

unless, pursuant to an earlier FOIA request, a prior determination to release or withhold the material has been made, the submitter has already provided sufficient information to grant the request for confidential treatment; or the material is otherwise in the public domain.\* \* \*

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#### Appendix A to Part 145—[Amended]

6. In Appendix A remove paragraph (b)(1) and redesignate paragraphs (b)(2) through (b)(13) as (b)(1) through (b)(12), respectively; and in paragraph (g) of Appendix A remove the phrase “from the Division of Trading and Markets, Commodity Futures Trading Commission, 300 South Riverside Plaza, suite 1600 North, Chicago, Illinois 60606 or.”

7. Amend Appendix B to Part 145 by revising paragraph (a)(3) to read as follows:

#### Appendix B to Part 145—Schedule of Fees

(a) \* \* \*

(3) The Commission uses a variety of computer systems to support its operations and store records. Older systems of records, particularly systems involving large numbers of records, are maintained on a mainframe computer. More recently, systems have been developed using small, inexpensive, shared computer systems to store records. Systems of use in particular programmatic and administrative operations may also store records on the workstation computers assigned to particular staff members. For searches of records stored on the Commission's mainframe computer, the use of computer processing time will be charged at \$456.47 for each hour, \$7.61 for each minute, and \$0.1268 for each second of computer processing time indicated by the job accounting log printed with each search. When searches require the expertise of a computer specialist, staff time for programming and performing searches will be charged at \$32.00 per hour. For searches of records stored on personal computers used as workstations by Commission staff and shared access network servers, the computer processing time is included in the search time for the staff member using that workstation as set forth in the other paragraphs under paragraph (a) of Appendix B.

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#### PART 147—OPEN COMMISSION MEETINGS

8. The authority for part 147 continues to read:

**Authority:** Sec. 3(a), Pub. L. 94–409, 90 Stat. 1241 (5 U.S.C. 552b), sec. 101(a)(11), Pub. L. 93–463, 88 Stat. 1391 (7 U.S.C. 4a(j) (Supp. V, 1975)), unless otherwise noted.

##### § 147.3 [Amended]

9. In § 147.3 make the following changes:

- a. Remove the introductory text of paragraph (b)(4)(i).
- b. In paragraphs (b)(4)(i)(A)(2) and (5) remove the following phrase: “*Provided*, The procedure set forth in 17 CFR 1.10(g) is followed.”
- c. In paragraphs (b)(4)(i)(A)(3) and (4) remove the following phrase: “, provided, the procedure set forth in § 1.10(g) of this chapter is followed.”
- d. In paragraph (b)(4)(i)(A)(6) remove the following phrase: “, if the procedure set forth in § 1.10(g) of this chapter is followed.”
- e. In paragraph (b)(4)(i)(A)(8) remove the following phrase: “provided the procedure set forth in § 31.13(m) of this chapter is followed.”

Issued by the Commission.

Dated: December 28, 1998.

**Jean A. Webb,**

*Secretary of the Commission, Commodity Futures Trading Commission.*

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#### DEPARTMENT OF THE TREASURY

##### Customs Service

##### 19 CFR Parts 123, 142, and 178

[T.D. 99–2]

RIN 1515–AC16

##### Land Border Carrier Initiative Program

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations to provide for the Land Border Carrier Initiative Program (LBCIP), a program designed to prevent smugglers of illicit drugs from utilizing commercial land conveyances for their contraband. The program provides for agreements between carriers and Customs in which the carrier agrees to increase its security measures and cooperate more closely with Customs, and Customs agrees to apply, commensurate with the degree of carrier compliance with the terms of the agreement, special administrative

provisions pertaining to penalty amounts and expedited processing of penalty actions if illegal drugs are found on a conveyance belonging to the participating carrier. Further, at certain, high-risk locations along the land border, an importer's continued use of the Line Release method of processing entries of merchandise is conditioned on the use of carriers that participate in the LBCIP. These regulatory changes are designed to improve Customs enforcement of Federal drug laws along the land border by enhancing its ability to interdict illicit drug shipments through additional trade movement information provided by common carriers that voluntarily choose to participate in the LBCIP.

**EFFECTIVE DATE:** February 3, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jim Kelly, Office of Field Operations, Anti-Smuggling Division, (202) 927–0458.

##### SUPPLEMENTARY INFORMATION:

##### Background

In 1984 Customs began an air and sea Carrier Initiative Program (CIP), in part because of Customs growing awareness of an increase in the smuggling of marijuana and cocaine in the South Florida area. Developed under Customs remission and mitigation of penalties authority pursuant to section 618 of the Tariff Act of 1930 (19 U.S.C. 1618), the CIP was grounded in the execution of written Carrier Initiative Agreements between Customs and the common carrier, whereby the carrier agrees to improve cargo and conveyance security, and Customs provides security and drug awareness training.

In 1986, Congress enacted the Anti-Drug Abuse Act of 1986 (Pub. L. 99–570, 100 Stat. 3207; 21 U.S.C. 801 note) (the 1986 Act) to, among other things, strengthen Federal efforts to improve the enforcement of Federal drug laws and enhance the interdiction of illicit drug shipments. Pursuant to the drug interdiction mandates contained in the 1986 Act, in 1995 Customs decided to expand the CIP to land border carriers to address the increasing drug smuggling threat along the southwest border.

This new Land Border Carrier Initiative Program (LBCIP) is designed to prevent smugglers of illicit drugs from utilizing commercial land conveyances for their contraband. The program solicits land and rail carriers to voluntarily enter into agreements with Customs in which the carrier agrees to increase its security measures and cooperate more closely with Customs in identifying and reporting suspected smuggling conduct in exchange for

which Customs agrees to provide training to carrier employees and drivers in the areas of cargo and personnel security, document review techniques, drug awareness, and conveyance search. Further, should illegal drugs be found aboard a conveyance belonging to a participating carrier, Customs agrees to apply, commensurate with the degree of carrier compliance with the terms of the agreement, special administrative provisions pertaining to penalty amounts and expedited processing of penalty actions.

In conjunction with implementing the LBCIP, Customs decided to tie the mutual benefits of Line Release processing to the security offered by the LBCIP at certain, high-risk locations along the southwest border. Thus, Customs planned to require at these designated locations that an importer's continued use of the Line Release method of processing entries of merchandise is conditioned on the use of carriers that participate in the LBCIP. Customs planned to publish a list of these high-risk locations along the southwest border in the **Federal Register**.

On December 30, 1997, Customs published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (62 FR 67765) that proposed to amend the Customs Regulations to provide for the LBCIP and to require that merchandise be transported by a LBCIP participant for merchandise to be processed through use of Line Release at certain high-risk locations. Customs stated in the BACKGROUND portion of the document its intention that the LBCIP would be implemented at the southwest border. Comments were solicited on the proposal. The comment period closed March 2, 1998; four comments were received. The comments and Customs responses are set forth below.

### Analysis of Comments

#### Concerns With the LBCIP, in General

*Comment:* All of the commenters inquired if the LBCIP would be limited to the southwest border. Acknowledging that Customs stated its intention to limit the LBCIP to the Mexican border in the BACKGROUND portion of the NPRM, these commenters pointed out that the proposed regulations did not contain such a limitation and that Customs should clearly indicate in the regulatory text portion of the Final Rule document that the LBCIP will apply only to the Mexican border.

*Customs Response:* The whole reason for expanding the Carrier Initiative

Program (CIP) to include land border carriers is to address the increased drug-smuggling threat to the United States. While that threat presently comes primarily from the southwest border, should that threat find other avenues for entering the U.S., *i.e.*, along the northern border, and if the regulations expressly restrict the LBCIP's application to the southern border, then Customs would not be able to employ the LBCIP as a law enforcement tool to counter the threat from the different direction. On reconsideration of the scope and benefits of the program, it makes more sense to make the program available to all interested carriers than to restrict the program's availability to one border area.

Accordingly, although it was Customs intention at the time it published the NPRM to implement the LBCIP only along the southwest border—where the drug threat to the United States is greatest—because of the interest raised in the comments concerning the application of special administrative provisions (see below), Customs will now make the program available to interested carriers at any Customs land border crossing point. Thus, no change will be made to § 123.71, which describes the LBCIP in general terms, to expressly limit the application of the LBCIP to the southwest border.

*Comment:* Two commenters inquired that if the LBCIP Agreements are only entered into with carriers on the southwest border, will the accompanying special administrative provisions pertaining to the assessment and mitigation of penalties for carriage of controlled substances apply only at the Mexican border, and not the Canadian border?

*Customs Response:* As mentioned above, because of comments concerned about the application of special administrative provisions, Customs has decided to expand the availability of the LBCIP to interested carriers at any land border crossing location. Accordingly, the issues of limited LBCIP participation and application of special administrative provisions are rendered moot.

*Comment:* One commenter wanted Customs to define a "high-risk" area in the regulations, stating that carriers need to know whether they are operating in such areas, which can effect carrier safety and security and impact operational efficiency. This commenter also inquired that should Canadian land border ports ever be designated as "high risk", will Customs afford Canadian carriers fair and appropriate notice so that they can meet the requirements of the LBCIP.

Along this line of inquiry, another commenter stated that compliance with the LBCIP is only a requirement for carriers participating in Line Release and that the LBCIP should remain a voluntary program for carriers not participating in Line Release.

*Customs Response:* These comments reveal a certain confusion concerning how the LBCIP is designed to operate as a voluntary, stand-alone program and how it interrelates with the Line Release-method of processing certain merchandise. As provided in proposed § 123.71, the LBCIP is a voluntary program—for carriers—designed to assist Customs in preventing the smuggling of controlled substances into the United States. The LBCIP is independent of Line Release processing, which is an automated method to expedite the release of certain shipments—for importers. However, at certain land border crossing locations, designated "high risk" by Customs, an importer's continued use of Line Release processing will be contingent on the importer's use of carriers that participate in the LBCIP. Accordingly, if there are no carriers at a designated high-risk area that participate in the LBCIP, then the importer cannot use the Line Release program.

"High-risk" locations—where continued use of Line Release will be conditioned on the importer's use of carriers that participate in the LBCIP—currently designated by Customs are:

1. Calexico, CA;
2. Otay Mesa, CA;
3. Tecate, CA;
4. Douglas, AZ;
5. Nogales, AZ;
6. Brownsville, TX;
7. Del Rio, TX
8. Eagle Pass, TX;
9. El Paso, TX;
10. Hidalgo, TX, the cargo-processing center at Pharr;
11. Laredo, TX; and
12. Progreso, TX.

These ports of entry are designated as "high risk" based on seizure statistics. Additional areas designated by Customs as high risk will be identified in General Notices that will be published in the **Federal Register**. These notices will normally be published with a 30-day delayed effective date to give affected importers time to restructure their business interests.

#### Concerns With the Written Agreement; § 123.72

*Comment:* One commenter stated that a standard agreement should be used throughout the entire southwest border, and another commenter stated that port

directors should not have the ability to change the language in an agreement.

*Customs Response:* Since the drug threat is the focus of the program and not regional/local conditions, one standard agreement will be used in the LBCIP, and port directors will not have the ability to modify the language employed in agreements.

*Comment:* One commenter stated that Customs should clarify whether they want carriers or individual train crews, to enter into agreements with Customs. This commenter suggested that Customs should revise § 123.71 to make this clear.

*Customs Response:* As provided at proposed § 123.72, which pertains to the written agreement requirement, it is the commercial carriers (not the drivers of the conveyance) that are to enter into the written agreement with Customs. The statement in proposed § 123.71 that the LBCIP is a program designed to enlist the voluntary cooperation of the designated drivers of commercial entities as well as the commercial entities was merely to reflect that a participating carrier's commitment to the LBCIP includes the carrier being responsible, after designating drivers (or crews) for program participation, for adequately training the drivers (or crews) on how to identify and report suspected smuggling attempts. Accordingly, the carriers are, in effect, responsible for enlisting the cooperation of the drivers (or crews) they designate to be in the program. However, because language regarding drivers in §§ 123.71, 123.72, and 123.74 confused readers concerning whether Customs intends to enter into individual agreements with the drivers (or crew), these provisions will be revised to remove references to designated drivers.

However, because the cooperation of drivers is such an integral part of the program and with the revisions discussed above to §§ 123.71, 123.72, and 123.74, a new § 123.76 will be added that more fully explains how drivers fit into the program.

*Comment:* One commenter wants Customs to modify the written agreement provision (§ 123.72) to acknowledge that the training of railroad crews might impact existing labor agreements.

*Customs Response:* Since the LBCIP is a voluntary program, Customs finds the issue of labor agreements between carriers and its employees outside the scope of these regulations. Accordingly, no change will be made to § 123.72.

*Comment:* Concerned with the written agreement provision that requires carrier-participants to establish security procedures aimed at restricting access to

transporting conveyances and preventing the unauthorized lading of illegal drugs while the conveyance is en route to the U.S., one commenter suggested that § 123.72(b) be revised to acknowledge the national limits incumbent on establishing such security measures.

*Customs Response:* Customs is well aware of the national limits/physical restraints faced by carrier-applicants in establishing the security measures provided for at § 123.72(b) and does not expect the carriers to do what is beyond their control. With the LBCIP being a cooperative venture between participant-carriers and Customs, Customs will of course work with particular carriers to establish those security procedures that are necessary and within the ability of the LBCIP participant to implement. Since the scope of the security burden on the carrier-participant is substantially less than that envisioned by the commenter, Customs sees no reason to revise the security requirements of § 123.72(b).

*Comment:* Two commenters wanted Customs to clarify what background checks need to be performed and on which employees. These commenters questioned which criminal records have to be checked—presumably this relates to records maintained by the resident country of the participant-carrier—and whether the “all personnel designated to participate in the LBCIP” language encompasses all employees who will handle a shipment from the time it crosses one border, traverses the U.S., and arrives at another border, and all employees in between. These commenters argued that the scope of such a provision would affect thousands, if not tens of thousands, of employees, and that the provision should be limited to new hires. Based on the magnitude of these concerns, two commenters stated that Customs paperwork assessment/recordkeeping burden is understated.

*Customs Response:* Section 123.72(c) provides, in part, that, to the extent permitted by law, participant-carriers are to conduct employment and criminal history record checks on all (not just newly hired) employees who will be designated to participate in the LBCIP. Customs contemplates within this context that a carrier-employer need not check the criminal histories of all employees as all employees will not be designated to be involved with the LBCIP. Involvement with the LBCIP would mean involvement with physically processing/transporting the merchandise that is to be exported to the United States. Further, Customs contemplates that the criminal records

of all potential employees who may be involved with physically processing/transporting merchandise for export to the United States may not be accessible to the carrier-exporter despite the carrier-employer's best efforts. Thus, concerning the question of which criminal records have to be checked, a carrier-employer would be required to report to Customs any criminal activity concerning employees that are directly involved with the physical processing/transporting of merchandise exported to the United States, which the employer learns either through a search of accessible criminal records maintained by the country in which the employee is hired or through communication by the employee to the employer. Given the above, no change to § 123.72(c) will be made.

Regarding Customs assessment of the paperwork burden in applying for the LBCIP, since the scope of the background checks is more limited and reasonable than understood by the commenters, Customs does not believe that the time an average carrier will spend completing the application for LBCIP participation, providing background information on drivers designated for inclusion in the program, completing an affidavit of business character, and listing the conveyances that will be used will exceed one hour. However, because some carrier-applicants will experience a significant turnover in drivers, conveyances, and ownership, those applicants may have a greater paperwork burden—as much as 2 hours a week—in complying with the continuing reporting obligations of the program. Other carrier-applicants are so large and have so many drivers, they may fall outside the average. Accordingly, Customs will revise its paperwork estimates to fully account for this secondary reporting burden. The collection of information data previously submitted to the Office of Management and Budget has been revised to reflect an increase of 3 more hours per respondent. This increase is based on increased applicants and business turnover estimates, which impact both the initial paperwork requirement and the secondary reporting obligation.

*Comment:* One commenter wanted Customs to clarify the terms “properly registered conveyances,” *i.e.*, does it pertain to railcars or locomotives, and two commenters suggested that locomotive engineers be separately enumerated, rather than be collectively included with drivers.

*Customs Response:* For purposes of the written agreement, the term “conveyance” would include

locomotives—being the powered unit—rather than the railcars, which are non-powered, and the term “drivers” would include locomotive engineers—being the drivers of the powered conveyance. Concerning the “proper registration” of such conveyances, what is envisioned here is that the conveyance is registered with the appropriate government agency responsible for registering such conveyances in the country where the conveyance operates.

Customs believes that no change to § 123.72(d) is necessary.

*Comment:* One commenter wanted Customs to define the term “dishonest conduct” in the regulations.

*Customs Response:* Although not a term of art, the term “dishonest conduct” has been defined as an absence of integrity; a disposition to betray, cheat, deceive, lie, or defraud; and being untrustworthy. The meaning of the term extends beyond acts which would be criminal, and is not restricted to such conduct as would be criminal. However, the term does not necessarily include “wrongful acts”. For example, a speeding violation in an automobile would be a wrongful act in law, but it does not constitute “dishonest conduct”. The term “dishonest conduct” is designed, but not limited, to include any conduct or activity that bears on an individual’s veracity, such as allegations/complaints of lying, misleading, or perjury. Examples of such conduct would include writing bad checks, misrepresenting employment history, and deceiving government agencies as to the nature of information. Customs does not believe that it is appropriate to define the term in the regulations.

*Comment:* Three commenters requested that § 123.72 be revised to delete references to principals, drivers, and conveyances, because such information is irrelevant. Further, these commenters stated that the five-day notification period for advising Customs concerning material changes in business organization, drivers, or conveyances serves no useful purpose and that this time-frame is too short anyway.

*Customs Response:* Customs believes that by receiving the names of the drivers and principal officers of the companies who apply to join the LBCIP, Customs is better able to make a determination about the threat posed by the drivers and companies and to make an informed decision about the suitability of the carriers and specific drivers for the program. Customs also believes that the five-day notification period is sufficient time for a carrier to advise Customs in writing by mail of material changes affecting a carrier’s

business organization, designated drivers or registered conveyances. Accordingly, no change to § 123.72 will be made.

*Comment:* One commenter wanted to delete language regarding the requirement to provide information about past business relations, and the necessity of providing information about “dishonest conduct”. Another commenter wanted clearer language regarding the “affidavit of business character” requirement.

*Customs Response:* Because of the high-risk environment in which transportation companies sometime operate, Customs believes that it is imperative that principals of participating carriers submit an “affidavit of business character” and that information concerning “dishonest conduct” on the part of all designated participants be provided to Customs. This information will assist Customs in making informed decisions about a carrier’s suitability for the program.

#### *Concerns With the Revocation Procedure; § 123.75*

*Comment:* One commenter argued that carriers should be provided with advance notice of revocation and given the opportunity to cure defaults prior to revocations. This commenter also questioned the scope of revocations, wanting to know if all Customs land border ports will be notified in the case of a revocation.

*Customs Response:* Because the LBCIP is a cooperative venture between Customs and participant-carriers, the on-going dialogue between Customs and the carrier will enable a carrier to be aware of Customs concerns regarding the carrier’s operations and allow a carrier to explain or take remedial action to resolve a deficiency in the carrier’s operations. However, in cases where immediate revocation is necessary, proposed § 123.75(c) details the appeal process to be followed by the subject carrier once a decision to immediately revoke the carrier’s participation in the LBCIP has been made by a port director. Under this process, the subject participant-carrier may file a written appeal directly with the Assistant Commissioner of Field Operations within 10 days and receive a determination within 30 days of the appeal’s receipt by the Assistant Commissioner. Customs believes that these time frames provide carriers with ample time to cure operational defects noted by Customs, and that the process will ensure uniformity regarding revocations.

Concerning the scope of revocations, decisions to immediately revoke a

carrier-participant or individual driver would be effective at the national level; all land border ports would be notified.

*Comment:* One commenter felt that some misdemeanors, such as drunk driving, should not result in revocation.

*Customs Response:* Offenses such as drunk driving will not automatically result in revocation. The circumstances of such conduct, *i.e.*, did it occur as an incident to employment, will be fully considered by Customs before any action to institute revocation procedures is initiated.

*Comment:* One commenter wanted Customs to define “misuse” regarding authorized conveyances.

*Customs Response:* The term “misuse” of authorized conveyances means the unauthorized use of a carrier’s conveyance by a designated driver, *e.g.*, making unscheduled stops/trips, and such other use as goes beyond the scope of the agreement entered into between the carrier and Customs.

#### *Concerns Over Tying Line Release to LBCIP; §§ 123.71, 142.41, and 142.41*

*Comment:* Two commenters did not see the value of linking the LBCIP to Line Release at “high-risk” areas.

*Customs Response:* Linking the LBCIP with Line Release at designated “high-risk” areas will aid Customs invaluablely in its endeavor to thwart the smuggling of illicit drugs into the United States. The LBCIP is based on a mutual exchange of business information between a participant carrier and Customs: Customs receives participant-specific information regarding the participant’s facilities, conveyances, drivers, and business structure; the carrier receives special training in the areas of cargo and personnel security standards, document review, drug awareness, and container/conveyance searches. Line Release, on the other hand, requires an importer to provide Customs with information regarding the merchandise being imported, the importer, and the shipper or manufacturer. Linking the LBCIP with Line Release merges the merchandise, importer, carrier, driver, and conveyance data together, thereby enhancing Customs ability to assess the threat of each Line Release-type commercial shipment more effectively. Accordingly, since Customs scrutiny of Line Release transactions would be enhanced if it possesses the information that LBCIP participants provide, it makes perfect sense at those LBCIP locations designated as “high risk” to condition an importer’s continued use of Line Release on the use of carriers/drivers that participate in the LBCIP.

## Conclusion

After careful consideration of all the comments received and further review of the matter, Customs has decided to adopt as a final rule with the modifications and changes discussed above and set forth below, the amendments to implement the LBCIP and tying Line Release privileges to LBCIP carriers/drivers at certain, high-risk locations. The document also identifies the high-risk locations where merchandise must be transported by carriers who are participants in the LBCIP in order for the merchandise to be processed through Line Release.

To reflect the paperwork requirements contained at § 123.73, part 178 of the Customs Regulations is also amended.

## Regulatory Flexibility Act and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities, because the amendments concern a voluntary program that will confer a benefit on the trade community. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

## Paperwork Reduction Act

The collection of information contained in these final regulations has been revised, reviewed, and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1515-0217. An agency may not conduct or sponsor, 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 in this final rule is at § 123.73. This information is required to improve Customs ability to interdict illicit drug shipments along the land border in cooperation with common carriers and their designated drivers who voluntarily participate in the LBCIP. This information will be used to process applications for voluntary participation in the Land Border Carrier Initiative Program. The likely respondents are commercial carrier organizations that engage in foreign commerce and trade along the land border of the United States.

The estimated average burden associated with the collection of information in this final rule is four hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Ave., N.W., Washington, D.C. 20229; and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

## Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch. However, personnel from other offices participated in its development.

## List of Subjects

### 19 CFR Part 123

Administrative practice and procedure, Aliens, Canada, Common carriers, Customs duties and inspection, Forms, Imports, International boundaries, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vehicles.

### 19 CFR Part 142

Bonds, Common carriers, Customs duties and inspection, Entry of merchandise, Forms, Reporting and recordkeeping requirements.

### 19 CFR Part 178

Administrative practice and procedure, Collections of information, Exports, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

## Amendments To the Regulations

For the reasons stated above, parts 123, 142, and 178 of the Customs Regulations (19 CFR parts 123, 142, and 178) are amended as set forth below:

## PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 continues to read as follows, the specific authority citation for § 123.71 is removed, and specific authority citations for §§ 123.71 through 123.76 and for § 123.81 are added, to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1624.

\* \* \* \* \*

Sections 123.71–123.76 also issued under 19 U.S.C. 1618; Section 123.81 also issued under 19 U.S.C. 1595.

2. Subpart H is redesignated as subpart I and §§ 123.71 and 123.72 are redesignated as §§ 123.81 and 123.82 therein, respectively, and a new subpart H, consisting of §§ 123.71 through 123.76, is added to read as follows:

## Subpart H—Land Border Carrier Initiative Program

### Sec.

- 123.71 Description of program.
- 123.72 Written agreement requirement.
- 123.73 Application to participate.
- 123.74 Notice of selection; appeal of determination.
- 123.75 Notice of revocation; appeal of decision.
- 123.76 Authorization by Customs for participants to use certain drivers.

## Subpart H—Land Border Carrier Initiative Program

### § 123.71 Description of program.

The Land Border Carrier Initiative Program (LBCIP) is a program designed to enlist the voluntary cooperation of commercial conveyance entities in Customs effort to prevent the smuggling of controlled substances into the United States. Participation in the LBCIP requires the land or rail commercial carrier to enter into a written agreement with Customs that describes the responsibilities of participants in the LBCIP. The agreement generally provides that the carrier agrees to enhance the security of its facilities and the conveyances employed to transport merchandise. The carrier also agrees to cooperate closely with Customs in identifying and reporting suspected smuggling attempts. In exchange for this cooperation, Customs agrees to provide training to carrier personnel in the areas of cargo and personnel security, document review techniques, drug awareness, and conveyance searches. Customs also agrees that should a controlled substance be found aboard a conveyance owned or operated by a participating carrier, special administrative procedures relating to the assessment and mitigation of drug-related penalties will be followed; the degree of compliance with the terms of the agreement will be considered as an additional positive mitigating factor in any seizure or penalties decision or recommendation. Lastly, at certain high-risk locations, for the use of Line Release, imported merchandise, which otherwise qualifies for Line Release entry (see, subpart D of part 142 of this chapter), must be transported over the border by carriers that participate in the LBCIP. The locations where the use of Line Release will be conditioned on participation in the LBCIP will be published in the **Federal Register**.

**§ 123.72 Written agreement requirement.**

Commercial carriers desiring to participate in the LBCIP shall enter into a written agreement with Customs regarding the mutual obligations of the carrier-participant and Customs. The terms and conditions in the written agreement shall generally provide that the carrier-applicant agrees:

(a) To participate in Customs training regarding cargo and personnel security, document review techniques, drug awareness, and conveyance searches;

(b) To establish security systems at the place of business for the safe storage and handling of cargo intended to be imported into the United States; and security procedures aimed at restricting access to transporting conveyances and preventing the unauthorized lading of illegal drugs while the conveyance is en route to the United States;

(c) To conduct, to the extent allowed by law, employment and criminal history record checks on all personnel designated to participate in the LBCIP and to exercise responsible supervision and control over those personnel;

(d) To ensure that only authorized drivers and properly registered conveyances are utilized in the transportation of merchandise into the United States, and to maintain current lists of such drivers and conveyances for Customs inspection upon request;

(e) To immediately report to the appropriate port director any criminal or dishonest conduct on the part of drivers designated to participate in the LBCIP, or attempts by others to impede, influence, or coerce the carrier or drivers into violating any United States law, including Customs regulations, especially those concerned with trafficking in illegal drugs; and

(f) To notify the appropriate port director in writing by mail within 5 days of any change in legal name, business address, business principals, ownership, drivers, or conveyances that affects the basis for continued participation in the LBCIP.

**§ 123.73 Application to participate.**

To request participation in the LBCIP, the carrier-applicant must submit an application containing the information requested in this section. The application must be accompanied by two copies of a LBCIP written agreement (see § 123.72 of this part; upon request, the local port director will provide copies of an unsigned written agreement) containing original signatures of corporate officers or owners of the common carrier. The application shall be prepared by the common carrier, be signed by corporate officers or owners, and submitted to the

port director. If a submitted application does not provide all of the information specified in this section, the processing of the application will either be delayed or the application will be rejected. The application shall include the following information:

(a) *General business identification and site condition information.* The name and address of the commercial conveyance entity, the names of all principals or corporate officers, the name and telephone number of an individual to be contacted for further information, and a complete and detailed description of the premises where business operations are conducted, to include all working/storage areas and security features employed;

(b) *Designated driver information.* A listing of the drivers designated by the carrier who will be transporting merchandise into the U.S. The listing shall set forth the name(s), address(es), date of birth, nationality, driver's license number, and any other personal identifying information regarding the drivers listed, e.g., social security number (if available), to enable Customs to conduct background checks and to aid Customs officers at the border crossing point in identifying individual LBCIP-authorized drivers;

(c) *Conveyance identification information.* A listing of the conveyances, e.g., trucks and locomotives, that the carrier will utilize to transport merchandise into the U.S. The listing shall set forth the type and make of conveyances, country of registration and license number(s), conveyance-specific identifying markings, e.g., vehicle identification numbers (VINs), and any other general conveyance identifying information, e.g., weight, color, recognizable modifications, etc., to aid Customs officers at the border crossing point in identifying particular LBCIP-registered conveyances; and

(d) *Affidavit of business character.* A statement signed by the carrier-applicant which attests to each principal's or corporate officer's past and present business relations, e.g., a list of past companies worked for and positions held, which fully explains the presence of any past or present crime involving theft or smuggling or investigations into such crimes, or other dishonest conduct on the part of a principal.

**§ 123.74 Notice of selection; appeal of determination.**

The information provided pursuant to paragraphs (b) through (d) of § 123.73 shall constitute the criteria used to

evaluate the competency of the carrier-applicant to participate in the LBCIP. Following Customs evaluation of the information provided, Customs shall notify the carrier-applicant in writing of Customs determination as to whether the carrier-applicant is qualified to participate in the LBCIP. In cases of selection, Customs will sign and return one of the copies of the written agreement. In cases of nonselection, the written notice shall clearly state the reason(s) for denial and recite the applicant's appeal rights under paragraph (b) of this section.

(a) *Grounds for nonselection.* The port director may deny a carrier's application to participate in the LBCIP for any of the following reasons:

(1) Evidence of any criminal or dishonest conduct involving the carrier, a corporate officer, designated drivers, or other person the port director determines is exercising substantial ownership or control over the carrier operation or corporate officer;

(2) Evidence of improper use of designated conveyances;

(3) Evidence that the written agreement was entered into by fraud or misstatement of a material fact; or

(4) A determination is made that the grant of LBCIP privileges would endanger the revenue or security of the Customs area.

(b) *Appeal of determination.* Carrier-applicants not selected to participate in the LBCIP and who wish to appeal the decision shall either:

(1) Appeal the adverse determination in accordance with the appeal procedure set forth in § 123.75(c) of this part; or

(2) Cure any deficiency in the first application by submitting a new application to the port director who denied the previous application after waiting 60 days from the date of issuance of the first determination.

**§ 123.75 Notice of revocation; appeal of decision.**

(a) *Revocation.* The port director may immediately revoke a carrier's participation in the LBCIP and cancel the written agreement for any of the following applicable reasons:

(1) The selection and written agreement were obtained through fraud or the misstatement of a material fact by the carrier;

(2) The carrier, a corporate officer, or other person the port director determines is exercising substantial ownership or control over the carrier operation or corporate officer, is indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under

United States Federal or State law. In the absence of an indictment, conviction, or other legal process, the port director must have probable cause to believe the proscribed acts occurred;

(3) The carrier-participant allows an unauthorized person or entity to use its LBCIP certificate or other approved form of identification;

(4) The carrier-participant misuses authorized conveyances;

(5) The carrier-participant refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation;

(6) The carrier-participant fails to operate in accordance with the terms of the written agreement; or

(7) Continuation of LBCIP privileges would endanger the revenue or security of the Customs area in the judgment of the port director.

(b) *Notice.* When a decision revoking participation has been made, the port director shall notify the carrier-participant of the decision in writing. The notice of revocation shall clearly state the reason(s) for revocation and recite the applicant's appeal rights under paragraph (c) of this section.

(c) *Appeal of decision.* Carrier-participants that receive a notice of revocation and who wish to appeal the decision shall file a written appeal with the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, Washington, D.C. 20229, within 10 calendar days of receipt of the notice. The appeal shall be filed in duplicate and shall set forth the carrier's responses to the grounds specified by the port director in the notice. Within 30 working days of receipt of the appeal, the Assistant Commissioner, or his designee, shall make a determination regarding the appeal and notify the applicant in writing.

#### **§ 123.76 Authorization by Customs for participants to use certain drivers.**

(a) *Responsibilities of LBCIP participants.* An LBCIP participant is required, pursuant to § 123.73 of this part, to list the drivers designated to transport merchandise into the United States for the carrier to enable Customs to conduct background checks. An LBCIP participant is also required, pursuant to § 123.72 of this part, to conduct, to the extent allowed by law, employment and criminal history checks on all personnel designated to participate in the LBCIP; these personnel include drivers.

(b) *Authorization of drivers by Customs.* Customs may not approve a carrier for participation in the LBCIP if it determines that there is evidence that a driver designated by a carrier has been

involved in criminal or dishonest conduct or it may request that the carrier not use that driver before approving the carrier for participation. Once a carrier has been accepted in the LBCIP, Customs may determine to cancel a particular driver's authorization to transport merchandise for a LBCIP carrier for the reasons set forth in paragraph (c) of this section.

(c) *Reasons for cancellation of driver's authorization.* Customs may cancel a driver's authorization to transport merchandise for an LBCIP participant for any of the following reasons:

(1) The designated driver is indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, the port director must have probable cause to believe the proscribed acts occurred;

(2) The designated driver allows an unauthorized person or entity to use his LBCIP certificate or other approved form of identification;

(3) The designated driver misuses authorized conveyances;

(4) The designated driver refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation; or

(5) The designated driver fails to operate in accordance with the terms of the written agreement.

(d) *Notice; rights of driver.* (1) *If driver not acceptable to Customs at time of review of carrier's application.* When Customs notifies a carrier-applicant, pursuant to § 123.74 of this part, of its nonselection into the LBCIP because of conduct committed by a driver designated by the carrier or when Customs conditionally approves a carrier-applicant's participation in the LBCIP, but does not approve a driver designated on the application to be authorized to transport merchandise under the LBCIP, Customs will also notify the driver of the decision in writing and recite the driver's appeal rights under paragraph (e) of this section.

(2) *If driver's authorization cancelled.* When Customs makes a determination to cancel the authorization of a particular designated driver, pursuant to § 123.76(b) of this section, Customs will notify both the carrier-participant and the driver of the decision in writing; the notice to the driver will recite the driver's appeal rights under paragraph (e) of this section.

(e) *Appeal rights of drivers.* Drivers who receive a notice of nonselection or cancellation and who wish to appeal the decision shall file a written appeal with

the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, Washington, D.C. 20229, within 10 calendar days of receipt of the notice. The appeal shall be filed in duplicate and shall set forth the driver's responses to the grounds specified by the port director in the notice. Within 30 working days of receipt of the appeal, the Assistant Commissioner, or his designee, shall make a determination regarding the appeal and notify the applicant in writing.

#### **PART 142—ENTRY PROCESS**

1. The authority citation for part 142 continues to read as follows:

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

2. Section 142.41 is amended by adding a sentence at the end to read as follows:

##### **§ 142.41 Line Release.**

\* \* \* At certain high-risk locations along the land borders of the United States (the locations to be published in the **Federal Register**), which are approved by Customs for handling Line Release, the use of Line Release for particular shipments may be denied by Customs unless the imported merchandise is transported by carriers that participate in the Land Border Carrier Initiative Program (see, subpart H of part 123 of this chapter).

##### **§ 142.47 [Amended]**

3. In § 142.47, the first sentence of paragraph (b) is amended by removing the words "because of an examination" and adding, in their place, the words "for the following reasons: because of an examination, because a carrier transporting the Line Release merchandise is not a participant in the Land Border Carrier Initiative Program (LBCIP), or because a driver or conveyance is not authorized in accordance with the LBCIP".

#### **PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS**

1. 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.*

2. Section 178.2 is amended by adding, in appropriate numerical order, a listing for § 123.73 to read as follows:

##### **§ 178.2 Listing of OMB control numbers.**

19 CFR Section	Description	OMB control No.
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19 CFR Section	Description	OMB con- trol No.
* * *	* * *	* * *
§ 123.73 ...	Application to participate in the Land Border Carrier Initiative Program.	1515-0217
* * *	* * *	* * *

**Raymond W. Kelly,**  
*Commissioner of Customs.*

Approved: November 4, 1998.

**Dennis M. O'Connell,**  
*Acting Deputy Assistant Secretary of the Treasury.*  
[FR Doc. 98-34675 Filed 12-31-98; 8:45 am]  
BILLING CODE 4820-02-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 178

[Docket No. 97F-0504]

#### Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the expanded safe use of the butylated reaction product of *p*-cresol and dicyclopentadiene for use as an antioxidant in acrylonitrile/butadiene/styrene copolymers in contact with food. This action is in response to a petition filed by The Goodyear Tire and Rubber Co.

**DATES:** The regulation is effective January 4, 1999; submit written objections and request for a hearing by February 3, 1999.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS-206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3086.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of December 10, 1997 (62 FR 65084), FDA announced that a food additive petition

(FAP 8B4561) had been filed by The Goodyear Tire and Rubber Co., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers* (21 CFR 178.2010) to provide for the expanded safe use of butylated reaction product of *p*-cresol and dicyclopentadiene for use as an antioxidant in acrylonitrile/butadiene/styrene copolymers in contact with food.

In the notice of filing for this additive, FDA announced that it had determined under § 25.32(i) (21 CFR 25.32(i)) that this action was of a type that did not individually or cumulatively have a significant effect on the human environment. Subsequently, during FDA's indepth review of the petition, the agency determined that the proposed use of the subject additive was for both single service food-packaging materials and repeat use articles. Therefore, at the agency's request, the petitioner provided an amended claim of categorical exclusion from the requirement to prepare an environmental assessment under both § 25.32(i) (single service food packaging) and (j) (repeated use articles).

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and (3) the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has determined under § 25.32(i) and (j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before February 3, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

#### List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

#### PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) in the entry for "Butylated reaction product of *p*-cresol and dicyclopentadiene \* \* \*" by revising the entry under the heading "Limitations" to read as follows:

#### § 178.2010 Antioxidants and/or stabilizers for polymers.

\* \* \* \* \*

(b) \* \* \*