

U.S. Customs and Border Protection

19 CFR PARTS 123 AND 142
Docket No.: USCBP-2006-0132

RIN 1651-AA68

Land Border Carrier Initiative Program

AGENCY: Customs and Border Protection, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend U.S. Customs and Border Protection (CBP) regulations by removing the provisions pertaining to the Land Border Carrier Initiative Program (LBCIP). The LBCIP is a voluntary industry partnership program under which participating land and rail commercial carriers agree to enhance the security of their facilities and conveyances to prevent controlled substances from being smuggled into the United States.

Since the promulgation of the LBCIP regulations, CBP has developed a more comprehensive voluntary industry partnership program known as the Customs-Trade Partnership Against Terrorism (“C-TPAT.”) C-TPAT builds upon the best practices of the LBCIP, while providing greater border and supply chain security with expanded benefits to approved participants. For this reason, CBP intends to terminate the LBCIP and focus its partnership efforts on the further development of C-TPAT. Current LBCIP members may participate in the program until a final rule terminating the LBCIP is published in the **Federal Register** and goes into effect.

An LBCIP participant may apply for participation in C-TPAT at any time and, if accepted, will receive the expanded benefits offered under that program. For a more detailed description of C-TPAT, and information regarding eligibility, application criteria, and benefits, CBP directs current LBCIP participants and all other interested parties to the CBP internet web site located at www.cbp.gov.

DATES: Comments must be received on or before February 16, 2010.

ADDRESSES: You may submit comments, identified by *docket number*, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP 2006–0132.
- Mail: Border Security Regulations Branch, Customs and Border Protection, 1300 Pennsylvania Avenue, N.W. (Mint Annex), Washington, D.C. 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read 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 a.m. and 4:30 p.m. at the Border Security Regulations Branch, Customs and Border Protection, 799 9th Street, N.W., 5th Floor, Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Glenn Woodley, Jr., Office of Field Operations, (202) 344–2725.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

The Land Border Carrier Initiative Program (LBCIP) is a CBP-industry partnership regulatory program that enlists the voluntary

cooperation of commercial conveyance entities as part of CBP's effort to prevent the smuggling of controlled substances into the United States.

Under the LBCIP regulations set forth in title 19 of the Code of Federal Regulations (19 CFR 123.71–76), land and rail commercial carrier participants may enter into a written agreement with CBP that specifies methods by which the carrier will enhance the security of its facilities and conveyances. LBCIP participants also agree to identify and report suspected smuggling attempts to CBP. In exchange for this cooperation, CBP provides training to carrier personnel in the areas of cargo and personnel security, document review techniques, drug awareness, and conveyance searches. If a controlled substance is found aboard a conveyance owned or operated by a participating carrier, CBP agrees to follow special administrative procedures relating to the assessment and mitigation of drug-related penalties. It is also noted that only LBCIP participants may be approved for Line Release entry processing at certain high-risk border locations.¹ See 19 CFR 142.41.

In 2001, CBP introduced the Customs-Trade Partnership Against Terrorism (C-TPAT) program. C-TPAT is a voluntary industry partnership initiative that meets the objectives of the LBCIP while providing a more comprehensive approach to border and supply chain security. The program entails CBP's ongoing participation in a joint effort with importers, carriers, brokers, warehouse operators, manufacturers, and other industry sectors to develop a seamless security-conscious environment from manufacturing through transportation and importation to ultimate distribution. In addition to providing greater security for both government and business, C-TPAT provides its members with the same privileges accorded to LBCIP participants, as well as additional benefits such as priority processing for CBP inspections, reduced number of CBP inspections, assignment of a C-TPAT Supply Chain Security Specialist who will work with the company to validate and enhance security throughout the company's international supply chain, and eligibility to attend C-TPAT supply chain security training seminars. (For a detailed explanation of C-TPAT benefits, visit www.cbp.gov, and click on the link to C-TPAT).

C-TPAT builds upon the best practices of existing CBP-industry partnership programs and offers more comprehensive supply chain security measures for both government and industry than does LBCIP. For this reason, and in light of the fact that LBCIP is not an active program and CBP has not received an application to partici-

¹ Line Release provides for advance cargo screening and expedited release at land border ports.

pate in LBCIP for several years, CBP proposes to terminate LBCIP and focus its partnership efforts in the C-TPAT arena. Accordingly, CBP encourages any existing LBCIP participants to apply for C-TPAT membership. Information on the C-TPAT application process is available on the CBP web site (www.cbp.gov). Any existing LBCIP members in good standing remain eligible for LBCIP privileges until a final rule adopting the proposals set forth in this document is published in the **Federal Register** and becomes effective.

As a result of these proposed changes, CBP also proposes to replace references to the LBCIP in 19 CFR 142.41 (Line Release) and 142.47 (examinations of Line Release transactions) with references to “CBP-approved industry partnership programs.”

Lastly, this proposed rule would replace the word “Customs” where it appears in the regulations affected by these proposed changes with the acronym “CBP” to reflect the change in name resulting from the transfer of the legacy U.S. Customs Service of the Department of Treasury to the Department of Homeland Security.

Explanation of Amendments

For the reasons set forth above, CBP proposes to remove §§ 123.71, 123.72, 123.73, 123.74, 123.75, and 123.76 from 19 CFR, and amend 19 CFR 142.41 and 142.47.

Regulatory Flexibility Act

In Treasury Directive (T.D.) 99–2 (64 FR 27, January 4, 1999), it was certified that pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), the LBCIP regulations set forth at 19 CFR 123.71–76 would not have a significant economic impact on a substantial number of small entities, because the LBCIP is a voluntary partnership program that confers benefits to the trade community. Accordingly, the LBCIP regulations were not subject to regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Similarly, as this proposed rule would remove the voluntary LBCIP from the regulations and would not impose any direct costs on small entities, and as CBP encourages any existing LBCIP members to continue their partnership endeavors and benefits by applying for membership in C-TPAT, it is certified that pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. CBP invites comments from small entities regarding any direct costs commenters believe this rulemaking would impose.

Executive Order 12866

This proposed rule does not meet the criteria for a “significant regulatory action” under Executive Order 12866. As such, the Office of Management and Budget (OMB) has not reviewed this proposed rule.

Paperwork Reduction Act

The collections of information affected by this proposed rulemaking were previously 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 1651–0077. There are no new collections of information proposed in this document.

Part 178 of the CBP regulations (19 CFR part 178), which lists the information collections contained in the regulations and control numbers assigned by OMB, will be amended accordingly if this proposal is adopted

Signing Authority

This document is being issued in accordance with 19 CFR 0.2(a), which provides that the authority of the Secretary of the Treasury with respect to CBP regulations that are not related to customs revenue functions was transferred to the Secretary of Homeland Security pursuant to section 403(1) of the Homeland Security Act of 2002 and that such regulations are signed by the Secretary of Homeland Security.

List Of Subjects

19 CFR Part 123

Administrative Practice and Procedure, Canada, Common carriers, Customs duties and inspection, Entry of merchandise, Freight, Imports, International traffic, Mexico, Motor carriers, Penalties, Railroads, Reporting and recordkeeping requirements, Vehicles.

19 CFR Part 142

Administrative Practice and Procedure, Canada, Computer technology (Line release), Common carriers (Carrier initiative program), Customs duties and inspection, Entry of merchandise (Line release), Forms, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons stated above, CBP proposes to amend parts 123 and 142 of title 19 of the CFR as set forth below:

Part 123 — Customs Relations with Canada and Mexico

1. The heading text to part 123 is revised to read as follows, “PART 123 — CBP RELATIONS WITH CANADA AND MEXICO”.

2. The general authority citation for part 123 continues, and the specific authority citation for §§ 123.71–123.76 is removed, to read as follows:

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

* * * * *

3. Within part 123, subpart H is removed and reserved and §§ 123.71 through 123.76 are removed.

Part 142 — Entry Process

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

AUTHORITY: 19 U.S.C. 66, 1448, 1484, 1624.

5. Section 142.41 is amended by removing the word “Customs” where it appears and adding in each place the term “CBP” and, in the last sentence, by removing the language, “the Land Border Carrier Initiative Program (*see*, subpart H of part 123 of this chapter)” and adding in its place the language, “a CBP-approved industry partnership program”.

6. In § 142.47:

(a) Paragraph (a) is amended by removing the word “Customs” where it appears and adding in each place the term “CBP”; and

(b) Paragraph (b) is amended by removing the word “Customs” where it appears and adding in each place the term “CBP”, by removing the language “the Land Border Carrier Initiative Program (LB-CIP)” in the first sentence and adding in its place the language “a CBP-approved industry partnership program” and, in the second sentence, by removing the word “shall” and adding in its place the word “must”.

Dated: December 11, 2009

JANET NAPOLITANO,
Secretary.