

the publication of a notice in the **Federal Register** of any such procedure should such a situation arise.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This regulation merely explains the system which the Service currently uses to track the number of H-1B petition approved in a given fiscal year.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulation proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications

to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Reporting and recordkeeping requirements.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulation is proposed to be amended as follows:

PART 214—NONIMMIGRANT GLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

2. Section 214.2 is amended by revising paragraph (h)(8)(ii) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(8) * * *

(ii) *Procedures.* (A) Each alien issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) or (ii)(b) of the Act shall be counted for purposes of the numerical limit prescribed in section 214(g)(1) of the Act. Requests for petition extension or an extension of the alien's stay, concurrent employment, or sequential employment within the same fiscal year shall not be counted against the numerical limit. The spouse and children of principal aliens classified as H-4 nonimmigrant aliens shall not be counted against the numerical limit.

(B) An alien will be counted against the annual H-1B or H-2B numerical limit only after an H-1B or H-2B petition has been approved on his or her behalf. An alien will be counted in the order by which the H-1B or H-2B petition has been approved on his or her behalf. An alien on whose behalf an H-1B or H-2B petition has been denied will not be counted against the annual numerical limit.

(C) When an approved petition is not used because the beneficiary(ies) does not obtain H-1B or H-2B classification, the petitioner shall notify the Service Center Director who approved the petition that the petition was not used as soon as the petitioner becomes aware of the circumstance. The petition shall

be revoked pursuant to paragraph (h)(1)(ii) of this section.

(D) If the total numbers available in a fiscal year are used, the Service may reject and return the petition and the accompanying fee with a notice that numbers are not available for the nonimmigrant classification until the next fiscal year. The Service, may, in its discretion, adopt other mechanisms for processing petitions filed after the numerical limit has been reached in order to prevent unnecessary hardship to the public. The Service shall provide notice of such new mechanisms through publication in the **Federal Register**.

* * * * *

Dated: October 21, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97-33827 Filed 12-29-97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 123 and 142

RIN 1515-AC16

Land Border Carrier Initiative Program

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend 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 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, it is proposed to condition an importer's continued use of the Line Release method of processing entries of merchandise on the use of carriers/drivers that participate in the LBCIP. These proposed 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.

DATES: Comments must be received on or before March 2, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Suite 3000, Washington, D.C.

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

SUPPLEMENTARY INFORMATION:

Background

I. Carrier Initiative Programs in General

In 1984, Customs began an air and sea Carrier Initiative Program (CIP), generally in response to Customs awareness of a substantial increase in the smuggling of marijuana and cocaine in the South-Florida area, and specifically as a result of a Customs seizure of an aircraft operated by an American-flag carrier. The carrier, whose aircraft had been involved in repeated drug violations, agreed to a multi-point agreement implementing stringent security measures as a condition to release of the conveyance. 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 is 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.

Over the past ten years, the air and sea CIP has proved to be a marked success. Since that time, Customs has come to view carriers as allies in the war against drug smugglers, and expanded the CIP to include Super Carriers (see, 54 FR 14310, April 10, 1989). To date, over 2,300 air and sea carriers have voluntarily signed such Carrier Initiative Agreements with Customs.

Because of the proven success of the air and sea CIP, in 1995 Customs decided to expand the CIP to land border carriers to address the increased drug smuggling threat. This new Land Border Carrier Initiative Program (LBCIP) is designed to deter smugglers of illegal drugs from utilizing commercial land conveyances for their

contraband. The exact locations along the Southwest border where the LBCIP will be implemented will be published in the **Federal Register**.

In signing Carrier Initiative Agreements with Customs, land and rail carriers agree to increase the security measures at their places of business and on the conveyances used to transport cargo. Further, carriers agree to cooperate closely with Customs in identifying and reporting suspected smuggling conduct. In return for this cooperation, 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 carrier that has executed an agreement with Customs, Customs agrees to apply special administrative provisions pertaining to penalty amounts and expedited processing of penalties. Of course, the degree of compliance with the terms of the Agreement by the carrier will be considered by Customs in any seizure or penalty decision or recommendation.

II. The Drug Interdiction Mandates of the Anti-Drug Abuse Acts

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.

The 1986 Act amended Customs laws relating to the assessment of monetary penalties against persons in charge of conveyances used as common carriers and the seizure and forfeiture of conveyances for the illegal importation or transportation of drugs. Congress subjected common carriers to increased penalties and sanctions for at least two reasons: (1) To encourage greater vigilance on the part of those in charge of conveyances used as common carriers; and (2) to increase the accountability and legal responsibility of carriers to insure that drugs were not carried on board their conveyances.

In particular, the 1986 Act amended sections 584 and 594 of the Tariff Act of 1930 (19 U.S.C. 1584 and 1594). Section 584 was amended to increase the penalty provisions which could be assessed against owners, masters, or persons in charge of conveyances engaged as common carriers when unmanifested drugs were discovered on board vessels or in vehicles bound for the United States. The penalties,

virtually unchanged since the 1930s, were increased 2,000%, *i.e.*, from \$25 per ounce of marijuana to \$500 per ounce, and from \$50 per ounce of heroin or cocaine to \$1,000 per ounce.

Further, the seizure and forfeiture provisions of section 594 were greatly expanded to include all common carrier conveyances and operators where prohibited merchandise was involved. Section 594 was amended to require a conveyance to be forfeited unless the owner, operator, or person in charge proves that he exercised the "highest degree of care and diligence" where violations involved prohibited merchandise contained in unmanifested packages or where the marks, numbers, weights, or quantities disagreed with the manifest, or where the merchandise was concealed in or on the conveyance but not in the cargo.

Although the Customs laws hold common carriers to a high standard of care, Customs has provided guidance and training through the CIP to alleviate the harsh consequences of those laws in the face of a carrier's diligent and good faith effort to comply with them.

III. Customs Modernization, Trade Facilitation, and the Line Release Method of Merchandise Processing

Pursuant to section 448(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1448(b)), the Secretary of the Treasury is authorized to provide by regulation for the issuance of special permits for delivery prior to formal entry ("immediate delivery"). In the late 1980s, Customs established a new automated system for the expedited processing of repetitive, high volume entries of merchandise ("Line Release") through the use of personal computers and bar code technology (see, T.D. 92-93). Regulations implementing the Line Release processing method are delineated at subpart D of Part 142 (§§ 142.41-142.52), Customs Regulations (19 CFR Part 142, subpart D).

Line Release facilitates the entry of merchandise along the land borders of the United States. However, at certain high-risk locations Customs does not wish to continue to offer line-release processing unless it can be assured that such will not compromise its various law enforcement and drug interdiction responsibilities. Balancing these concerns, Customs proposes that at certain high-risk land border locations, continued importer use of Line Release be conditioned on the imported merchandise being carried by participants in the LBCIP. The additional information made available to Customs by interfacing the

merchandise-data of Line Release with the cargo-driver-conveyance data of the LBCIP will enhance Customs ability to assess the threat of certain commercial transactions more effectively. Only with the continuing assistance of such participatory land border carriers, as shown by the success of the previous CIPs, can Customs be assured that every tool available to protect the United States borders from illicit drug traffic is employed before according the benefits of expedited merchandise processing by means of Line Release.

Proposed Amendments Concerning the LBCIP and Line Release

In this document it is proposed to provide for the new LBCIP in Part 123 of the Customs Regulations, which pertains to Customs relations with Canada and Mexico, by adding a new Subpart H; the current subpart H which contains miscellaneous provisions will be redesignated as new subpart I. The new subpart H of Part 123 will consist of five sections (§§ 123.71–123.75).

Further, it is proposed to provide Customs with the discretion, at certain high-risk locations, to require for the use of Line Release that imported merchandise, which otherwise qualifies for Line Release, be transported over the border by carriers and drivers that participate in the LBCIP. Accordingly, two sections in subpart D (§§ 142.41 and 142.47) will be revised to reference that carrier participation in the LBCIP may be required by Customs for Line Release transactions at particular locations. The public will be informed of these locations by publications in the **Federal Register**. At this time Customs plans that these locations will be limited to those along the Southern border, where the greatest drug threat to the United States is located. This limited implementation of the LBCIP is designed to reduce the threat to public safety presented by the drug problem in that area.

It is noted that participation in either the LBCIP or the Line Release program does not alter the general authority of Customs officials to conduct inspections of participating carriers or their merchandise.

Discussion of Proposed Changes to Regulations

Proposed New Section 123.71

Proposed § 123.71, entitled “Description of program”, describes, in general terms, the responsibilities of participants in the LBCIP, and cross references subpart D, Part 142 of the Customs Regulations, which provides for expedited processing of repetitive

entries by means of Line Release, to indicate that, at certain high-risk locations (the locations to be published in the **Federal Register**), Customs may require for the use of Line Release that imported merchandise, which otherwise qualifies for Line Release, be transported over the border by carriers and drivers that participate in the LBCIP.

Proposed New Section 123.72

Proposed § 123.72, entitled “Written agreement requirement”, explains the mutual obligations of LBCIP carriers/drivers and Customs. A carrier wishing to participate in the LBCIP must agree to assume certain security responsibilities and a continuing reporting obligation to Customs regarding material changes to its operations. These material changes include changes to the structure and relationships of the carrier’s business enterprise and associations, the list of drivers designated or conveyances registered by the carrier within the agreement to transport merchandise into the United States, or any other circumstance that affects the basis of the carrier to participate in the LBCIP. In return, Customs agrees to train carrier personnel and designated drivers, and to consider the application of special administrative procedures when assessing and mitigating drug-related penalties should controlled substances be found aboard a conveyance owned or operated by a participating carrier.

Proposed New Section 123.73

Proposed § 123.73, entitled “Application to participate”, provides that the application is prepared by the carrier, with pertinent information provided by those drivers designated for participation in the program, and delineates the four items of information needed by Customs to process a request by carriers and their designated drivers to participate in the program at specific ports. The descriptive information required pertains to (1) general business identification and the condition of the business site; (2) designated drivers; (3) conveyance identification; and (4) an affidavit of business character. The driver and conveyance information sought is to enable Customs to conduct background checks and to aid Customs officers at the border crossing in visually identifying LBCIP-authorized drivers and LBCIP-registered conveyances. The affidavit of business character requirement is designed to provide sufficient business background information for Customs to determine if the applicant possesses the requisite business integrity to be given access to

Line Release entry processing. Accordingly, applicants will be required to provide complete business histories to Customs, *i.e.*, account for business name changes, reasons for relocations, etc.

Proposed New Section 123.74

Proposed § 123.74, entitled “Notice of selection; appeal of determination”, provides that Customs shall provide written notice to carrier-applicants concerning their participation in the LBCIP. (Customs will provide written notice to individual designated drivers only in cases where they are not selected to participate in the LBCIP.) This section also lists the grounds for nonselection and references the agency appeal procedures, described at proposed § 123.75, that carriers/drivers must follow if they wish to appeal the decision of nonselection.

Proposed New Section 123.75

Proposed § 123.75, entitled “Notice of revocation; appeal of decision”, explains the circumstances under which Customs may terminate a carrier’s or driver’s participation in the LBCIP. This section also describes the agency appeal procedures carriers/drivers must follow if they wish to challenge revocation of their participation in the LBCIP.

Proposed Amendments to Sections 142.41 and 142.47

Section 142.41, which explains Line Release in general terms, and § 142.47, which concerns the voiding of Line Release transactions, are being revised to indicate that, at certain high-risk locations (the locations to be published in the **Federal Register**), Customs may require for the use of Line Release that imported merchandise, which otherwise qualifies for Line Release, be transported over the border by carriers and drivers that participate in the LBCIP.

Comments

Before adopting this proposed regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Suite 3000, Washington, D.C.

Inapplicability of the 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, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities, because the proposed amendments concern a voluntary program that will confer a benefit on the trade community. Accordingly, the proposed 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 this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to Customs at the address set forth previously.

Comments are invited on:

- (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;
- (b) The accuracy of the agency's estimate of the information collection burden;
- (c) Ways to enhance the quality, utility, and clarity of the information to be collected;
- (d) Ways to minimize the information collection burden on respondents, including through the use of automated collection techniques or other forms of information technology; and
- (e) Estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

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.

The collection of information in these proposed regulations is at § 123.73. The information to be collected is necessary to improve Customs ability to interdict illicit drug shipments along the land

border in cooperation with common carriers and their designated drivers who participate in the LBCIP. The likely respondents are individual drivers and commercial carrier organizations that engage in foreign commerce and trade along the land border of the United States.

Estimated total annual reporting and/or recordkeeping burden: 500 hours.

Estimated average annual burden per respondent/recordkeeper: 1 hour.

Estimated number of respondents and/or recordkeepers: 500.

Estimated annual frequency of responses: 1.

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

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.

Amendments to the Regulations

For the reasons stated above, it is proposed to amend parts 123 and 142 of the Customs Regulations (19 CFR parts 123 and 142), 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 123.75 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 123.71–123.75 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 123.75, is added to read as follows:

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—and their designated drivers—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 (e.g., trucks, buses, locomotives, etc.) 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 and drivers 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 carrier/driver participants 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 (1) security systems at the place of business for the safe storage and handling of cargo intended to be imported into the United States, and (2) security procedures aimed at restricting access to transporting conveyances and preventing the unauthorized lading of illegal drugs while the conveyance is enroute 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 attempt 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 or any other provision contained in the written agreement.

§ 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 of Customs 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 information 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 and its designated drivers to participate in the LBCIP. Following Customs evaluation of the information provided, Customs shall determine the carrier-applicant's and its designated drivers' ability to participate in the

LBCIP. In cases of selection, Customs will notify the common carrier in writing and sign and return one of the copies of the written agreement. In cases of nonselection, the written notice of nonselection shall clearly state the reason(s) for denial and recite the applicant's/driver's appeal rights under paragraph (b) of this section.

(a) *Grounds for nonselection.* The port director may deny a carrier's application, or a driver's designation, 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 and designated drivers 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, or a driver's authorization to participate in the LBCIP, 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, any designated driver, 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 or a designated driver allows an unauthorized person or entity to use its LBCIP certificate or other approved form of identification;

(4) The carrier-participant or a designated driver misuses authorized conveyances;

(5) The carrier-participant or a designated driver refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation relative to continued participation in the LBCIP;

(6) The carrier-participant or a designated driver 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, and, where appropriate, the individual designated driver(s), of the decision in writing. The notice of revocation shall clearly state the reason(s) for revocation and recite the applicant's/driver's appeal rights under paragraph (c) of this section.

(c) *Appeal.* An LBCIP participant who receives a notice of revocation and who wishes 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 participant'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 may be denied by Customs unless the imported merchandise is transported by carriers and drivers 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".

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: August 7, 1997.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 330, and 358

[Docket No. 96N-0420]

Over-The-Counter Human Drugs; Proposed Labeling Requirements; Notice of Availability of Study Data and Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period on specific data.

SUMMARY: The Food and Drug Administration (FDA) is reopening to February 13, 1998 the comment period on specific data related to the February 27, 1997, proposed rule to establish a standardized format for the labeling of over-the-counter (OTC) drug products (62 FR 9024). As part of that rulemaking proceeding, the agency collected data under a study entitled "Over-the-Counter (OTC) Label Format Preference, Study B." (Study B). This document announces the availability of the data and frequency tabulations that summarize the Study B data and reopens the comment period for the OTC rulemaking proceeding to allow an opportunity for comment on Study B. **DATES:** Submit written comments on Study B by February 13, 1998.

ADDRESSES: Submit written comments on the information collected in Study B to the Dockets Management Branch (HFA-305), ATTN: Study B, OTC Drug Labeling Data Collection, Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kathryn J. Aikin, Food and Drug Administration, Division of Drug Marketing, Advertising, and Communications (HFD-40), 5600 Fishers Lane, Rockville, MD, 20857, 301-827-2828, Aikink@cder.fda.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 27, 1997 (62 FR 9024), FDA published a proposed rule intended to enable consumers to read and understand OTC drug product labeling and to more effectively apply the information in the labeling to the safe and effective use of such products. An important element of FDA's proposed rule is a standardized labeling format for OTC drug products.

After issuing the proposed rule, FDA published in the **Federal Register** a notice under the Paperwork Reduction Act of 1995 announcing the agency's intention to conduct four studies relating to OTC drug products (62 FR 28482, May 23, 1997). The agency intends at this time to use two of the studies ("Evaluation of Proposed Over-the-Counter (OTC) Label Formats, Study A," and "Over-the-Counter (OTC) Label Format Preference, Study B") in deliberations on developing a standardized, easy to read and easy to understand, labeling format for OTC drug products (see 62 FR 9024). The data and frequency tabulations for one of these studies, Study B, are now available.

In Study B, consumers were invited to view examples and variations of current OTC label designs. Respondents were asked to indicate their preference for various designs and to evaluate labeling terminology and graphics to help the agency understand how consumers interpret various ways of communicating drug safety and drug effectiveness information. The agency is now seeking comments on the data developed under Study B, including the opinions of the respondents on the various labeling format elements used in the Study. The comments on Study B will be included in the agency's deliberations on developing a final, standardized OTC labeling format regulation.

After the results for Study A are tabulated, the agency will publish a notice in the **Federal Register** announcing when the data and tabulations are available for viewing.