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Submitted electronically via eRulemaking Portal

Re: Docket No.: USCBP-2021-0009, Advance Electronic Data on International Mail Shipments

The International Mailers' Advisory Group (IMAG), a trade association representing primarily U.S.-based international mailers and shippers, is made up of consolidators, hardware and software solutions providers, platforms, and ecommerce marketplaces. IMAG [members](#) help to facilitate the movement of billions of dollars' worth of goods across borders each year. Members use a wide array of shipping and delivery partners, including designated operators (posts), express consignment operators (ECOs), local couriers, freight forwarders, and new market entrants. Our core mission is to address the barriers to the efficient flow of information and goods across borders.

IMAG submits the following comments to U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS) on the rulemaking on Mandatory Advance Electronic Information for International Mail Shipments.

IMAG acknowledges the importance of advance electronic data (AED) to posts and customs authorities around the world for nations' security reasons, to prevent imports of prohibited goods, and for tax and revenue protection. On the export/outbound side, IMAG members have been providing AED to the Postal Service and ECOs for many years and members continue to make the necessary investments and adjustments to ensure full compliance with all export requirements. The STOP Act, with its focus on stopping the importation of synthetic opioids into the United States through international mail, should also help in curbing counterfeiting and intellectual property rights' violations, which IMAG supports.

The requirement for additional data does not necessarily represent the solution to the problem. Absent accountability from CBP that more data equates to more effective enforcement efforts as evidenced by some form of metrics, the challenges faced by the flood of violative goods in ecommerce shipments will not be mitigated by more data.

Any alleged decline in the transport of opioids and fentanyl via international mail does not resolve the larger problem of illicit drug trafficking, as the decline in international seizures has been countered with a significant increase in seizures of opioids from domestic mail. In furtherance of a key intent of the STOP Act – to tighten security on inbound mail shipments to stop the movement of opioids through the international mail system – we offer the following suggestions for consideration in a final rule.

Building Capacity

IMAG supports the one-year period for informed compliance, as the Postal Service works with foreign postal operators toward full compliance. IMAG believes a capacity-building approach is more effective and will ensure long-term success better than a punitive approach. Rejecting and returning shipments lacking AED is not ideal as it could impact other aspects of the Postal Service's international service center (ISC) operations and impair outbound shipments. With so little available space at ISC, rejected shipments could lead to potential bottlenecks and backlogs on both compliant inbound mail as well as outbound mail. The pandemic has shown how easily backups on ramps can occur and impact all operations at an ISC and cause delays on outbound shipments as well.

Costs and Penalties

IMAG also remains concerned that the cost to return shipments will be borne by users of the Postal Service's international products and services, given that, by law, every USPS product must cover its costs. To this end, IMAG also disagrees with the IFR's direction to CBP to issue \$5,000 penalties to the Postal Service for non-compliance. Again, IMAG worries this cost would fall to users of the Postal Service's international products and services, having to be paid, in most part, by "good actors." Further, it makes little sense that one government agency would fine another when the two agencies are effectively "on the same team" and working together to ensure security in the international mail system. A key goal in the September 2018 action plan, *CBP Strategy to Combat Opioids*, is enhancing collaboration and information-sharing. Penalizing a partner in these efforts would seem to work against that goal.

Given the concern raised in the prior paragraph about costs, IMAG recommends proposing that CBP amend the text in the IFR in proposed section 145.74(g) to authorize USPS to refuse shipments prior to loading the inbound international mail shipment onto the transporting conveyance, if the AED has not been supplied as required no later than loading. Currently, the draft text provides that USPS may refuse shipment for packages after they have been "received." If USPS is required to provide CBP the AED at a point no later than loading, clearly the ability to refuse shipments lacking the AED required prior to loading will result in cost avoidance for all parties, including CBP.

To ensure capacity-building efforts are sincere and persistent, CBP (or an oversight entity, such as the Office of Inspector General or the Government Accountability Office) should monitor USPS efforts to guarantee reasonable progress is being made toward full compliance. In addition, CBP should be judicious in issuing waivers under the exclusion allowances so that countries do their part in building capacity and working toward AED on all shipments. In addition, IMAG worries that issuing extensive waivers opens the door to rerouting and transshipments by bad actors. Today, even in the most disadvantaged of countries, technological solutions and mobile networks are becoming available and should be leveraged to quickly phase out waivers.

Concerns about returning noncompliant shipments and the costs to do so are diminished if CBP receives AED from USPS prior to the foreign post loading the inbound international mail shipment onto the transporting conveyance. This is CBP's stated preferred alternative (with an allowance for electronic updates from USPS if submitted data changes or more accurate data becomes available after the USPS transmits AED). This is also IMAG's preferred alternative and if USPS is authorized to refuse shipments, costs would be mitigated. However, we recognize how things work in the real world. Even if AED is required before loading on the transport conveyance, it is likely some shipments will move before AED is submitted. Again, this raises our concern about costs to return the shipment.

This leads to another important point: the final rule should spell out more explicitly when and how remedial action should be used. The IFR says, "If remedial action is warranted, CBP and USPS will determine the appropriate remedial action. Remedial action includes, but is not limited to, destruction, seizure, controlled delivery or other law enforcement initiatives, or correction of the failure to provide the AED described in this section with respect to the shipments." But it is not clear when remedial action is warranted, or which of the options for remediation should be used. To this end, IMAG recommends CBP include in the regulation a requirement for the development and publication of standards and guidance on when remediation is appropriate.

AED on Documents

IMAG does not believe that AED should be required on documents. First, the sheer number of documents coming through the international mailstream would make this impractical and fairly unworkable. Secondly, under Universal Postal Union regulations, “goods” are no longer allowed as lettermail (letters or flats), meaning they must be mailed as packets or packages and thus subject to AED requirements. While fentanyl could be shipped with documents, CBP’s own data indicate that most fentanyl is coming through the southern border at ports of entry and in sizable quantities. It strikes IMAG that the significant cost and scale of requiring AED on documents does not make sense, with more analysis needed to understand how effective AED is in the overall fight against the opioid epidemic. As the IFR notes: “Requiring all countries to submit AED will close this security gap and increase the seizures from all countries. The exact effect of these seizures on the growing opioid epidemic is less clear. Literature on the effectiveness of supply-side drug policy is both limited and discouraging.”

Metrics

With that in mind, IMAG urges that the final rule include metrics in some form that measure how much collected AED CBP is actually using and whether the additional scrutiny is improving CBP’s targeting and interdiction of high-risk shipments. As noted in the IFR, “Quantification of the benefits of the interim final rule is unusually challenging. While the pilot programs suggest that the rule may result in additional package seizures, it is not possible to extrapolate from any estimated increase in seized packages a number to represent likely benefits, including mortality reductions, from the interim final rule. This is particularly true because of uncertainty about the effectiveness of supply-side drug policies.”

Data for data’s sake is not sound policy. Millions of dollars have been spent on data collection and presentation with little measurement of CBP’s targeting success. IMAG encourages the creation of metrics to define a “success rate” and then measure it annually. The Inspector General for the Department of Homeland Security could measure across all entry modes (postal and ECO) and then publish some sort of aggregate numbers that would be available to the public and other stakeholders.

IMAG is grateful for the opportunity to share our comments. Any questions on the above comments or if further information is requested, please contact Katherine Muth, Executive Director, at 703-867-7002 or katemuth@comcast.net.

Sincerely,



Katherine Muth
Executive Director