruction must not be loaded onto aircraft and requires immediate adherence to the protocols and directions from law enforcement authorities. Below, we describe the new program including the eligible ACAS filers, the ACAS data, the ACAS referrals, DNL instructions, the bonds required to file ACAS data, and available enforcement actions.

B. Eligible ACAS Filers

The new 19 CFR 122.48b(c) specifies which parties are eligible to file ACAS data. Eligible parties include the inbound air carrier and other parties as specified below. The inbound air carrier is required to file the ACAS data if no other eligible party elects to file. CBP is allowing parties other than the inbound air carrier to file because, in some cases, these other parties will have access to accurate ACAS data sooner. For effective targeting to occur prior to loading, it is essential that the most accurate ACAS data be filed at the earliest point possible in the supply chain. This approach is consistent with the Trade Act parameters that require CBP to obtain data from the party most likely to have direct knowledge of the data and to balance the impact on the flow of commerce with the impact on cargo safety and security.

In addition to the inbound air carrier, the other parties that may elect to file the ACAS data are all the parties eligible to elect to file advance air cargo data under 19 CFR 122.48a(c), as well as foreign indirect air carriers, a term which encompasses freight forwarders. Parties eligible to elect to file advance air cargo data under 19 CFR 122.48a(c) include an Automated Broker Interface (ABI) filer (importer or its Customs broker) as identified by its ABI filer code; a Container Freight Station/ deconsolidator as identified by its FIRMS (Facilities Information and Resources Management System) code; an Express Consignment Carrier Facility as identified by its FIRMS code; or, an air carrier as identified by its carrier IATA (International Air Transport Association) code, that arranged to have the inbound air carrier transport the cargo to the United States.

Freight forwarders (also referred to as foreign indirect air carriers) are generally ineligible to directly file the advance air cargo data required under 19 CFR 122.48a. CBP decided to allow freight forwarders to participate in the ACAS pilot because HAWB data is generally available to the freight forwarder earlier than it is available to the inbound air carrier. CBP has concluded that the inclusion of freight forwarders in the ACAS pilot has resulted in CBP's receipt of the data earlier in some cases. Therefore, CBP is including freight forwarders as eligible filers under 19 CFR 122.48b.

For purposes of ACAS, foreign indirect air carrier (FIAC) is defined as any person, not a citizen of the United States, that undertakes indirectly to engage in the air transportation of property. This is consistent with the definitions in the regulations of the Department of Transportation (14 CFR 297.3(d)) and the TSA (*see* 49 CFR 1540.5, defining “indirect air carrier”). This definition includes a foreign air freight forwarder, that is, a FIAC that is responsible for the transportation of property from the point of receipt to point of destination, and utilizes for the whole or any part of such transportation the services of a direct air carrier or its agent, or of another foreign indirect cargo air carrier. Certain FIACs, such as deconsolidators or ABI filers, may already be eligible to file ACAS data if they separately qualify as an eligible filer under 19 CFR 122.48a(c). FIACs who are not eligible 19 CFR 122.48a filers are still eligible to transmit ACAS only filings.

Under the new 19 CFR 122.48b(c)(3), all inbound air carriers and other eligible entities electing to be ACAS filers must meet the following prerequisites to file the ACAS data:

- Establish the communication protocol required by CBP for properly transmitting an ACAS filing through a CBP-approved EDI system.²² As set forth in the new 19 CFR 122.48b(a), the ACAS data must be transmitted through such a system.
- Provide 24 hours/7 days a week contact information consisting of a telephone number and email address. CBP will use the 24 hours/7 days a week contact information to notify, communicate, and carry out response protocols for a DNL instruction, even if an electronic status message is sent.
- Report all of the originator codes that will be used to file ACAS data. (Originator codes are unique to each filer to allow CBP to know who initiated the filing and to identify the return address to provide status messages.) If, at any time, an ACAS filer wishes to utilize additional originator codes to file ACAS data, the originator codes must be reported to CBP prior to their use to ensure that CBP can link the ACAS data to the complete set of advance data transmitted pursuant to 19 CFR 122.48a. This will allow CBP to easily identify all the ACAS and 19 CFR 122.48a filers for one shipment.
- Possess the appropriate bond containing all the necessary provisions of 19 CFR 113.62, 113.63, or 113.64. CBP is amending the regulations covering certain bond conditions, as described in Section IV.I., to incorporate the ACAS requirements.

²² Instructions are currently set forth at <https://www.cbp.gov/trade/automated/interconnection-security-agreement/instructions>.

C. Time Frame for Filing ACAS Data

The new 19 CFR 122.48b(b) sets forth the time frame for submission of the ACAS data. As noted previously, the ACAS filing requirements are applicable to any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard. (These same aircraft are subject to the requirements in 19 CFR 122.48a). For such aircraft, the ACAS data must be transmitted as early as practicable, but no later than prior to loading of the cargo onto the aircraft.²³ Based on the operation of the ACAS pilot, CBP believes that the ACAS time frame provides CBP sufficient time to perform a risk assessment prior to loading of the cargo aboard the aircraft without unduly impacting the flow of commerce.

Although CBP has determined that it is not commercially feasible to require the submission of the ACAS data a specified number of hours prior to loading of the cargo onto the aircraft, CBP encourages filers to transmit the required data as early as practicable. The earlier the ACAS data is filed, the sooner CBP can perform its targeting and the more time the filer or other responsible party will have to address any ACAS referral or DNL instruction. If the ACAS data is transmitted at the last minute and CBP issues an ACAS referral or DNL instruction, the scheduled departure of the flight could be delayed.

D. ACAS Data

The ACAS data for the ACAS program is a subset of the 19 CFR 122.48a data.²⁴ It differs slightly from the ACAS pilot data. After an evaluation of the ACAS pilot, CBP determined that some improvements and additions to the data were needed. The ACAS data for the program is listed in the new 19 CFR 122.48b(d). As discussed below, some of the data is mandatory, one data element is conditional and other data elements are optional. ACAS data will only be used to the extent consistent with the Trade Act.

²³ If an aircraft en route to the United States stops at one or more foreign airports and cargo is loaded, an ACAS filing would be required for the cargo loaded on each leg of the flight prior to loading of that cargo.

²⁴ 19 CFR 122.48a specifies, based on the type of shipment, what data the inbound air carrier must transmit to CBP and what data other eligible filers may transmit to CBP. For non-consolidated shipments, the inbound air carrier must transmit to CBP the 17 data elements (11 mandatory, 6 conditional) applicable for the air waybill record. For consolidated shipments, the inbound air carrier must transmit to CBP the 17 data elements (11 mandatory, 6 conditional) that are applicable to the MAWB, and the inbound air carrier must transmit a subset of the data (7 mandatory, 1 conditional) for all associated HAWBs, unless another eligible filer transmits this data to CBP. For split shipments, the inbound air carrier must submit an additional subset of this data (9 mandatory, 3 conditional) for each HAWB.

1. ACAS Data Definitions

The definitions of the ACAS data elements are set forth in 19 CFR 122.48a. The relevant definitions for non-consolidated shipments are set forth in 19 CFR 122.48a(d)(1) and the relevant definitions for consolidated shipments are set forth in both 19 CFR 122.48a(d)(1) and (d)(2).

2. Mandatory ACAS Data

The new 19 CFR 122.48b(d)(1) sets forth the mandatory ACAS data required in all circumstances. The mandatory ACAS data elements are the same six data elements as the ACAS pilot data. They are: shipper name and address, consignee name and address, cargo description, total quantity based on the smallest external packing unit, total weight of cargo, and air waybill number. As explained above in Section III.C., each of these six data elements provides CBP with crucial information needed to target and identify high-risk cargo before it is loaded onto an aircraft destined to the United States. CBP has determined that when taken together, these six data elements, if provided within the ACAS time frame, will enable CBP to perform an effective risk assessment. Based on the ACAS pilot, CBP believes that ACAS filers will be able to provide this data in a consistent, timely, and reasonably accurate manner.

The ACAS data is required to be transmitted at the lowest air waybill level (*i.e.*, at the HAWB level if applicable) by all ACAS filers. As explained in detail in Section IV.J.2., CBP is making minor changes to the definition of consignee name and address in 19 CFR 122.48a(d) for clarity. The mandatory ACAS data elements for the ACAS program with the revised definition are:

(1) *Shipper name and address.* The name and address of the foreign vendor, supplier, manufacturer, or other similar party is acceptable. The address of the foreign vendor, etc., must be a foreign address. The identity of a carrier, freight forwarder, or consolidator is not acceptable. (This definition is in 19 CFR 122.48a(d)(1)(x) for non-consolidated shipments and in 19 CFR 122.48a(d)(2)(vi) for consolidated shipments.)

(2) *Consignee name and address.* This is the name and address of the party to whom the cargo will be delivered regardless of the location of the party; this party need not be located at the arrival or destination port. (This definition is in revised 19 CFR 122.48a(d)(1)(xi) for non-consolidated shipments and in revised 19 CFR 122.48a(d)(2)(vii) for consolidated shipments.)

(3) *Cargo description.* A precise cargo description or the 6-digit Harmonized Tariff Schedule (HTS) number must be provided. Ge-

neric descriptions, specifically those such as “FAK” (“freight of all kinds”), “general cargo,” and “STC” (“said to contain”) are not acceptable. (This definition is in 19 CFR 122.48a(d)(1)(ix) for non-consolidated shipments and in 19 CFR 122.48a(d)(2)(iii) for consolidated shipments.)

(4) *Total quantity based on the smallest external packing unit.* For example, 2 pallets containing 50 pieces each would be considered 100, not 2. (This definition is in 19 CFR 122.48a(d)(1)(vii) for non-consolidated shipments and in 19 CFR 122.48a(d)(2)(iv) for consolidated shipments.)

(5) *Total weight of cargo.* This may be expressed in either pounds or kilograms. (This definition is in 19 CFR 122.48a(d)(1)(viii) for non-consolidated shipments and in 19 CFR 122.48a(d)(2)(v) for consolidated shipments.)

(6) *Air waybill number.* The air waybill number must be the same in the ACAS filing and the 19 CFR 122.48a filing. For non-consolidated shipments, the air waybill number is the International Air Transport Association (IATA) standard 11-digit number, as provided in 19 CFR 122.48a(d)(1)(i). For consolidated shipments, the air waybill number that is a mandatory data element for ACAS purposes is the HAWB number. As provided in 19 CFR 122.48a(d)(2)(i), the HAWB number may be up to 12 alphanumeric characters (each alphanumeric character that is indicated on the HAWB must be included in the electronic transmission; alpha characters may not be eliminated).

3. Conditional ACAS Data: Master Air Waybill Number

In addition to the mandatory ACAS data, CBP is adding the MAWB number as a conditional ACAS data element. As provided by 19 CFR 122.48a(d) and (d)(1)(i), the MAWB number is the IATA standard 11-digit number. Although the MAWB number is one of the required 19 CFR 122.48a data elements for consolidated shipments, it is not an ACAS pilot data element. Based on CBP’s experience with the pilot, CBP is including the MAWB number as an ACAS data element in certain situations. The new 19 CFR 122.48b(d)(2) lists those situations. The inclusion of the MAWB number in the ACAS data will address several issues that have arisen during the pilot.

CBP has found that oftentimes the transmitted ACAS pilot data by itself is insufficient to fully analyze whether the required ACAS data has been transmitted for a particular flight. This is because the ACAS pilot data only requires the data at the HAWB level. As a result, it provides data about the cargo and the relevant parties for a specific shipment but does not provide any data about the flight and routing of that shipment. Without that information, it is difficult to link the

ACAS data with a particular flight and to estimate the time and airport of departure to the United States. This makes it difficult to locate the cargo for risk mitigation. The MAWB data provides the necessary information about the flight and routing of the shipment.

CBP also found that without the ability to link the HAWB number to a MAWB, the inbound air carrier might not be able to verify whether an ACAS assessment was performed for the cargo before it is accepted and loaded.

CBP is requiring the MAWB number in the following situations:

(1) When the ACAS filer is a different party from the party that will file the 19 CFR 122.48a data. The MAWB number is required in this situation because CBP needs a way to link the associated HAWBs transmitted as part of the ACAS data with the relevant MAWB provided by the 19 CFR 122.48a filer. To allow for earlier submission, an initial ACAS filing may be transmitted without the MAWB number, as long as the MAWB number is transmitted by the ACAS filer or the inbound air carrier according to the applicable ACAS time frame.

(2) When the ACAS filer transmits all the 19 CFR 122.48a data in the applicable ACAS time frame through a single filing. Since the MAWB number is required 19 CFR 122.48a data for consolidated shipments, the ACAS filer will be providing the MAWB number by default in this single filing.

(3) When the inbound air carrier would like to receive a status check from CBP on the ACAS assessment of specific cargo. If the MAWB number is transmitted, either by the ACAS filer or the inbound air carrier, CBP will be able to provide this information to the inbound air carrier upon request. If the MAWB number is not transmitted, CBP has no means of linking the ACAS data to a particular flight, as explained above, and cannot accurately respond to the query.

CBP believes that requiring the MAWB number in these three situations and encouraging it in other situations, best balances the need to collect this important data without negatively impacting trade operations.²⁵

²⁵ As mandated by the Trade Act, CBP consulted with the industry regarding the feasibility of including the MAWB number as ACAS data. Some industry representatives indicated that providing the MAWB number early in the supply chain was not operationally feasible and would inhibit the transmission of the ACAS data as early as possible in the supply chain. Some express carriers stated that their guaranteed on-time delivery service required flexibility in their transportation routes and that current business practices do not involve assigning a MAWB number until the very last minute prior to departure. As a result, CBP decided to only require the MAWB number in certain situations where it was needed and/or could be reasonably provided.

When the MAWB number is required, it must be provided for each leg of the flight for any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard.

4. Optional ACAS Data

The new 19 CFR 122.48b(d)(3) lists optional data that may be provided by ACAS filers. ACAS filers may choose to designate a “Second Notify Party,” which is any secondary stakeholder or interested party in the importation of goods to the United States, to receive shipment status messages from CBP. This party does not have to be the inbound air carrier or eligible ACAS filer. Allowing ACAS filers the option of electing a “Second Notify Party” enables other relevant stakeholders to receive shipment status messages from CBP. This functionality will increase the ability to respond expeditiously to DNL instructions by warning additional stakeholders of such a situation through direct contact and automated data.

ACAS filers are also encouraged to file additional information regarding any of the ACAS data (*e.g.*, telephone number, email address, and/or internet protocol address for shipper and/or consignee) or any data listed in 19 CFR 122.48a that is not ACAS data. This additional data will assist CBP in its risk assessment and may allow for a faster ACAS disposition.

CBP and/or TSA may also require additional information such as flight numbers and routing information to address ACAS referrals for screening. This information will be requested in a referral message, when necessary.

E. Filing and Updating the ACAS Data

CBP’s objective for the ACAS program is to obtain the most accurate data at the earliest time possible with as little impact to the flow of commerce as possible. To achieve this objective, CBP is allowing multiple parties to file the ACAS data, allowing flexibility in how the ACAS data is filed, and requiring that the ACAS data be disclosed to the filer by the parties in the supply chain with the best knowledge of the data.

The eligible ACAS filers and the prerequisites to be an ACAS filer are described above in Section IV.B. If no other eligible filer elects to file, the inbound air carrier must file the ACAS data. Even if another eligible party does elect to file the ACAS data, the inbound air carrier may also choose to file.

CBP allows flexibility in how the ACAS data is filed. As explained above in Section IV.D.3, an ACAS filer, who is also a 19 CFR 122.48a eligible filer, may choose to file the 19 CFR 122.48a filing in accor-

dance with the ACAS time frame. This would be a single filing and would satisfy both the 19 CFR 122.48a and the ACAS filing requirements. Regardless of which party chooses to file or how they choose to file, the ACAS data must be transmitted to CBP within the ACAS time frame.

To ensure that an ACAS filer has the most accurate ACAS data at the time of submission, CBP requires certain parties, with knowledge of the cargo, to provide the ACAS filer with the ACAS data.²⁶ Specifically, the new 19 CFR 122.48b(c)(4) provides that when an eligible ACAS filer, who arranges for and/or delivers the cargo, does not elect to file the ACAS data, that party must fully disclose and present the inbound air carrier with the ACAS data. The inbound air carrier must then present this data electronically to CBP. The new 19 CFR 122.48b(c)(5) provides that any other entity that is not an eligible ACAS filer, but is in possession of ACAS data must fully disclose and present the ACAS data to either the inbound air carrier or other eligible ACAS filer, as applicable. The inbound air carrier or other eligible ACAS filer must then transmit such data to CBP.

While CBP emphasizes the need for the ACAS data as early as possible in the supply chain, the ACAS filer is also responsible for updating the ACAS data, if any of the data changes or more accurate data becomes available. Updates are required up until the time the 19 CFR 122.48a filing is required.²⁷

When the ACAS filing is transmitted to CBP, the ACAS filer receives a status message confirming the submission. If the ACAS filer designates a Second Notify Party, that party will also receive the status notification (and any subsequent status notifications).²⁸ After the risk assessment of each cargo shipment is performed, the ACAS

²⁶ This is in accordance with the Trade Act parameters. Section 343(a)(3)(B) provides that in general, the requirement to provide particular information shall be imposed on the party most likely to have direct knowledge of that information. It further provides that where requiring information from the party with direct knowledge of that information is not practicable, the regulations shall 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. It provides that 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.

²⁷ The 19 CFR 122.48a data must be transmitted to CBP no later than the time of departure of the aircraft for the United States (from specified nearby foreign locations) or four hours prior to arrival in the United States for all other foreign locations. See Section III.A.1. for additional information on the 19 CFR 122.48a time frames.

²⁸ If the inbound air carrier is neither the ACAS filer nor the Second Notify Party, the inbound air carrier can still obtain the ACAS status of a shipment if: (1) The ACAS filer submits the MAWB number, whether in the original ACAS filing or later. (This will allow the inbound air carrier to query CBP for any HAWBs under that MAWB number); or (2) The inbound air carrier submits a message to CBP containing the MAWB number and ACAS data from the HAWB that are exact matches to the ACAS data submitted by the original

filer will receive either an “ACAS assessment complete” clearance message, an ACAS referral, or a DNL instruction.

F. ACAS Referrals

After CBP conducts a risk assessment of the ACAS filing, an ACAS referral may be issued for cargo deemed high-risk or determined to have insufficient data. An ACAS referral is a designation attached to cargo to indicate that CBP and TSA need more accurate or more complete information, and/or that the information provided indicates a risk that requires mitigation pursuant to TSA-approved enhanced screening methods. CBP will send a shipment status message to the ACAS filer about the referral. The new 19 CFR 122.48b(e)(1) describes two types of potential ACAS referrals: referrals for information and referrals for screening.

Referrals 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 data. Referrals for screening will be issued if the potential risk of the cargo is deemed high enough to warrant enhanced security screening. The screening must be performed in accordance with the appropriate TSA-approved screening methods contained in the carrier’s security program. For more information about TSA’s screening requirements, *see* Section III.A.2.

G. Do-Not-Load (DNL) Instructions

A DNL instruction will be issued if it is determined, based on the risk assessment and other intelligence, that the cargo may contain a potential bomb, improvised explosive device, or other material that may pose an immediate, lethal threat to the aircraft, persons aboard, and/or the vicinity. Because a DNL instruction will be issued when it appears that a terrorist plot is in progress, all ACAS filers must provide a telephone number and email address that is monitored 24 hours/7 days a week. All ACAS filers must respond and fully cooperate when the entity is reached by phone and/or email when a DNL instruction is issued.

H. Responsibilities of ACAS Filers

Filing the ACAS data comes with certain responsibilities. Failure to fulfill these responsibilities could result in CBP issuing liquidated damages and/or assessing penalties. The inbound air carrier and/or the other eligible ACAS filer have the responsibility to provide accurate ACAS data to the ACAS filer, allowing the inbound air carrier to receive the ACAS status of the HAWB; or (3) The inbound air carrier opts to resubmit the ACAS data previously filed by the other ACAS filer.

rate data to CBP in the ACAS filing and to update that data if necessary, to transmit the data within the ACAS time frame to CBP, to resolve ACAS referrals prior to departure of the aircraft and to respond to a DNL instruction in an expedited manner.

1. Responsibility To Provide Accurate and Timely Data

CBP needs accurate and timely data to perform effective targeting. To ensure this, the inbound air carrier and/or other eligible ACAS filer is liable for the timeliness and accuracy of the data that they transmit. Accurate data is the best data available at the time of filing. The same considerations will apply here as for the current Trade Act requirements.

As stated in the new 19 CFR 122.48b(c)(6), CBP will take into consideration how, in accordance with ordinary commercial practices, the ACAS filer acquired such data, and whether and how the filer is able to verify this data. Where the ACAS filer is not reasonably able to verify such information, CBP will permit the filer to electronically present the data on the basis of what that filer reasonably believes to be true. This is in accordance with the Trade Act parameters that require CBP to take these factors into account when promulgating regulations.

2. Responsibility To Resolve ACAS Referrals

The new 19 CFR 122.48b(e)(2) specifies the requirements for resolving ACAS referrals. This section describes the responsibilities of the inbound air carrier and/or other eligible ACAS filer to take the necessary action to respond to and address any outstanding ACAS referrals no later than prior to departure of the aircraft.

Each of the two types of ACAS referrals results in different responsibilities for the ACAS filer and/or inbound air carrier. The responsible party must address any ACAS referrals within the specified time frame. The new 19 CFR 122.48b(e)(3) specifies that the inbound air carrier is prohibited from transporting cargo on an aircraft destined to the United States until any and all referrals issued for that cargo have been resolved and CBP has provided an “ACAS assessment complete” clearance message.

a. Referral for Information

For referrals for information, the party who filed the ACAS data must resolve the referral by providing CBP with the requested clarifying data. This responsibility is imposed on the party who filed the ACAS data because they are in the best position to correct any data inconsistencies or errors. The last party to file the ACAS data must

address the referral. For instance, when the inbound air carrier retransmits an original ACAS filer's data and a referral for information is issued after this retransmission, the inbound air carrier is responsible for taking the necessary action to address the referral.

b. Referral for Screening

All in-bound cargo must be screened in accordance with the TSA-approved or accepted enhanced screening methods contained in the carrier's security program. If operating under an approved amendment to the security program, the measures specified in that amendment will apply whether that be a NCSP amendment or other amendment. TSA will amend security program requirements to be consistent with ACAS. Upon receipt of a referral for screening, the ACAS filer and/or inbound air carrier is required to respond with information on how the cargo was screened in accordance with TSA-approved or accepted enhanced screening methods.

The ACAS filer can perform the necessary screening provided it is a party recognized by TSA to perform screening. If the filer chooses not to perform the screening or is not a party recognized by TSA to perform screening, the ACAS filer must notify the inbound air carrier of the referral for screening. Once the inbound air carrier is notified of the unresolved referral for screening, the inbound air carrier must perform the enhanced screening required, and/or provide the necessary information to TSA and/or CBP to resolve the referral for screening. The ultimate responsibility to resolve any outstanding referral for screening is placed on the inbound air carrier because that is the party with physical possession of the cargo prior to departure of the aircraft.

3. Responsibility To Address DNL Instructions

The new 19 CFR 122.48b(f) specifies the requirements for a DNL instruction. A DNL instruction cannot be mitigated or resolved because of its urgency and the grave circumstances under which it is issued. A DNL instruction will be issued if it is determined that the cargo may contain a potential bomb, improvised explosive device, or other material that may pose an immediate, lethal threat to the aircraft and/or its vicinity. Accordingly, if a DNL is issued, the cargo must not be loaded onto the aircraft. The ACAS filer would be contacted by CBP and TSA using the 24/7 contact information provided, even if an electronic status message is sent, to notify, communicate, and carry out the necessary response protocols. The party in physical possession of the cargo at the time the DNL instruction is issued must

adhere to the appropriate CBP and TSA protocols and the directions provided by the applicable law enforcement authority.

I. Amendments To Bond Conditions

As described above, all ACAS filers have certain responsibilities under the ACAS program including the timely submission of ACAS data, and addressing ACAS referrals and DNL instructions prior to departure, among others. Under the ACAS program, failure to adhere to the ACAS requirements may result in CBP assessing liquidated damages and/or penalties. To ensure a proper enforcement mechanism exists, CBP is amending the relevant bond provisions to incorporate the ACAS requirements and to require all ACAS filers to have a bond. Although 19 CFR 122.48a filers are already required to have a bond, freight forwarders, currently unregulated entities, will also be required to obtain a bond if they elect to file the ACAS data.

Accordingly, CBP is adding a new condition to the relevant bond provisions in 19 CFR 113.62 (basic importation and entry bond) and in 19 CFR 113.63 (basic custodial bond) to cover the ACAS requirements. Specifically, CBP is amending 19 CFR 113.62 and 113.63 to add a new paragraph that includes a bond condition whereby the principal agrees to comply with all ACAS requirements set forth in 19 CFR 122.48a and 122.48b including, but not limited to, providing ACAS data to CBP in the manner and in the time period prescribed by regulation and taking the necessary action to address ACAS referrals and DNL instructions as prescribed by regulation.

The amendments further provide that if the principal fails to comply with the requirements, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation. CBP may also assess penalties for violation of the new ACAS regulations where CBP deems that such penalties are appropriate, *e.g.*, pursuant to 19 U.S.C. 1436.

The amendments also add a new condition to those provisions in 19 CFR 113.64 required to be included in an international carrier bond. Specifically, CBP is amending 19 CFR 113.64 to add a new paragraph to include conditions whereby the principal, be it the inbound air carrier or other party providing ACAS data, agrees to comply with the ACAS requirements set forth in 19 CFR 122.48a and 122.48b including, but not limited to, providing ACAS data to CBP in the manner and in the time period prescribed by regulation and taking the necessary action to address ACAS referrals and DNL instructions as prescribed by regulation.

This new paragraph further provides that if the principal fails to comply with the requirements, 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. CBP may also assess penalties for violation of the new ACAS regulations where appropriate, *e.g.*, pursuant to 19 U.S.C. 1436. The regulations also amend 19 CFR 113.64 to provide that, if a party who elects to file ACAS data incurs a penalty (or duty, tax or other charge), the principal and surety (jointly and severally) agree to pay the sum upon demand by CBP. CBP notes that the regulations in 19 CFR 113.64 already provide that the principal and surety agree to pay the sum upon demand by CBP when other parties, including an aircraft, owner of an aircraft, or person in charge of an aircraft, incur a penalty (or duty, tax or other charge).

Due to the addition of the new ACAS paragraphs in 19 CFR 113.62, 113.63, and 113.64, some of the other paragraphs in those sections are redesignated. Specifically, 19 CFR 113.62(l) and (m) are redesignated as 19 CFR 113.62(m) and (n); 19 CFR 113.63(h) and (i) are redesignated as 19 CFR 113.63(i) and (j), and 19 CFR 113.64(i) through (l) are redesignated as 19 CFR 113.64(j) through (m). Conforming changes are also made to 19 CFR 12.3, 141.113 and 192.

J. Amendments to 19 CFR 122.48a

As discussed throughout this document, several revisions to 19 CFR 122.48a are required to properly implement the ACAS program. This is because the ACAS regulation cites to provisions in 19 CFR 122.48a including the definitions of the ACAS data and the parties that are eligible to file the ACAS data. Additionally, as described below in Section IV.J.1., a new 19 CFR 122.48a data element, the FDM, is necessary to enforce the ACAS program.

1. Flight Departure Message (FDM)

The FDM is an electronic message sent by the inbound air carrier to CBP when a flight leaves a foreign airport and is en route to the United States. Although neither the 19 CFR 122.48a regulations nor the ACAS pilot currently requires the submission of the FDM, some inbound air carriers voluntarily provide it.

CBP is requiring the FDM as a mandatory 19 CFR 122.48a data element. The inbound air carrier is required to transmit the FDM to CBP for each leg of a flight en route to the United States within the specified time frames for transmitting 19 CFR 122.48a data. CBP welcomes comments on the timing of the FDM submission.

The FDM is necessary for the proper enforcement of the ACAS program. It will provide CBP with the liftoff date and time from each foreign airport for a flight en route to the United States. This will

allow CBP to easily assess whether an ACAS filing has been transmitted within the ACAS time frame and whether ACAS referrals and/or DNL instructions were addressed prior to the aircraft's departure. As a result, this will provide CBP with the information needed to determine whether an ACAS filer has complied with the ACAS requirements and responsibilities and whether to impose liquidated damages and/or assess penalties.

Specifically, CBP is adding a new paragraph 19 CFR 122.48a(d)(1)(xviii) that lists the FDM as a mandatory 19 CFR 122.48a data element. It further provides that the FDM includes the liftoff date and liftoff time using the Greenwich Mean Time (GMT)/Universal Time, Coordinated (UTC) at the time of departure from each foreign airport. It further provides that if an aircraft en route to the United States stops and cargo is loaded onboard at one or more foreign airports, the FDM must be provided for each departure.

2. Other Amendments to 19 CFR 122.48a

CBP is making several other revisions to 19 CFR 122.48a. These include revisions to 19 CFR 122.48a(a), (c), and (d). Specifically, in 19 CFR 122.48a(a), detailing general requirements, CBP is adding a sentence stating that the subset of data elements known as ACAS data is also subject to the requirements and time frame described in 19 CFR 122.48b. Also, in 19 CFR 122.48a(a), CBP is making a minor change to the language regarding the scope of the advance data requirement. The current text states that for any inbound aircraft required to enter under § 122.41 that will have commercial cargo aboard, CBP must receive advance air cargo data. CBP is changing "required to enter under § 122.41" to "required to make entry under § 122.41" for clarity.

In 19 CFR 122.48a(c), in order to more accurately reflect the obligations of the parties, CBP is making a minor change in the text. The current text states that where the inbound carrier receives advance cargo information from certain nonparticipating parties, the inbound carrier, on behalf of the party, must present this information electronically to CBP. CBP is of the view that the clause "on behalf of the party" improperly implies that the carrier is acting as the agent for the nonparticipating party and is therefore removing this clause.

Additionally, in 19 CFR 122.48a(d), CBP is also adding the notation of an "A" next to any listed data element that is also an ACAS data element. This notated data is required during both the ACAS filing and the 19 CFR 122.48a filing.

As discussed in Section IV.D., based on the operation of the ACAS pilot, CBP is amending the definition of consignee in order to have

more information for risk assessment purposes. The current definition asks for the name and address of the party to whom the cargo will be delivered, and makes an exception for “FROB” (Foreign Cargo Remaining On Board). In the case of consolidated shipments, the current definition asks specifically for the address of the party to whom the cargo will be delivered in the United States. Due to the FROB exception and the United States address limitation, CBP may not know the ultimate destination of some cargo transiting the United States. The amendment removes the FROB exception and United States address limitation, and requires the name and address of the consignee regardless of the location of the party. This will allow for better targeting because it provides more complete information about where the cargo is going.

K. Flexible Enforcement

In order to provide the trade sufficient time to adjust to the new requirements and in consideration of the business process changes that may be necessary to achieve full compliance, CBP will show restraint in enforcing the data submission requirements of the rule, taking into account difficulties that inbound air carriers and other eligible ACAS filers, particularly those that did not participate in the ACAS pilot, may face in complying with the rule, so long as inbound air carriers and other eligible ACAS filers are making significant progress toward compliance and are making a good faith effort to comply with the rule to the extent of their current ability. This CBP policy will last for twelve months after the effective date. While full enforcement will be phased in over this twelve month period, willful and egregious violators will be subject to enforcement actions at all times. CBP welcomes comments on this enforcement policy.

V. Statutory and Regulatory Reviews

A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the **Federal Register** (5 U.S.C. 553(b)) and provide interested persons the opportunity to submit comments (5 U.S.C. 553(c)). However, the APA provides an exception to these requirements “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(B). The implementation of this rule as an interim final rule, with provisions for post-promulgation public comments, is based on this good cause exception. As explained below, delaying the imple-

mentation of this ACAS rule pending the completion of notice and comment procedures would be contrary to the public interest.

DHS has determined that the potential exploitation by terrorists of existing inbound air cargo security arrangements exposes the United States to a significant new and emerging terrorist threat that would be effectively mitigated by the new ACAS rule. The intelligence community continues to acknowledge credible threats in the air environment, including the continued desire by terrorists to exploit the global air cargo supply chain. Moreover, DHS has received specific, classified intelligence that certain terrorist organizations seek to exploit vulnerabilities in international air cargo security to cause damage to infrastructure, injury, or loss of life in the United States or onboard aircraft. This ACAS rule mitigates these identified risks by providing CBP with the necessary data and additional time to perform necessary targeted risk assessments of air cargo before the aircraft departs for the United States. The rule strengthens DHS' ability to identify attempts by global terrorist organizations to exploit vulnerabilities in the air cargo as a means of conducting an attack. Delaying this rule to undertake notice and comment rulemaking would leave the United States unnecessarily vulnerable to a specific terrorist threat during the interval between the publication of the proposed and final rules and would be contrary to the public interest. Therefore, prompt implementation of this new ACAS rule is critical to reduce the terrorism risk to the United States and thereby protect the public safety. DHS has engaged in extensive consultation with stakeholders and has worked closely with the air cargo industry to address operational and logistical issues in the context of a voluntary pilot program in advance of this rulemaking, and has determined that this rule effectively addresses existing risks and emerging threats.

For the reasons stated above, DHS has determined that this rule is not subject to a 30-day delayed effective date requirement pursuant to 5 U.S.C. 553(d). Delaying this for 30 days after publication would leave the United States unnecessarily vulnerable to a specific terrorist threat and would be contrary to the public interest. Therefore, this rule is effective upon publication.

Accordingly, DHS finds that it would be contrary to the public interest to delay the implementation of this rule to provide for prior public notice and comment and delayed effective date procedures. As such, DHS finds that under the good cause exception, this rule is exempt from the notice and comment and delayed effective date requirements of the APA. DHS is providing the public with the opportunity to comment without delaying implementation of this rule. DHS will respond to the comments received when it issues a final rule.

B. Executive Orders 12866, 13563, and 13771

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

As this rule has an impact of over \$100 million in the first year, this rule is a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has reviewed this rule. Although this rule is a significant regulatory action, it is a regulation where a cost benefit analysis demonstrates that the primary, direct benefit is national security and the rule qualifies for a “good cause” exception under 5 U.S.C. 553(b)(B). The rule is thus exempt from the requirements of Executive Order 13771. See OMB’s Memorandum titled “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’ ” (April 5, 2017). A regulatory impact analysis, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule*, has been included in the docket of this rulemaking (docket number [USCBP–2018–0019]). The following presents a summary of the aforementioned regulatory impact analysis.

1. Need and Purpose of the Rule

CBP has identified a notable threat to global security in the air environment—the potential for terrorists to use the international air cargo system to place high-risk cargo, such as unauthorized weapons, explosives, or chemical and/ or biological weapons, on a United States-bound aircraft with the intent of bringing down the aircraft. In recent years, there have been several terrorist actions that highlighted this threat. In one notable incident in October 2010, concealed explosive devices that were intended to detonate during flight over the continental United States were discovered in cargo on board two aircraft destined to the United States. The exposure of international

air cargo to such a threat requires a security strategy to detect, identify, and deter this threat at the earliest point in the international supply chain, before the cargo departs on an aircraft destined to the United States.

The ACAS rule represents an important component of the U.S. Department of Homeland Security (DHS's) evolving layered strategy for securing the cargo supply chain from terrorist-related activities. The rule is designed to extend security measures out beyond the physical borders of the United States so that domestic ports and borders are not the first line of defense, with the objective of having better and more detailed information about all cargo prior to loading. The principal security benefit of the new rule will be a targeted risk assessment using real-time data and intelligence to make a more precise identification of high-risk shipments at an earlier time in the supply chain, prior the aircraft's departure. This information will allow for better targeting of cargo with potential ties to terrorist activity, reducing the risk of in-flight terrorist attacks intended to cause extensive casualties and inflict catastrophic damage to aircraft and other private property, and allowing sufficient time to take the necessary action to thwart a potential terrorist attack.

2. Synopsis

In December 2010, CBP and TSA launched the Air Cargo Advance Screening (ACAS) pilot program. Participants in this pilot program transmit a subset of the 19 CFR 122.48a data as early as possible prior to loading of the cargo onto an aircraft destined to the United States. CBP and pilot participants believe this pilot program has proven successful by not only mitigating risks to the United States, but also minimizing costs to the private sector. As such, CBP is transitioning the ACAS pilot program into a permanent, mandatory program with only minimal changes from the pilot program.

To give the reader a full understanding of the impacts of ACAS so they can consider the effect of the ACAS program as a whole, our analysis separately considers the impacts of ACAS during the pilot period (2011–2017), the regulatory period (2018–2027), and the combined period. For each time period, the baseline scenario is defined as the “world without ACAS.” During the pilot period (2011–2017), the baseline includes non-ACAS-related costs incurred by industry and CBP in the absence of the pilot program. During the first ten years the interim final rule is likely to be in effect (2018–2027), the baseline similarly includes costs incurred by industry and CBP in the absence of any ACAS implementation (pilot program or interim final rule). For

an accounting of the costs of the entire ACAS time period, including the pilot period and the regulatory period, see Table 3.

During the pilot period, CBP estimates that CBP and 38 pilot participants incurred costs totaling between \$112.8 million and \$122.7 million (in 2016 dollars) over the 6 years depending on the discount rate used (3 and 7 percent, respectively). CBP estimates that the rule will affect an estimated 215 entities and have an approximate total present value cost ranging from \$245.7 million and \$297.9 million (in 2016 dollars) over the 10-year period of analysis, depending on the discount rate used (seven and three percent, respectively). As shown below in Table 1, the estimated annualized costs of ACAS range from \$25.2 million to \$26.1 million (in 2016 dollars) depending on the discount rate used. The cost estimates include both the one-time, upfront costs and recurring costs of the activities undertaken by the affected entities to comply with the rule, both in the pilot and the post-pilot periods.

Due to data limitations, CBP is unable to monetize the benefits of the rule. Instead, CBP has conducted a “break-even” analysis, which shows how often a terrorist event must be avoided due to the rule for the benefits to equal or exceed the costs of the ACAS program. Table 1, below, shows the results of the break-even analysis under lower and higher consequence estimates of terrorist events. For the low cost consequence estimate, CBP estimates that ACAS must result in the avoidance of a terrorist attack event about every 7.7 to 8.0 months for the benefits of ACAS to equal the costs. For the higher cost consequence estimate, CBP estimates that the rule must result in the avoidance of a terrorist attack event about every 90.4 to 94 years for the benefits of ACAS to equal the costs.

TABLE 1—SUMMARY OF FINDINGS

Discount rate	Present value costs 2011–2027 (2016 dollars) (million)	Annualized costs 2011–2027 (2016 dollars) (million)	Economic consequences of terrorist attack ²	Benefits of the regulation equal its costs if: ¹	
				Number of events that must be avoided in 17 years ³	Critical event avoidance rate ⁴
Three Percent	\$410.8	\$26.1	Lower Estimate ...	26.6	One event every 7.7 months.
			Higher Estimate ..	0.2	One event every 90.4 years.
Seven Percent	368.4	25.2	Lower Estimate ...	25.6	One event every 8.0 months.
			Higher Estimate ..	0.2	One event every 94.0 years.

Discount rate	Present value costs 2011–2027 (2016 dollars) (million)	Annualized costs 2011–2027 (2016 dollars) (million)	Economic consequences of terrorist attack ²	Benefits of the regulation equal its costs if: ¹	
				Number of events that must be avoided in 17 years ³	Critical event avoidance rate ⁴

Notes:

¹ Reflects the range of averted cost estimates associated with attack scenarios in TSA’s TSSRA model involving the detonation of an explosive device on board a commercial passenger or one or multiple cargo aircraft destined to the United States that result in the destruction of the aircraft.

² Results assume regulation reduces risk of a single type of attack only. The rule will likely reduce the risk of multiple numbers and types of attacks simultaneously.

³ Indicates the number of terrorist attack events that would have to be avoided in a single year for the avoided consequences of a successful terrorist attack to equal the costs of the rule.

⁴ Indicates the frequency at which the event would need to be averted for the avoided consequences of a successful terrorist attack to equal the costs of the rule.

Table Source: Adapted from Exhibit ES–6 of the full regulatory impact analysis included in the docket of this rulemaking, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule*.

Although the annualized costs of this rule are estimated to be less than \$100 million dollars, the estimated first year costs are estimated to be approximately \$104.1 million dollars. As such, the rule is considered an economically significant rulemaking, and, in accordance with OMB Circular A–4 and Executive Order 12866, CBP has provided accounting statements in Tables 2 and 3 reporting the estimated costs and benefits of the rule. Table 2 includes the costs and benefits for the post-pilot period (2018–2027) and Table 3 includes the costs and benefits across the entire ACAS period (2011–2027).

TABLE 2—A-4 ACCOUNTING STATEMENT: COST OF THE RULE, 2018–2027 [2016]

	3% Discount rate	7% Discount rate
U.S. Costs		
Annualized monetized costs	\$36.0 million	\$37.4 million.
Annualized quantified, but non-monetized costs	None	None.
Qualitative (non-quantified) costs	Costs associated with issuing a “do not load,” which would jointly result from ACAS information and information obtained from intelligence agencies and the governments of other countries.	Costs associated with issuing a “do not load,” which would jointly result from ACAS information and information obtained from intelligence agencies and the governments of other countries.
U.S. Benefits		
Annualized monetized benefits ...	None	None.
Annualized quantified, but non-monetized benefits.	None	None.
Qualitative (non-quantified) benefits	Increased security through the targeting and mitigation of threats posed by air cargo prior to loading onboard aircraft destined to the United States.	Increased security through the targeting and mitigation of threats posed by air cargo prior to loading onboard aircraft destined to the United States.

TABLE 3—A-4 ACCOUNTING STATEMENT: COST OF THE ACAS PROGRAM (PILOT AND REGULATORY PERIOD), 2011-2027
[\$2016]

	3% Discount rate	7% Discount rate
Annualized monetized costs	\$26.1 million	\$37.4 million.
Annualized quantified, but non- monetized costs	None	None.
Qualitative (non-quantified) costs	Costs associated with issuing a “do not load,” which would jointly result from ACAS information and information obtained from intelligence agencies and the governments of other countries.	Costs associated with issuing a “do not load,” which would jointly result from ACAS information and information obtained from intelligence agencies and the governments of other countries.
U.S. Benefits		
Annualized monetized benefits	None	None.
Annualized quantified, but non-monetized benefits.	None	None.
Qualitative (non-quantified) benefits	Increased security through the targeting and mitigation of threats posed by air cargo prior to loading onboard aircraft destined to the United States.	Increased security through the targeting and mitigation of threats posed by air cargo prior to loading onboard aircraft destined to the United States.

3. Background

In December 2010, CBP and TSA launched the Air Cargo Advance Screening (ACAS) pilot program. Participants in this pilot program transmit a subset of air manifest data elements (19 CFR 122.48a), as early as possible prior to loading of the cargo onto an aircraft destined to the United States. CBP believes this pilot program has proven successful by not only mitigating risks to the United States, but also minimizing costs to the private sector. CBP is, therefore, formalizing the pilot and making the ACAS program mandatory for any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard. CBP has, however, identified minor changes to the ACAS program that will increase the efficiency of targeting and mitigation of risks to air cargo destined to the United States. Specifically, CBP is making the following modifications from the pilot: (1) Minor modifications to the definition of the consignee name and address data element required under the pilot (see Table 4 for a description of each data element under the rule); (2) requiring the master air waybill (MAWB) number in certain circumstances (see Table 4 for a more detailed explanation); (3) requiring inbound air carriers to provide the flight departure message (FDM) under the 19 CFR 122.48a time frames,²⁹ and (4) requiring the filer to obtain a

²⁹ In addition to the ACAS data elements described above, the regulations also require inbound carriers to transmit a flight departure message (FDM) to CBP upon departure or four hours prior to arrival in the United States (*i.e.*, on the same timeframe as the 19 CFR 122.48a data). The FDM is used for ACAS enforcement (*i.e.*, to determine whether the ACAS filing was submitted on time), rather than targeting, and thus is not considered an ACAS data element. This information is already routinely provided by carriers on this timeframe and thus is not considered further in this analysis (Personal communication with Program Manager, Cargo and Conveyance Security Directorate, CBP, May 16, 2016.)

bond. CBP is amending the bond conditions to include an agreement to comply with ACAS requirements.

TABLE 4—ACAS DATA ELEMENTS

Data element	Description
(1) Shipper name and address.	The name and address of the foreign vendor, supplier, manufacturer, or other similar party is acceptable. The address of the foreign vendor, etc., must be a foreign address. The identity of a carrier, freight forwarder or consolidator is not acceptable.
(2) Consignee name and address.	The name and address of the party to whom the cargo will be delivered regardless of the location of the party; this party need not be located at the arrival or destination port.
(3) Cargo description	A precise cargo description or the 6-digit Harmonized Tariff Schedule (HTS) number. Generic descriptions, specifically those such as “FAK” (“freight of all kinds”), “general cargo,” and “STC” (“said to contain”) are not acceptable.
(4) Total quantity based on the smallest external packing unit.	For example, 2 pallets containing 50 pieces each would be considered as 100, not 2.
(5) Total weight of cargo	Weight of cargo expressed in either pounds or kilograms.
(6) Air waybill number	For non-consolidated shipments, the air waybill number is the International Air Transport Association (IATA) standard 11-digit number, as provided in 19 CFR 122.48a(d)(1)(i). For consolidated shipments, the air waybill number is the HAWB number. As provided in 19 CFR 122.48a(d)(2)(i), the HAWB number may be up to 12 alphanumeric characters (each alphanumeric character that is indicated on the HAWB must be included in the electronic transmission; alpha characters may not be eliminated). The air waybill number must be the same in the ACAS and 19 CFR 122.48a filings.
(7) Master air waybill number.	As provided in 19 CFR 122.48a(d)(1)(i), the MAWB number is the IATA standard 11-digit number. The MAWB number is required under the following circumstances: <ul style="list-style-type: none"> • The ACAS filer is also transmitting all the data elements required for the 19 CFR 122.48a filing under the ACAS time frame (i.e., in a single filing).¹ • The inbound carrier wants the ability to receive status checks from CBP on the ACAS assessment of a specific shipment (e.g., for which the ACAS data were transmitted by another party such as a freight forwarder).² • The ACAS filer is a different party from the party that will file the 19 CFR 122.48a data for the cargo.³
(8) Second notify party (optional).	This optional data element allows other relevant stakeholders to receive shipment status messages from CBP. The filing of this data element is likely to be rare. ⁴

Notes:

¹ Based on interviews with the trade, simultaneous submission of the ACAS data and the 19 CFR 122.48a filing is unlikely (see discussion in Chapter 3 of the full regulatory impact analysis).

² In the latter two cases, the MAWB number does not need to be transmitted with the initial ACAS transmission and can be supplied later as long as it is under the ACAS time frame. For example, a freight forwarder can later transmit a carrier-issued MAWB number linking the MAWB and HAWB numbers, which then allows the carrier to receive status checks from CBP by referencing the MAWB number only. In addition to a freight forwarder updating an initial ACAS filing, an inbound carrier can be notified of the ACAS assessment of a shipment by transmitting the entire ACAS filing with MAWB and HAWB information. We note that based on our discussions with ACAS pilot participants, inbound carriers are unlikely to rely solely on an ACAS filing by a freight forwarder; rather, they will make their own ACAS transmission even if the data have previously been transmitted by a freight forwarder (see discussion in Chapter 3 of the full regulatory impact analysis).

³ The MAWB number is generally not required for express consignment shipments since most, if not all, express carriers or operators transmit both ACAS and 19 CFR 122.48a filings for shipments transported on their own aircraft or tendered to other carriers (see discussion in Chapter 3 of the full regulatory impact analysis).

⁴ Based on discussions with ACAS pilot participants.

Table Source: Adapted from Exhibit 1–1 of the full regulatory impact analysis included in the docket of this rulemaking, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule*.

4. Baseline

To give the reader a full understanding of the impacts of ACAS so they can consider the effect of the ACAS program as a whole, our analysis separately considers the impacts of ACAS during the pilot period (2011–2017), the regulatory period (2018–2027), and the com-

bined period. For each time period, the baseline scenario is defined as the “world without ACAS.” During the pilot period (2011–2017), the baseline includes non-ACAS-related costs incurred by industry and CBP in the absence of the pilot program. During the first ten years the interim final rule is likely to be in effect (2018–2027), the baseline similarly includes costs incurred by industry and CBP in the absence of any ACAS implementation (pilot program or interim final rule). For an accounting of the costs of the entire ACAS time period, including the pilot period and the regulatory period, see Table 3.

To estimate the number of businesses affected by the pilot program we use historic data pilot participation. Table 5 shows 2015 ACAS participation by entity type. As shown, in 2015, 32 pilot participants combined to file over 80 million ACAS filings.

TABLE 5—ESTIMATED NUMBER OF ENTITIES OR FILERS AND SHIPMENTS AFFECTED BY THE PILOT, BY ENTITY TYPE
[Calendar year 2015]

Entity type	Number of entities ¹	Total number of ACAS filings	Average number of ACAS filings per entity
Passenger Carriers	11	2,518,699	228,973
Cargo Carriers	4	643,693	160,923
Express Carriers	5	76,395,500	15,279,100
Freight Forwarders	12	1,438,884	119,907
Total	32	80,996,776	2,531,149

Notes:

¹ The number of entities includes both operational and data quality analysis pilot participants. It excludes one pilot participant that became inactive in 2016, and two participants whose entity types and operational status were unknown. CBP’s 2013–2015 ACAS pilot program data listed a total of 35 entities; however, as of October 2016 CBP reports 32 operational and data quality participants.

Numbers may not sum due to rounding.

Table Source: Exhibit 3–4 of the full regulatory impact analysis included in the docket of this rulemaking, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule*.

To estimate the number of filers who would be affected by ACAS in the postpilot period, we use the data on 19 CFR 122.48a filings for any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard. As the ACAS filing is a subset of the 19 CFR 122.48a data, these data serve as a good representation of the number of entities that would be affected by the rule. As shown

in Table 6 below, using 2015 19 CFR 122.48a data, CBP has identified 293 19 CFR 122.48a data filers that have filed approximately 93.6 million air waybills.³⁰

TABLE 6—ESTIMATED NUMBER OF ENTITIES OR FILERS AND SHIPMENTS POTENTIALLY AFFECTED BY THE RULE, BY ENTITY TYPE [Calendar year 2015]

Entity type	Number of entities ¹	Number of air waybills, in millions ²	Number of shipments, in millions ³
Passenger Carriers	129	7.87	4.23
Cargo Carriers	56	2.26	1.74
Express Carriers	22	79.2	79.0
Freight Forwarders ⁴	83	4.30	4.29
Unknown ⁵	3	0.00	0.00
Total ⁶	293	93.6	89.2

Notes:

¹ Number of entities represents the number of unique filers identified in the ACE data after aggregating filer names and associated originator codes.

² The number of air waybills may include master, house, and split air waybills filed under ACE, and is indicative of an entity's total volume of manifest transactions, rather than shipments.

³ Number of shipments based on the number of HAWBs filed under ACE.

⁴ Freight Forwarders included in this table are permitted to file the 19 CFR 122.48a data due to their additional classification by CBP as deconsolidators and broker/deconsolidators (71 entities with 4.03 million shipments). They also include those classified as brokers (12 entities with 0.27 million shipments).

⁵ The 2013 ACE data includes three filers for which the name and entity type could not be identified. These three filers had a combined number of only 73 air waybills and 17 HAWBs in 2013.

⁶ Numbers may not sum due to rounding.

Source: IEC analysis of ACE data provided by CBP's OFO on May 5, June 4, June 23, and July 3, 2014.

Table Source: Exhibit 2-2 of the full regulatory impact analysis included in the docket of this rulemaking, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule*.

Please see chapter 2 of the full regulatory impact analysis included in the docket of this rulemaking for additional information on the baseline analysis.

5. Costs

During interviews with pilot program participants, key activities necessary for pilot participation were identified. As discussed in the full regulatory impact analysis, we developed a methodology for estimating associated pilot program costs, which are sunk costs for the purpose of deciding whether to continue the ACAS program in the future and are thus reported separately from costs in the 10-year period of analysis for the post-pilot period. These costs are useful when evaluating the effectiveness of the ACAS program as a whole,

³⁰ A small number of freight forwarders have participated in the ACAS pilot and may continue to make ACAS filings voluntarily when the rule is promulgated. Interviews with the trade, however, suggest that most freight forwarders who are not already participating are unlikely to begin participating in the future. For a more detailed discussion, please see Chapter 3 of the full regulatory impact analysis included in the docket of this rulemaking (docket number [USCBP-2018-0019]).

including the pilot and the postpilot periods. Our methodology looked at the following activities: (1) Developing information and communication systems required to transmit the ACAS data elements as early as practicable; (2) training staff and providing outreach to trade partners on the ACAS requirements; (3) developing and implementing business protocols and operations to respond to and resolve ACAS referrals and address DNL instructions issued by CBP and establishing and providing 24 × 7 point of contact capabilities; and (4) responding to and resolving ACAS referrals issued by CBP (*i.e.*, identify, locate, and/or screen cargo) and providing requested data to CBP. Below, Table 7 presents the estimated costs of the ACAS pilot participants.

TABLE 7—TOTAL ESTIMATED COSTS OF THE ACAS PILOT PROGRAM FOR INDUSTRY BY ACAS-RELATED ACTIVITY (\$2016, MILLIONS), 2013 TO 2017

Year	Upfront, one-time costs			Recurring costs		Total
	IT systems	Training/outreach	Protocols/operations	IT systems	Referral response	
2013	\$3.4	\$2.0	\$7.6	\$3.8	\$0.7	\$17.5
2014	0.0	0.0	0.0	3.8	0.7	4.5
2015	0.0	0.0	0.0	3.8	0.2	4.0
2016	0.0	0.0	0.0	3.8	0.2	4.0
2017	0.0	0.0	0.0	3.8	0.2	4.0
Total (undiscounted)	3.4	2.0	7.6	18.9	2.0	34.0
Total Present Value (3% Discount Rate)	3.7	2.2	8.3	19.5	2.1	35.9
Total Present Value (7% Discount Rate)	4.2	2.5	9.3	20.3	2.3	38.6

Note: Numbers may not sum due to rounding.

Table Source: Exhibit ES-3 of the full regulatory impact analysis included in the docket of this rulemaking, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule*.

Given that the requirements of the rule are similar to those of the pilot program, the methodology developed to assess pilot program costs is used to estimate the incremental costs of the rule for both pilot program participants and non-participants over a 10-year post-pilot period of analysis (2018–2027). The most significant costs are the one-time, upfront and recurring costs associated with developing and implementing the necessary protocols and operations to respond to and take the necessary action to address ACAS referrals. Total costs to industry are greatest for the passenger carriers, followed by cargo carriers, express carriers, and freight forwarders. The costs are greatest for passenger carriers, as a group, because they account for more than half of all regulated entities, and they tend not to be already fully operational under the ACAS pilot. In future years,

express carriers and large freight forwarders are likely to experience higher costs on a per entity basis due to a higher transaction volume (*i.e.*, greater number of ACAS filings).

As shown in Table 8, CBP estimates that over a 10-year post-pilot period of analysis, the rule will approximately cost between a total present value of \$245.7 million and \$297.9 million (in 2016 dollars) assuming discount rates of seven and three percent, respectively. Annualized, it is estimated that this rule will cost between \$36.0 million and \$37.4 million (in 2016 dollars) depending on the discount rate used. The cost estimates include both the onetime, upfront costs and recurring costs of the activities undertaken by the affected entities to comply with the rule.

TABLE 8—TOTAL ESTIMATED COSTS OF THE ACAS RULE BY ENTITY TYPE (\$2016, MILLIONS), 2018–2027

Entity type	Number of entities	Three percent discount rate		Seven percent discount rate	
		Total present value costs	Annualized costs	Total present value costs	Annualized costs
Passenger Carrier	129	\$91.4	\$11.0	\$78.3	\$11.9
Cargo Carrier	56	38.4	4.6	32.9	5.0
Express Carrier	22	34.0	4.1	28.2	4.3
Freight Forwarder	8	13.8	1.7	11.0	1.7
Government	N/A	120.3	14.5	95.3	14.5
Total	215	297.9	36.0	245.7	37.4

Table Source: Exhibit 3–27 of the full regulatory impact analysis included in the docket of this rulemaking, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule*.

Please see chapter 3 of the full regulatory impact analysis included in the docket of this rulemaking for additional information on the cost analysis.

6. Benefits

The purpose and intended benefit of this rule is that it would help prevent unauthorized weapons, explosives, chemical and/or biological weapons, weapons of mass destruction (WMDs) and other dangerous items from being loaded onto aircraft destined to the United States. As mentioned above, several incidents over the last several years have demonstrated the continued focus of terrorist actors to exploit vulnerabilities within the global supply chain. In order to continue to meet this threat, CBP and TSA must combine capabilities and scopes of authority to implement a comprehensive and tactical risk assessment for capability. CBP needs certain information earlier in the process

so that it can work with TSA to identify high-risk cargo before it is loaded onto an aircraft. The ACAS program is intended to satisfy this need. The results of the ACAS pilot program demonstrate that CBP is receiving actionable information in time to prevent dangerous cargo from being loaded onto an aircraft. Since the inception of the ACAS pilot program, CBP has identified a significant number of air cargo shipments that have potential ties to terrorism and, therefore, may represent a threat to the safety and security of the aircraft. In each instance, CBP issued ACAS referrals and the inbound air carrier or other eligible ACAS filer performed or confirmed the prior performance of enhanced cargo screening pursuant to TSA-approved methods.³¹

Ideally, the quantification and monetization of the benefits of this regulation would involve estimating the current baseline level of risk of a successful terrorist attack, absent this regulation, and the incremental reduction in risk resulting from implementation of the regulation. We would then multiply the change by an estimate of the value individuals place on such a risk reduction to produce a monetary estimate of benefits. However, existing data limitations prevent us from quantifying the incremental risk reduction attributable to this rule. As a result, we performed a “break-even” analysis to inform decision-makers of the frequency at which an attack would need to be averted for the avoided consequences of a successful terrorist attack to equal the costs of the rule (also referred to as the critical event avoidance rate).

In the break-even analysis, we identified possible terrorist attack scenarios that may be prevented by the regulation. These scenarios and corresponding consequence data are identified using TSA’s Transportation Sector Security Risk Assessment (TSSRA) 4.0 model. TSSRA 4.0 is a Sensitive Security Information (SSI)³² report that was produced in response to DHS Appropriations legislation (Pub. L. 110–396/Division D and Pub. L. 111–83), which requires DHS through TSA to conduct a comprehensive risk assessment. CBP reviewed TSSRA scenarios that involve the detonation of an explosive device onboard commercial aircraft destined to United States. The

³¹ If TSA’s existing protocols identified a need for enhanced screening prior to the issuance of an ACAS referral, enhanced screening may have already been performed to satisfy the TSA requirements prior to the referral. In that case, the entity responsible for responding to the ACAS referral would resolve the referral for screening by confirming that enhanced screening had been performed.

³² “Sensitive Security Information” or “SSI” is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

consequences include deaths, nonfatal injuries, property loss, and rescue and clean-up costs. The break-even analysis compares the annualized costs of the regulation to the avoided direct costs of each event to estimate the number of events that would have to be avoided in a single year for the avoided consequences of a successful terrorist attack to equal the costs of the rule. The break-even results are also described in terms of risk reduction required, for example, a 0.25 reduction in the probability of an event occurring in a single year implies that one additional event must be avoided in a four-year period.

To allow the reader to evaluate the benefits of ACAS against both the post-pilot costs of the rule and the ACAS program as a whole, we include two break even analyses. Table 9, below, indicates what would need to occur for the post-pilot costs of the rule to equal the avoided consequences of a successful terrorist attack, assuming the rule only reduces the risk of a single type of attack. For the lower consequence estimate, CBP estimates the regulation must result in the avoidance of a terrorist attack event about every 5.4 to 5.6 months for the avoided consequences of a successful terrorist attack to equal the costs of the rule. For the higher consequence estimate, CBP estimates that the regulation must result in the avoidance of a terrorist attack event in a time period of about every 63.1 years to 65.7 years for the avoided consequences of a successful terrorist attack to equal the costs of the rule. These estimates reflect property loss, nonfatal injuries, and fatalities assumed in the TSSRA model. The value of avoided fatalities substantially increases the consequence estimates relative to the value of the other consequences such as nonfatal injury and property loss. Table 10 shows the same information for the entire ACAS period (2011–2027).

TABLE 9—SUMMARY OF FINDINGS

Discount rate	Annualized costs 2018–2027 (2016 million dollars)	Economic consequences of terrorist attack ²	Benefits of the regulation equal its costs if: ¹	
			Number of events that must be avoided in ten years ³	Critical event avoidance rate ⁴
Three Percent	\$36.0	Lower Estimate ..	21.5	One event every 5.6 months.
		Higher Estimate .	0.2	One event every 65.7 years.
Seven Percent	37.4	Lower Estimate ..	22.4	One event every 5.4 months.

Discount rate	Annualized costs 2018–2027 (2016 million dollars)	Economic consequences of terrorist attack ²	Benefits of the regulation equal its costs if: ¹	
			Number of events that must be avoided in ten years ³	Critical event avoidance rate ⁴
		Higher Estimate .	0.2	One event every 63.1 years.

Notes:

¹ Reflects the range of averted cost estimates associated with attack scenarios in TSA’s TSSRA model involving the detonation of an explosive device on board a commercial passenger or one or multiple cargo aircraft destined to the United States where the aircraft is destroyed.

² Results assume regulation reduces risk of a single type of attack only. The rule will likely reduce the risk of multiple numbers and types of attacks simultaneously.

³ Indicates the number of terrorist attack events that would have to be avoided in a single year for the avoided consequences of a successful terrorist attack to equal the costs of the rule.

⁴ Indicates the frequency at which the event would need to be averted for the avoided consequences of a successful terrorist attack to equal the costs of the rule. Results rounded to two significant digits.

Table Source: Adapted from Exhibit 4–1 of the full regulatory impact analysis included in the docket of this rulemaking, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule*.

TABLE 10—SUMMARY OF FINDINGS

Discount rate	Annualized costs 2011–2027 (2016 dollars)	Economic consequences of terrorist attack ²	Benefits of the regulation equal its costs if: ¹	
			Number of events that must be avoided in 17 years ³	Critical event avoidance rate ⁴
Three Percent ..	\$26.1	Lower Estimate ..	6.6	One event every 7.7 months.
		Higher Estimate .	0.2	One event every 90.4 years.
Seven Percent ..	25.1	Lower Estimate ..	25.6	One event every 8.0 months.
		Higher Estimate .	0.2	One event every 94.0 years.

Notes:

¹ Reflects the range of averted cost estimates associated with attack scenarios in TSA’s TSSRA model involving the detonation of an explosive device on board a commercial passenger or one or multiple cargo aircraft destined to the United States where the aircraft is destroyed.

² Results assume regulation reduces risk of a single type of attack only. The rule will likely reduce the risk of multiple numbers and types of attacks simultaneously.

³ Indicates the number of terrorist attack events that would have to be avoided in a single year for the avoided consequences of a successful terrorist attack to equal the costs of the rule.

⁴ Indicates the frequency at which the event would need to be averted for the avoided consequences of a successful terrorist attack to equal the costs of the rule. Results rounded to two significant digits.

Table Source: Adapted from Exhibit 4–2 of the full regulatory impact analysis included in the docket of this rulemaking, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule*.

Please see chapter 4 of the full regulatory impact analysis included in the docket of this rulemaking for additional information on the break-even analysis.

7. Alternatives

In accordance with Executive Order 12866, the following three alternatives have been considered:

(1) *Alternative 1 (the chosen alternative)*: Six mandatory ACAS data elements and, as applicable, one conditional data element (the MAWB number) required no later than prior to loading of the cargo onto any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard;

(2) *Alternative 2*: Six mandatory ACAS data elements and, as applicable, one conditional data element (the MAWB number), required no later than two hours prior to the estimated time of departure of any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard; and

(3) *Alternative 3*: Same as Alternative 1, however, the one conditional ACAS data element, the MAWB number, is not required for any shipment.

These three alternatives represent adjusting the required timing for ACAS transmittal and excluding a particular ACAS data element, namely the MAWB number. In comparison to Alternative 1 (the preferred alternative), Alternative 2 advances (makes earlier) the required time frame for ACAS transmission, which would provide CBP more time to conduct its risk assessment and mitigate any identified risk prior to aircraft departure. In comparison to Alternative 1, Alternative 3 excludes the MAWB number data element for any shipment. In general, CBP needs to receive the MAWB number so that it can provide the location of the high-risk cargo and will allow CBP to associate the cargo with an ACAS submission. Some inbound carriers also prefer that the forwarder-issued HAWB and carrier-issued MAWB numbers be linked so that they can verify that an ACAS assessment for a particular shipment they accepted from an ACAS-filing freight forwarder has been completed. However, some freight forwarders expressed issues with providing the MAWB number in time for the ACAS filings because they may not be finalized until just prior to aircraft departure. By evaluating these three alternatives, CBP is seeking the most favorable balance between security outcomes and impacts to air transportation. Based on this analysis of alternatives, CBP has determined that Alternative 1 provides the most favorable balance between security outcomes and impacts to air transportation.

Please see chapter 5 of the full regulatory impact analysis included in the docket of this rulemaking for additional information on the alternatives analysis.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires federal agencies to examine the impact a rule would have on small entities. 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). Because this rule is being issued as an interim final rule under the good cause exception (5 U.S.C. 553(b)(B)), as set forth above, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. 601–612).

Nonetheless, in the docket of this rulemaking (docket number [US-CBP–2018–0019]), CBP has included a regulatory impact analysis entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule*. This document contains a threshold analysis that estimates the impacts of the rule on small entities.

The threshold analysis identified that out of 215 total affected entities, 86 are U.S. entities and 61 U.S. entities of the 86 U.S. entities affected by this rule may be small businesses. These small entities are in 4 distinct industries and generally represent 50 percent or more of their respective industries. As such, CBP believes that a substantial number of small entities may be affected by this rule. The threshold analysis also identified that the percentage of first-year costs relative to the average annual revenue of the small entities potentially affected by this rule range from a low of 0.4 percent to a high of 1.3 percent. CBP believes that impacts identified in the threshold analysis may be considered a significant economic impact.

CBP has prepared the following initial regulatory flexibility analysis. Please see chapter 5 of the full regulatory impact analysis included in the docket of this rulemaking for additional information on the threshold analysis.

1. A description of the reasons why action by the agency is being considered.

In October 2010, concealed explosive devices were discovered in cargo onboard two aircraft destined to the United States. This incident provides evidence of the potential for terrorists to use the international air cargo system to place high-risk cargo such as unauthor-

ized weapons, explosives, chemical and/or biological weapons, WMDs, or other destructive substances or items in the cargo of a United States-bound aircraft with the intent of bringing down the aircraft. The exposure from international air cargo requires a security strategy to detect, identify, and deter this threat at the earliest point in the international supply chain, before the cargo departs for the United States.

2. A succinct statement of the objectives of, and legal basis for, the rule.

Current CBP regulations require air carriers to electronically transmit air manifest data in advance of their cargo's arrival in the United States (codified in 19 CFR 122.48a). These 19 CFR 122.48a data are required to be provided to CBP no later than the time of aircraft departure for the United States (from foreign ports in all of North America, including Mexico, Central America, the Caribbean, and Bermuda as well as South America north of the equator), or no later than four hours prior to aircraft arrival in the United States (from foreign ports located everywhere else). CBP determined, however, that it is necessary to receive a subset of the 122.48a data prior to loading of the cargo aboard the aircraft in order to more effectively complete its risk targeting and identification, and mitigate any identified risk, prior to aircraft departure.

The rule, which was developed by CBP in coordination with the trade, including consultation with the Commercial Customs Operations Advisory Committee (COAC), represents an important component of DHS's evolving layered strategy for securing the cargo supply chain from terrorist-related activities. The rule is designed to identify high-risk air cargo, such as unauthorized weapons, explosives, chemical and/or biological weapons, WMDs, or other destructive substances or items prior to the aircraft's departure for the United States through a targeted intelligence-based risk assessment. The principal security benefit of the new rule will be more precise identification and mitigation of at-risk shipments prior to the departure of the U.S.-bound aircraft. This information will allow for better targeting and will increase the safety of the aircraft during flight.

3. A description of, and, where feasible, an estimate of the number of small entities to which the rule will apply.

As discussed earlier in this section, the rule applies to 129 passenger carriers, 56 cargo carriers, 22 air express couriers, and 8 freight

forwarders. Of these, 86 entities are U.S.-owned companies. Among the U.S.-owned companies, 61 meet SBA's definition of a small entity (See Table 11).

TABLE 11—ESTIMATED NUMBER OF POTENTIALLY AFFECTED U.S. ENTITIES THAT ARE SMALL

Affected industry (NAICS code)	Total number of affected entities ¹	Total number of affected U.S. entities	SBA small business size standard ²	Number of U.S. entities that meet SBA's definition of a small entity ³	Proportion of U.S. entities that are small (%)
Scheduled Passenger Air Transportation (481111).	129	30	1,500 employees	18	60
Scheduled Freight Air Transportation (481112).	56	31	1,500 employees	27	87
Freight Transportation Arrangement (488510).	8	7	\$15 million in average annual receipts.	3	43
Air Courier and Express Delivery Services (492110).	22	18	1,500 employees	13	72
Total	215	86	N/A	61	71

Notes:

¹ Some of the 215 entities are foreign-owned companies.

² "Table of Small Business Size Standards", U.S. Small Business Administration, accessed at http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf on October 3, 2016.

³ If no data were available, we assume the entity is small. This may overstate the number of small entities. None of the small entities identified were non-profit organizations.

Table Source: Exhibit 5-2 of the full regulatory impact analysis included in the docket of this rulemaking, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule*.

4. *A description of the projected reporting, record-keeping and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

The rule requires the transmission of six mandatory ACAS data elements to CBP as early as practicable, but no later than prior to loading of the cargo onto any inbound aircraft required to make entry under 19 CFR 122.41 that will have commercial cargo aboard. The six ACAS data elements include: (1) Shipper name and address; (2) consignee name and address; (3) cargo description; (4) total quantity based on the smallest external packing unit; (5) total weight of cargo; and (6) air waybill number. The rule also requires the ACAS filer to transmit a MAWB number under certain conditions, as described in

Chapter 1 of the full regulatory impact analysis.³³ Filers will include passenger airlines (NAICS 481111), cargo-only airlines (NAICS 481112), freight forwarders (NAICS 488510), and air courier and express delivery services (NAICS 492110).

Generally, regulated entities will meet this requirement using existing information and communication systems; however, these systems, along with certain business processes, may require modification. In addition, some entities may purchase new systems or adopt new processes. In either case, new training will be required for existing staff (generally logistics professionals and support staff). In addition, entities will need to designate a 24/7 point of contact to respond to DNL instructions issued by CBP. Costs that may be incurred by these small entities in the first year of the rule are summarized in Table 12. For a detailed discussion of the derivation of the cost estimates, *see* Chapter 3 of the full regulatory impact analysis.

**TABLE 12—FIRST YEAR COSTS OF THE INTERIM FINAL RULE
RELATIVE TO AVERAGE ANNUAL SMALL ENTITY REVENUES**

Affected industry (NAICS code)	Number of small U.S. entities	Cost per small entity for first year of rule (\$2016) ¹	Average annual revenues of small entities (\$2016) ²	Percentage of first-year costs relative to average annual revenues ^{3 4} (%)
Scheduled Passenger Air Transportation (481111)	18	\$420,000	\$35,387,000	1.2
Scheduled Freight Air Transportation (481112)	27	420,000	120,408,000	0.3
Freight Transportation Arrangement (488510)	3	17,400	3,503,000	0.5
Air Courier and Express Delivery Services (492110)	13	325,000	48,845,000	0.7

Notes:

¹ We assume that many small passenger and cargo carriers (as defined by SBA) incur costs identical to carriers transmitting 100 or more AWBs per year, while some may submit less and incur fewer costs. We assume small freight forwarders (as defined by SBA) transmit between 1,000 and 100,000 AWBs per year. We also assume small express carriers (as defined by SBA) transmit fewer than 15,000 AWBs per year.

² Represents the average of the annual revenues of the entities that are small and for which we were able to obtain revenue data from Hoover's (26 small entities).

³ We also calculate these percentages using the average annual cost (based on analysis and data presented in Chapter 3) instead of first-year costs, finding percentages of 0.2 percent for passenger carriers, 0.1 percent for cargo carriers, 0.5 percent for freight forwarders, and 0.1 percent for air express couriers.

⁴ As a sensitivity analysis, we also report the first-year cost impacts for small passenger and cargo carriers using the lower AWB volumes reported in Chapter 3. Assuming small passenger and cargo carriers transmit fewer than 100 AWBs annually, the average costs equal 0.6 percent and 0.2 percent of revenues, respectively.

⁵ Costs are rounded to the nearest thousand. Totals may not calculate due to rounding.

Table Source: Exhibit 5-4 of the full regulatory impact analysis included in the docket of this, entitled *Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Interim Final Rule: Air Cargo Advance Screening (ACAS) Rule*.

³³ In addition to the ACAS data elements described above, the regulations also require inbound carriers to transmit a flight departure message (FDM) to CBP upon departure or four hours prior to arrival in the United States (*i.e.*, on the same timeframe as the 19 CFR 122.48a data). This information is already routinely provided by carriers on this timeframe and thus is not considered further in this analysis (Personal communication with Program Manager, Cargo and Conveyance Security Directorate, CBP, May 16, 2016.)

5. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the rule.

The data elements required to be transmitted in this rule are, largely, already required under existing Federal rules (*i.e.*, 19 CFR 122.48a). The main impact of this rule is to advance (make earlier) the time frame at which a subset of the existing 19 CFR 122.48a data elements for air cargo are required. Refer to Chapter 1 of the full regulatory impact analysis for further detail.

6. An establishment of any significant alternatives to the rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the rule on small entities.

CBP does not identify any significant alternatives to the rule that specifically address small entities. Due to the security nature of the regulation, CBP is unable to provide an alternative regulatory framework for small entities that would not jeopardize the security of the United States. Excluding small entities would undermine the rule and increase in-flight security risks for aircraft operated by small entities. We evaluate two alternatives in our analysis, in addition to the chosen alternative; however as discussed in Chapter 3 of the full regulatory impact analysis, these alternatives affect all regulated entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. The regulation is exempt from these requirements under 2 U.S.C. 1503 (Exclusions) which states that the UMRA “shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress and any provision in a proposed or final Federal regulation” that “is necessary for the national security or the ratification or implementation of international treaty obligations.”

E. Privacy

CBP will ensure that all Privacy Act requirements and policies are adhered to in the implementation of this rule, and will issue or update any necessary Privacy Impact Assessment and/or Privacy Act System of Records notice to fully outline processes that will ensure compliance with Privacy Act protections.

F. Paperwork Reduction Act

An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collection of information regarding electronic information for air cargo required in advance of arrival under 19 CFR 122.48a was previously reviewed and approved by OMB in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under OMB Control Number 1651-0001. When CBP began the ACAS pilot, however, CBP did not publish the collection of information specific to the pilot for notice and comment under the Paperwork Reduction Act because there is no new burden associated with ACAS, just a change in when the data is submitted. Any additional cost to file the ACAS subset of the 19 CFR 122.48a filing on the ACAS time frame was not captured under the OMB Control Number mentioned above. CBP requests comment on what, if any, additional burden ACAS represents. CBP notes that when this rule is implemented, carriers will have the option to file the full 19 CFR 122.48a filing with the ACAS time frame to satisfy both requirements in a single filing. Many carriers are able to submit their 19 CFR 122.48a information well in advance of the flight and this would allow them to only file once, if they choose to do so. This document adds an additional data element, the flight departure message, to 19 CFR 122.48a and this collection. This data element is readily accessible for those filers for whom it is required and it is already routinely provided. The collection of information for ACAS under 19 CFR 122.48b is comprised of a subset of information already collected pursuant to 19 CFR 122.48a under this approval, but information for ACAS will now be collected earlier. Filers will need to modify their systems in order to provide these data earlier in an automated manner, but as the only new required data element (the flight departure message) is already routinely provided on a voluntary basis and is readily available, CBP does not estimate any change in the burden hours as a result of this rule.

The resulting estimated burden associated with the electronic information for air cargo required in advance of arrival under this rule is as follows:

Estimated Number of Respondents: 215.

Estimated Number of Total Annual Responses: 1,466,400.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 366,600.

Comments concerning the accuracy of this cost estimate and suggestions for reducing this burden should be directed to the Office of

Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, at *DHSDeskOfficer@omb.eop.gov*. A copy should also be sent to Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, Attention: Border Security Regulations Branch, 90 K Street NE, 10th Floor, Washington, DC 20229 or by email at *CBP_PRA@cbp.dhs.gov*.

The list of approved information collections contained in 19 CFR part 178 is revised to add an appropriate reference to section 122.48b to reflect the approved information collection.

VI. Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a). Accordingly, this document is signed by the Secretary of Homeland Security.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 113

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

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Alcohol and alcoholic beverages, Cigars and cigarettes, Customs duties and inspection, Drug traffic control, Freight, Penalties, Reporting and recordkeeping requirements, Security measures.

19 CFR Part 141

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 178

Reporting and recordkeeping requirements.

19 CFR Part 192

Aircraft, Exports, Motor vehicles, Penalties, Reporting and recordkeeping requirements, Vessels.

Regulatory Amendments

For the reasons set forth above, CBP amends parts 12, 113, 122, 141, 178, and 192 of title 19 of the Code of Federal Regulations (19 CFR parts 12, 113, 122, 141, 178, and 192) as follows:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and specific authority citation for § 12.3 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Section 12.3 also issued under 7 U.S.C. 135h, 21 U.S.C. 381;

* * * * *

§ 12.3 [Amended]

■ 2. Amend § 12.3(b)(2) and (c) by removing the references to “§ 113.62(m)(1)” and adding in their place “§ 113.62(n)(1)”.

PART 113—CBP BONDS

■ 3. The general authority citation for part 113 continues to read as follows:

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

* * * * *

■ 4. Amend § 113.62 as follows:

■ a. Redesignate paragraphs (l) and (m) as paragraphs (m) and (n);

■ b. Add a new paragraph (l);

■ c. In redesignated paragraph (n)(1), remove the word “or” after the text “(k)(2)” and after the text “(l)”, add “, or (m)”;

■ d. In redesignated paragraph (n)(4), remove the reference to “paragraph (m)(1)” and add in its place “paragraph (n)(1)”; and

■ e. In redesignated paragraph (n)(5), remove the reference to “paragraph (l)” and add in its place “paragraph (m)”.

The addition reads as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(l) *Agreement to comply with Air Cargo Advance Screening (ACAS) requirements.* The principal agrees to comply with all ACAS requirements set forth in §§ 122.48a and 122.48b of this chapter including, but not limited to, providing ACAS data to U.S. Customs and Border Protection in the manner and in the time period prescribed by regu-

lation and taking the necessary action to address ACAS referrals and Do-Not-Load (DNL) instructions as prescribed by regulation. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation.

* * * * *

■ 5. Amend § 113.63 by redesignating paragraphs (h) and (i) as paragraphs (i) and (j) and adding a new paragraph (h) to read as follows:

§ 113.63 Basic custodial bond conditions.

* * * * *

(h) *Agreement to comply with Air Cargo Advance Screening (ACAS) requirements.* The principal agrees to comply with all ACAS requirements set forth in §§ 122.48a and 122.48b of this chapter including, but not limited to, providing ACAS data to U.S. Customs and Border Protection in the manner and in the time period prescribed by regulation and taking the necessary action to address ACAS referrals and Do-Not-Load (DNL) instructions as prescribed by regulation. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation.

* * * * *

■ 6. Amend § 113.64 as follows:

■ a. In paragraph (a), add “or § 122.48b(c)(2)” after the words “as specified in § 122.48a(c)(1)(ii)–(c)(1)(iv)”;

■ b. Redesignate paragraphs (i) through (l) as paragraphs (j) through (m); and

■ c. Add a new paragraph (i) to read as follows:

§ 113.64 International carrier bond conditions.

* * * * *

(i) *Agreement to comply with Air Cargo Advance Screening (ACAS) requirements.* (1) The inbound air carrier agrees to comply with all ACAS requirements set forth in §§ 122.48a and 122.48b of this chapter including, but not limited to, providing ACAS data to U.S. Customs and Border Protection (CBP) in the manner and in the time period prescribed by regulation and taking the necessary action to address ACAS referrals and Do-Not-Load (DNL) instructions as prescribed by regulation. If the inbound air 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) If a party specified in § 122.48b(c)(2) of this chapter provides the ACAS data to CBP, that party, as principal under this bond, agrees to comply with all ACAS requirements set forth in §§ 122.48a and 122.48b of this chapter including, but not limited to, providing ACAS data to CBP in the manner and in the time period prescribed by regulation and taking the necessary action to address ACAS referrals and Do-Not-Load (DNL) instructions as prescribed by regulation. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation, to a maximum of \$100,000 per conveyance arrival.

* * * * *

PART 122—AIR COMMERCE REGULATIONS

■ 7. The general authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

* * * * *

■ 8. Amend § 122.48a as follows:

■ a. Revise the introductory text of paragraph (a);

■ b. In paragraph (c)(3), remove the phrase “, on behalf of the party,”;

■ c. In paragraph (d)(1) introductory text, add the phrase “; and an “A” next to any listed data element indicates that the data element is an ACAS data element that is also subject to the requirements and time frame specified in § 122.48b” before the closing parenthesis;

■ d. In paragraphs (d)(1)(i) and (d)(1)(vii)–(x), add the text “(A)” after the text “(M)”;

■ e. Revise paragraph (d)(1)(xi);

■ f. In paragraph (d)(1)(xvi), remove the word “and” after the last semicolon;

■ g. In paragraph (d)(1)(xvii), remove the period and add in its place the text “; and”;

■ h. Add paragraph (d)(1)(xviii);

■ i. In paragraph (d)(2) introductory text, add the phrase “; and an “A” next to any listed data element indicates that the data element is an ACAS data element that is also subject to the requirements and time frame specified in § 122.48b” before the closing parenthesis;

■ j. In paragraphs (d)(2)(i) and (d)(2)(iii)–(vi), add the text “(A)” after the text “(M)”;

■ k. Revise paragraph (d)(2)(vii).

The revisions and additions read as follows:

§ 122.48a Electronic information for air cargo required in advance of arrival.

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), for any inbound aircraft required to make entry under § 122.41, that will have commercial cargo aboard, U.S. Customs and Border Protection (CBP) must electronically receive from the inbound air carrier and, if applicable, an approved party as specified in paragraph (c)(1) of this section, certain information concerning the inbound cargo, as enumerated, respectively, in paragraphs (d)(1) and (d)(2) of this section. CBP must receive such information according to the time frames prescribed in paragraph (b) of this section. However, a subset of these data elements known as ACAS data and identified in paragraph (d) of this section, is also subject to the requirements and time frame described in § 122.48b. The advance electronic transmission of the required cargo information to CBP must be effected through a CBP-approved electronic data interchange system.

* * * * *

(d) * * *

(1) * * *

(xi) Consignee name and address (M)

(A) (for consolidated shipments, the identity of the container station (see 19 CFR 19.40–19.49), express consignment or other carrier is sufficient for the master air waybill record; for non-consolidated shipments, the name and address of the party to whom the cargo will be delivered is required regardless of the location of the party; this party need not be located at the arrival or destination port);

* * * * *

(xviii) Flight departure message (M) (this data element includes the liftoff date and liftoff time using the Greenwich Mean Time (GMT)/Universal Time, Coordinated (UTC) at the time of departure from each foreign airport en route to the United States; if an aircraft en route to the United States stops at one or more foreign airports and cargo is loaded on board, the flight departure message must be provided for each departure).

(2) * * *

(vii) Consignee name and address (M) (A) (the name and address of the party to whom the cargo will be delivered is required regardless of the location of the party; this party need not be located at the arrival or destination port); and

* * * * *

■ 9. Add § 122.48b to read as follows:

§ 122.48b Air Cargo Advance Screening (ACAS).

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), in addition to the advance filing requirements pursuant to § 122.48a, for any inbound aircraft required to make entry under § 122.41, that will have commercial cargo aboard, U.S. Customs and Border Protection (CBP) must electronically receive from the inbound air carrier and/or another eligible ACAS filer, as specified in paragraph (c) of this section, certain information concerning the inbound cargo, as enumerated in paragraph (d) of this section. CBP must receive such information, known as ACAS data, no later than the time frame prescribed in paragraph (b) of this section. The transmission of the required ACAS data to CBP (ACAS filing) must be effected through a CBP-approved electronic data interchange system. Any ACAS referrals must be resolved in accordance with the provisions and time frame prescribed in paragraph (e) of this section. Any Do-Not-Load (DNL) instruction must be addressed in accordance with the provisions prescribed in paragraph (f) of this section.

(b) *Time frame for presenting data.* (1) *Initial filing.* The ACAS data must be submitted as early as practicable, but no later than prior to loading of the cargo onto the aircraft.

(2) *Update of ACAS filing.* The party who submitted the initial ACAS filing pursuant to paragraph (a) of this section must update the initial filing if, after the filing is submitted, any of the submitted data changes or more accurate data becomes available. Updates are required up until the time frame specified in § 122.48a(b) for submitting advance information under § 122.48a(a).

(c) *Parties filing ACAS data—(1) Inbound air carrier.* If no other eligible party elects to file the ACAS data, the inbound air carrier must file the ACAS data. If another eligible party does elect to file ACAS data, the inbound air carrier may also choose to file the ACAS data.

(2) *Other filers.* The following entities can elect to be ACAS filers, provided they also meet the ACAS filer requirements in paragraph (c)(3) of this section:

(i) All parties eligible to elect to file advance electronic cargo data listed in § 122.48a(c); and

(ii) Foreign Indirect Air Carriers. For purposes of this section, “foreign indirect air carrier” (FIAC) is defined as any person, not a citizen of the United States, who undertakes indirectly to engage in the air transportation of property. A FIAC may volunteer to be an ACAS filer and accept responsibility for the submission of accurate and timely ACAS filings, as well as for taking the necessary action to address any referrals and Do-Not-Load (DNL) instructions when applicable.

(3) *ACAS filer requirements.* All inbound air carriers and other entities electing to be ACAS filers must:

(i) Establish the communication protocol required by CBP for properly transmitting an ACAS filing through a CBP-approved electronic data interchange system;

(ii) Possess the appropriate bond containing all the necessary provisions of § 113.62, § 113.63, or § 113.64 of this chapter;

(iii) Report all of the originator codes that will be used to file ACAS data. If at any time, ACAS filers wish to utilize additional originator codes to file ACAS data, the originator code must be reported to CBP prior to its use; and

(iv) Provide 24 hours/7 days a week contact information consisting of a telephone number and email address. CBP will use the 24 hours/7 days a week contact information to notify, communicate, and carry out response protocols for Do-Not-Load (DNL) instructions, even if an electronic message is sent.

(4) *Nonparticipation by other party.* If a party specified in paragraph (c)(2) of this section does not participate in an ACAS filing, the party that arranges for and/or delivers the cargo to the inbound air carrier must fully disclose and present to the inbound air carrier the required cargo data listed in paragraph (d) of this section; and the inbound air carrier must present this data electronically to CBP under paragraph (a) of this section.

(5) *Required information in possession of third party.* Any other entity in possession of required ACAS data that is not the inbound air carrier or a party described in paragraph (c)(2) of this section must fully disclose and present the required data for the inbound air cargo to either the inbound air carrier or other eligible ACAS filer, as applicable, which must present such data to CBP.

(6) *Party receiving information believed to be accurate.* Where the party electronically presenting the cargo data required in paragraph (d) of this section receives any of this data from another party, CBP will take into consideration how, in accordance with ordinary com-

mercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the data on the basis of what that party reasonably believes to be true.

(d) *ACAS data elements.* Some of the ACAS data elements are mandatory in all circumstances, one is conditional and is required only in certain circumstances, and others are optional. The definitions of the mandatory and conditional ACAS data elements are set forth in § 122.48a.

(1) *Mandatory data elements.* The following data elements are required to be submitted at the lowest air waybill level (*i.e.*, at the house air waybill level if applicable) by all ACAS filers:

- (i) Shipper name and address;
- (ii) Consignee name and address;
- (iii) Cargo description;
- (iv) Total quantity based on the smallest external packing unit;
- (v) Total weight of cargo; and

(vi) Air waybill number. The air waybill number must be the same in the filing required by this section and the filing required by § 122.48a.

(2) *Conditional data element: Master air waybill number.* The master air waybill (MAWB) number for each leg of the flight is a conditional data element. The MAWB number is a required data element in the following circumstances; otherwise, the submission of the MAWB number is optional, but encouraged:

(i) When the ACAS filer is a different party than the party that will file the advance electronic air cargo data required by § 122.48a. To allow for earlier submission of the ACAS filing, the initial ACAS filing may be submitted without the MAWB number, as long as the MAWB number is later submitted by the ACAS filer or the inbound air carrier according to the applicable ACAS time frame for data submission in paragraph (b) of this section; or

(ii) When the ACAS filer is transmitting all the data elements required by § 122.48a according to the applicable ACAS time frame for data submission; or

(iii) When the inbound air carrier would like to receive from CBP a check on the ACAS status of a specific shipment. If the MAWB number is submitted, either by the ACAS filer or the inbound air carrier, CBP will provide this information to the inbound air carrier upon request.

(3) *Optional data elements*—(i) *Second Notify Party*. The ACAS filer may choose to designate a Second Notify Party to receive shipment status messages from CBP.

(ii) Any additional data elements listed in § 122.48a or any additional information regarding ACAS data elements (e.g., telephone number, email address, and/or internet protocol address for shipper and/or consignee) may be provided and are encouraged.

(e) *ACAS referrals*—(1) *Potential referrals*. There are two types of referrals that may be issued by CBP after a risk assessment of an ACAS submission:

(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; and

(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. A referral for screening must be resolved according to TSA-approved enhanced screening methods.

(2) *ACAS referral resolution*. All ACAS filers and/or inbound air carriers, as applicable, must respond to and take the necessary action to address all referrals as provided in paragraphs (e)(2)(i)–(ii) of this section, no later than prior to departure of the aircraft. 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 ACAS referrals are as follows:

(i) *Referral for information*. The ACAS filer is responsible for taking the necessary action to address a referral for information. The last party to file the ACAS data is responsible for such action. For instance, the inbound air carrier is responsible for taking the necessary action to address a referral for information if the inbound air carrier retransmits an original ACAS filer's data and the referral is issued after this retransmission.

(ii) *Referral for screening*. As provided in paragraph (e)(1)(ii) of this section, a referral for screening must be resolved according to TSA-approved enhanced screening methods. If the ACAS filer is a party recognized by TSA to perform screening, the ACAS filer may address a referral for screening directly; if the ACAS filer is a party other than the inbound air carrier and chooses not to address the referral for screening or is not a party recognized by TSA to perform screening, the ACAS filer must notify the inbound air carrier of the referral for screening. The inbound air carrier is responsible for taking the nec-

essary action to address a referral for screening, unless another ACAS filer recognized by TSA to perform screening has taken such action.

(3) *Prohibition on transporting cargo with unresolved ACAS referrals.* The inbound air carrier may not transport cargo on an aircraft destined to the United States until any and all referrals issued pursuant to paragraph (e)(1) of this section with respect to such cargo have been resolved.

(f) *Do-Not-Load (DNL) instructions.* (1) A Do-Not-Load (DNL) instruction will be issued if it is determined that the cargo may contain a potential bomb, improvised explosive device, or other material that may pose an immediate, lethal threat to the aircraft and its vicinity.

(2) As provided in paragraph (c)(3)(iv) of this section, all ACAS filers 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 ACAS filers and/or inbound air carriers, as applicable, must respond and fully cooperate when the entity is reached by phone and/or email when a Do-Not-Load (DNL) instruction is issued. The party with physical possession of the cargo will be required to carry out the Do-Not-Load (DNL) protocols and the directions provided by law enforcement authorities.

(3) The inbound air carrier may not transport cargo with a Do-Not-Load (DNL) instruction.

PART 141—ENTRY OF MERCHANDISE

■ 10. The general authority citation for part 141 and specific authority citation for § 141.113 continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1498, 1624.

* * * * * Section 141.113 also issued under 19 U.S.C. 1499, 1623.

§ 141.113 [Amended]

■ 11. Amend § 141.113(b) by removing the reference to “§ 113.62(m)(1)” and adding in its place “§ 113.62(n)(1)”.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

■ 12. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

§ 178.2 [Amended]

■ 13. Amend § 178.2 by removing “§ 122.48a” and adding in its place “§§ 122.48a, 122.48b”.

PART 192—EXPORT CONTROL

■ 14. The authority citation for part 192 continues to read as follows:

Authority: 19 U.S.C. 66, 1624, 1646c. Subpart A also issued under 19 U.S.C. 1627a, 1646a, 1646b; subpart B also issued under 13 U.S.C. 303; 19 U.S.C. 2071 note; 46 U.S.C. 91.

§ 192.14 [Amended]

■ 15. Amend § 192.14(c)(4)(ii) by removing the reference to “§ 113.64(k)(2)” and adding in its place “§ 113.64(m)(2)”.

Dated: June 4, 2018.

KIRSTJEN M. NIELSEN,
Secretary.

[Published in the Federal Register, June 12, 2018 (83 FR 27380)]

AGENCY INFORMATION COLLECTION ACTIVITIES:**Guam-CNMI Visa Waiver Information**

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; revision and extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than August 13, 2018) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0109 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov*.

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protec-

tion, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number (202) 325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Guam-CNMI Visa Waiver Information.

OMB Number: 1651-0109.

Form Number: CBP Form I-736.

Type of Review: Revision and Extension (with change).

Action: CBP proposes to revise and extend the expiration date of this information collection with an increase to the burden hours due to the proposed changes to the information collected.

Proposed Changes (Items in italics were previously approved under this information collection):

1. *Surname/Family Name (exactly as in passport).*
2. *(Given) Name and Middle Name.*
3. *Are you known by any other names or aliases? (y/n) If yes: Alias Surname/Family Name.*

Alias First (Given) Name.

4. *Date of Birth (mm/dd/yyyy).*

5. *City of Birth.*

6. *Country of Birth.*

7. Gender.

8. Country of Citizenship.

9. What is your National Identification Number?

10. *Passport Number.*

—Issuing Country

—*Passport Issuing Date, (mm/dd/yyyy)*

—Passport Expire Date, (mm/dd/yyyy)

11. Have you ever been a citizen or national of any other country? (Y/N) If yes:

—provide the Country of Citizenship/Nationality.

12. Have you ever been issued a passport or national identity card for travel by any other country? (Y/N) If yes;

—provide Issuing Country, Document Type, Document Number, and Expiration Date (mm/dd/yyyy)

13. Are you now a citizen or national of any other country? (Y/N) If yes, then

—provide the Country of Citizenship/Nationality

14. How did you acquire citizenship/nationality from this country?

15. *Have you applied for an immigrant or nonimmigrant U.S. visa before? If yes, then:*

—*Place you applied*

—*Date you applied (mm/dd/yyyy)*

—*Type of visa Requested*

—*Was visa Issued? (Y/N) If no, then: was application withdrawn or denied (Y/N). If yes, then*

has your Visa ever been cancelled? (Y/N).

16. Are you a member of the CBP Global Entry Program? (Y/N) If yes, provide the PASSID/Membership Number.

17. Are you under the age of fourteen (14)? (Y/N) If yes:

—Father First (Given) Name

—Father Surname/Family Name

—Mother First (Given) Name

—Mother Surname/Family Name

18. PERSONAL CONTACT INFORMATION.

—Email

—Country Code and Phone Number

—Home Address

—City

—State/Province/Region

—Country

19. ADDRESS WHILE IN Guam/CNMI.

—Address

—City

—Guam or CNMI

—Phone Number

20. EMERGENCY CONTACT INFORMATION IN OR OUT OF THE United States.

—Surname/Family Name

—First (Given) Name

—Email Address

—Country Code

—Phone

—Country Name

21. Do you have a physical or mental disorder; or are you a drug abuser or addict; or do you currently have any of the following diseases? Communicable diseases are specified pursuant to section 361(b) of the Public Health Service Act: Cholera, Diphtheria, Tuberculosis infectious, Plague, Smallpox, Yellow Fever, Viral Hemorrhagic Fevers, including Ebola, Lassa, Marburg, Crimean-Congo, Severe acute respiratory illnesses capable of transmission to other persons and likely to cause mortality. (Y/N)

22. Have you ever been arrested or convicted for a crime that resulted in serious damage to property, or serious harm to another person or government authority? (Y/N)

23. Have you ever violated any law related to possessing, using, or distributing illegal drugs? (Y/N)

24. Do you seek to engage in or have you ever engaged in terrorist activities, espionage, sabotage, or genocide? (Y/N)
25. Have you ever committed fraud or misrepresented yourself or others to obtain, or assist others to obtain, a visa or entry into the United States? (Y/N)
26. Have you ever stayed in the United States longer than the admission period granted to you by the U.S. government? (Y/N)
27. Are you currently seeking employment in Guam or CNMI? (Y/N)
28. Were you previously employed in the United States without prior permission from the U.S. government? (Y/N)
29. Have you traveled to, or been present in Iraq, Syria, Iran, Sudan, Libya, Somalia, or Yemen on or after March 1, 2011? (Y/N)

Affected Public: Individuals.

Abstract: Public Law 110–229 provides for certain aliens to be exempt from the nonimmigrant visa requirement if seeking entry into Guam or the Commonwealth of the Northern Mariana Islands (CNMI) as a visitor for a maximum stay of 45 days, provided that no potential threat exists to the welfare, safety, or security of the United States or its territories, and other criteria are met. Upon arrival at a Guam or CNMI Port-of-Entry, each applicant for admission presents a completed I–736 to CBP. CBP Form I–736 is provided for by 8 CFR 212.1(q) and is accessible at: <http://www.cbp.gov/newsroom/publications/forms?title=736&=Apply> or <https://i736.cbp.dhs.gov/I736/#/home>.

Estimated Number of Respondents: 1,560,000.

Estimated Time per Respondent: 19 minutes.

Estimated Total Annual Burden Hours: 492,960.

Dated: June 7, 2018.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

