

U.S. Customs and Border Protection

19 CFR PARTS 123, 142 AND 178
Docket No.: USCBP-2006-0132

CBP Dec. No. 11-04

RIN 1651- AA68

LAND BORDER CARRIER INITIATIVE PROGRAM

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

ACTION: Final rule.

SUMMARY: This document amends U.S. Customs and Border Protection (CBP) regulations by removing the provisions pertaining to the Land Border Carrier Initiative Program (LBCIP). The LBCIP was established as a voluntary industry partnership program under which participating land and rail commercial carriers would agree to enhance the security of their facilities and conveyances to prevent controlled substances from being smuggled into the United States. Because CBP has developed a more comprehensive voluntary industry partnership program known as the Customs-Trade Partnership Against Terrorism (C-TPAT), CBP is terminating the LBCIP and will focus its partnership efforts on the further development of 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.

EFFECTIVE DATE: March 10, 2011.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Land Border Carrier Initiative Program (LBCIP) was established as a CBP-industry partnership regulatory program enlisting

the voluntary cooperation of commercial conveyance entities as part of an 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. In exchange for this cooperation, CBP would provide training to carrier personnel in the areas of cargo and personnel security, document review techniques, drug awareness, and conveyance searches. Additionally, only LBCIP participants could be approved for Line Release entry processing at certain high-risk border locations as set forth in 19 CFR 142.41.¹

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).

In light of the development of C-TPAT as a more comprehensive CBP industry partnership program, CBP published a proposal in the **Federal Register** (74 FR 66933) on December 17, 2009, to amend title 19 of the Code of Federal Regulations by removing provisions pertaining to the LBCIP and changing certain references to the LBCIP to "CBP-approved industry partnership program." CBP also proposed replacing the word "Customs" with "CBP" where it appeared in the regulations affected by these changes. Interested parties were given until February 16, 2010 to comment on the proposed changes. CBP received no comments in response to the notice. Accordingly, CBP has determined to adopt as final, the proposed rule

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

published in the **Federal Register**, which eliminates LBCIP as a CBP program. In addition, CBP is removing the reference in 19 CFR 178.2 to the information collection pertaining to the LBCIP.

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 LB-CIP. CBP encourages any former 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).

EXPLANATION OF AMENDMENTS

For the reasons set forth above, CBP removes §§ 123.71, 123.72, 123.73, 123.74, 123.75, and 123.76 from 19 CFR, and amends 19 CFR 142.41, 142.47 and 178.2.

EXECUTIVE ORDER 12866

Executive Order 12866 requires Federal agencies to conduct economic analyses of significant regulatory actions as a means to improve regulatory decision making. Significant regulatory actions include those that may “(1) [h]ave an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) [c]reate a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) [m]aterially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) [r]aise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

CBP incorporated the best practices and security principles of LB-CIP and other industry partnership programs when developing C-TPAT, a comprehensive border and supply chain security partnership. The termination of LBCIP does not eliminate benefits previously conferred to land and rail carrier participants because former LBCIP participants may elect to, and are encouraged to, apply to participate in C-TPAT, which confers all of the privileges of LBCIP along with additional benefits discussed previously. As such, this rule does not meet the criteria for a “significant regulatory action” under Executive Order 12866. The Office of Management and Budget (OMB) has not reviewed this rule under that order.

REGULATORY FLEXIBILITY ACT

In Treasury Decision (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, this rule removes the voluntary LBCIP from the regulations and does not impose any direct costs on small entities. Additionally, CBP encourages any existing LBCIP members to continue their partnership endeavors and benefits by applying for membership in C-TPAT. CBP solicited comments regarding the impact on small entities of the proposal published in the **Federal Register** on December 17, 2009 (74 FR 66933). As no comments were received challenging these findings, it is certified that pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), this rule does not have a significant economic impact on a substantial number of small entities.

PAPERWORK REDUCTION ACT

The collections of information pertaining to the LBCIP were 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. This information collection is referenced in 19 CFR 178.2 under section 123.73.

With the adoption of this final rule removing the LBCIP from the CBP regulations, 19 CFR 178.2 is being amended to delete the reference to this information collection.

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.

19 CFR Part 178

Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

For the reasons stated above, CBP amends parts 123, 142 and 178 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 to read as follows, and the specific authority citation for §§ 123.71–123.76 is removed:

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”.

PART 178 - APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

7. The general 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.*

8. Amend § 178.2 by removing the listing for § 123.73.

JANET NAPOLITANO,
Secretary

[Published in the Federal Register, February 8, 2011 (76 FR 6688)]

19 CFR PART 177

REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF MIXED XYLIDINES (CAS 1300-73-8)

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the classification of mixed xylidines (CAS 1300-73-8).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CPB”) is revoking a ruling concerning the classification of mixed xylidines (CAS 1300-73-8), under the Harmonized Tariff Schedule of the United

States (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed revocation was published on June 9, 2010, in Volume 44, Number 24, of the CUSTOMS BULLETIN. No comments were received in response to the proposed notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 25, 2011.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, Tariff Classification and Marking Branch
(202) 325-0029.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (CBP Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the CUSTOMS BULLETIN, Volume 44, No. 24, on June 9, 2010, proposing to revoke Headquarter's Ruling Letter HQ 955644, dated March 6, 1995, and proposing to revoke any treatment accorded to substantially identical transactions. No comments were received in response to the proposed notice.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In HQ 955644, CBP classified the merchandise in subheading 2921.49.50, HTSUS, which provides for: "Amine-function compounds: Aromatic monoamines and their derivatives; salts thereof: Other: Other: Other: Other." The referenced ruling is incorrect because the merchandise is not listed in the Chemical Appendix to the HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 955644, and is revoking or modifying any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) H073927, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Dated: February 7, 2011

IEVA K. O'ROURKE

For

MYLES B. HARMON, DIRECTOR

Commercial and Trade Facilitation Division

HQ H073927

February 7, 2011

CLA-2 OT:RR:CTF:TCM H073927 ARM**CATEGORY: Classification****TARIFF NO.: 2921.49.45**

MR. EDWARD K. WALDINGER
B.I. CHEMICALS, INC.
HENLEY DIVISION
50 Chestnut Ridge Road
Montvale, NJ 07654

RE: Revocation of HQ 955644; Mixed Xylidines (CAS 1300–73–08)

DEAR MR. WALDINGER:

This is to inform you that Customs & Border Protection (CBP) has reconsidered Headquarter's Ruling (HQ) letter 955644, dated March 6, 1995, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of mixed xylidines (CAS 1300–73–08). CBP classified the product in subheading 2921.49.50, HTSUS, which provides for: "Amine-function compounds: Aromatic monoamines and their derivatives; salts thereof: Other: Other: Other: Other." We have determined that HQ 955644 is in error because the merchandise is not listed in the Chemical Appendix. Therefore, this ruling revokes HQ 955644.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection ("CPB") is revoking a ruling concerning the classification of mixed xylidines (CAS 1300–73–8), under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed revocation was published on June 9, 2010, in Volume 44, Number 24, of the CUSTOMS BULLETIN. No comments were received in opposition to the proposed notice.

FACTS:

The instant merchandise is a liquid containing 2,6-Xylidine (CAS 87–62–7), 2,4-Xylidine (CAS 95–68–1) and 2,5-Xylidine (CAS 95–78–3) with less than 10% ethylaniline and diaminoxylenes byproducts of the starting material. In HQ 955644, CBP described the product as follows:

Mixed xylidines (CAS 1300–73–8), is the name given to a mixture of isomeric xylidines (dimethylaniline isomers) which also contains ethylaniline. This commercial product results from the nitration of "xylene" followed by a reduction reaction. The product is also known as "mixed dimethylanilines" and "ar,ar- dimethylbenzenamine" and is used in the rubber processing industry as an intermediate for dyestuffs and antioxidants. The products that are manufactured from the mixed xylidines for the dye and rubber processing industries also include products of ethylaniline (mixed xylidines containing 85 percent xylidine isomers and up to 15 percent ethylaniline).

The Chemical Appendix Note 1 to the HTSUS states the following:

This appendix enumerates those chemicals and products which the President has determined were imported into the United States before January 1, 1978, or were produced in the United States before May 1, 1978. For convenience, the listed articles are described (1) by reference to their registry number with the Chemical Abstracts Service (C.A.S.) of the American Chemical Society, where available, or (2) by reference to their common chemical name or trade name where the C.A.S. registry number is not available. For the purpose of the tariff schedule, any reference to a product provided for in this appendix includes such products listed herein, by whatever name known.

There is no dispute that the merchandise is classified in heading 2921.49, HTSUS, as an amine-function compound. At issue is the applicable eight-digit subheading. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings.

In accordance with Additional U.S. note 3 to section VI, HTSUS, the CAS number of the instant merchandise (1300-73-08) does not appear in the Chemical Appendix. Therefore, the mixed xylydines must be classified as such in subheading 2921.49.45, HTSUS.

HOLDING:

Mixed xylydines, CAS No. 1300-73-8, are classified in heading 2921, HTSUS. Specifically, the merchandise is classified in subheading 2921.49.45, HTSUS, the provision for "Amine function compounds: Aromatic monoamines and their derivatives; salts thereof: Other: Other: Other: Products described in Additional U.S. note 3 to section VI". The column one, general rate of duty is 6.5% *ad valorem*.

Duty rates are provided for the protestant's convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

HQ 955644, dated March 6, 1995, is revoked.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON, DIRECTOR
Commercial Rulings Division

