

0001. In addition, one copy of each pleading must be served on John D. Heffner, Rea, Cross & Auchincloss, 1707 L Street, N.W., Suite 570, Washington, DC 20036.

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Decided: February 14, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 00-4101 Filed 2-22-00; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of a General Program Test: Procedure for Transfer of Accompanied (International) In-Transit Baggage

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs plan to conduct a test program that allows participating air carriers to electronically transmit information to Customs to transfer accompanied air passenger (checked) baggage from one aircraft entering the United States to another aircraft departing from the United States enroute to a foreign destination. For carriers participating in the test, this information filing procedure will replace the filing procedure for the air cargo manifest form (Customs Form (CF) 7509) currently provided for under the Customs Regulations and will permit more effective in-transit passenger and in-transit baggage processing procedures. The test covers arriving flights of air carriers participating at an acceptable performance level in the Advance Passenger Information System (APIS) program. This notice invites public comments concerning any aspect of the test, informs interested members of the public of the eligibility requirements for voluntary participation in the test, and describes the information transmission and baggage processing procedures required of those participating in the test.

EFFECTIVE DATES: The testing period will commence no earlier than March 24, 2000, and will run for approximately one year. Comments concerning this notice, including eligibility standards, application process, and information submission requirements, must be

received on or before March 24, 2000. To participate in the test, the necessary information, as set forth in this notice, must be filed with Customs on or before March 24, 2000.

ADDRESSES: Written comments regarding this notice should be addressed to Passenger Programs, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Room 5.4D, Washington, D.C. 20229. Air carriers that have entered into an agreement with the Government by signing an APIS Memorandum of Understanding (MOU) may request participation in the test program by providing written notification, to the port director with jurisdiction over the airport where the transfer of accompanied international in-transit baggage will occur, of their acceptance of all the conditions outlined in the "Conditions of Operation" section of this notice. Air carriers who wish to participate in the test can apply to participate in the APIS program by contacting Mike Cronin, Acting Associate Commissioner for Programs, U.S. Immigration & Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536.

FOR FURTHER INFORMATION CONTACT: For operational or policy matters: Steve A. Gilbert, Office of Field Operations (202) 927-1391. For regulatory matters: Larry L. Burton, Office of Regulations and Rulings (202) 927-1287.

SUPPLEMENTARY INFORMATION:

Background

Customs recognizes that commercial air travel is a dynamic and ever changing industry. The establishment of new ways of operating within the industry, including gateway airports, air carrier hubs, and the advent of global alliances, fosters new working relationships between air carriers. Air carriers are continually looking to improve international passenger processing, one aspect of which is the efficient transfer of international in-transit baggage, a matter also of concern to Customs. The announced test is designed to test procedures for processing international in-transit baggage and for filing certain information in place of an air cargo manifest.

The announced test program pertains to passengers and their baggage arriving in the United States aboard one aircraft and departing from the United States aboard another aircraft. Thus, the test pertains to international in-transit passengers and their international in-transit baggage, i.e., in transit through the United States to a foreign destination.

The baggage referred to is checked baggage, not carry on baggage. Because checked baggage is stored below the passenger cabin in the baggage compartment of the aircraft, passengers do not have access to it during flights. Because the passengers are on board the same aircraft as their checked baggage, the baggage is considered accompanied baggage (as opposed to unaccompanied baggage).

Thus, to reiterate, the test program covers the following specific kind of baggage: accompanied, international, in-transit, checked baggage that arrives in the United States on board one aircraft and departs from the United States on board another aircraft. (Hereafter, this baggage will be referred to merely as in-transit baggage or baggage.)

The Air Cargo Manifest Requirement Under the Customs Regulations

Under § 122.48(a) of the Customs Regulations (19 CFR 122.48(a)), air carriers arriving in the United States from a foreign area must file an air cargo manifest (Customs Form (CF) 7509) for all cargo on board. (See 19 U.S.C. 1431(a) and 1644a(b)(1)(E).) This filing requirement can be met by manually submitting the manifest form (CF 7509) to Customs or by filing an electronic manifest under the Automated Manifest System (AMS). (See 19 U.S.C. 1431(b), 1431(d)(1), and 1644a(b)(1)(E).)

Section 122.48(e) of the Customs Regulations (19 CFR 122.48(e)) pertains specifically to accompanied baggage entering the United States in one aircraft and leaving the United States in another aircraft. It provides that when passengers do not have access to their baggage while in transit through the United States, the baggage is considered cargo and must be listed on the air cargo manifest. (See also § 122.101 of the Customs Regulations (19 CFR 122.101), which provides that such baggage must be listed on the air cargo manifest in accordance with § 122.48(e).)

Thus, the Customs Regulations require that in-transit baggage of the kind covered by the announced test program must be listed on an air cargo manifest submitted to Customs when passengers do not have access to their baggage while in transit through the United States (between flights).

Under the test program, in-transit passengers will not have access to their in-transit baggage between flights, but the ordinarily applicable air cargo manifest filing requirement under the Customs Regulations will be replaced by a procedure requiring the test participant, prior to the flight's arrival, to electronically file certain information via the Advanced Passenger Information

System (APIS) program (see "APIS" section below) and to file certain other information either by manual delivery at the port of arrival or by allowing Customs access to its reservations data base. (See Conditions (1) and (2) of the "Conditions of Operation" section of this notice.) The required information that will be provided electronically via APIS pertains to passengers, including in-transit passengers. The required information that will be provided either by manual delivery or through Customs access to the participant's reservations data base includes information on the in-transit baggage.

Participants that submit the required information will not have to file an air cargo manifest (CF 7509) for their in-transit baggage, either manually or electronically. This exemption applies only to in-transit baggage covered by the test program; the requirement that a manifest must be filed for cargo remains in force.

In-Transit Baggage Processing

Ordinarily, although procedures can vary somewhat depending on the airport, in-transit passengers deplaning from the arriving aircraft pick up their checked baggage at the baggage carousel, proceed through Customs processing (inspection) with their baggage, and then submit the baggage to a transfer desk where it is placed in a staging area to be picked up for loading onto the departing aircraft. Because, under this procedure, passengers access their baggage between flights, there is no requirement to list the baggage on the air cargo manifest for submission to Customs. This ordinary practice that occurs at most airports is provided for under § 122.101(a) of the Customs Regulations (19 CFR 122.101(a)).

The test program differs from the ordinary procedure of § 122.101(a), as described above. Under the test, the baggage will not be released to in-transit passengers between flights for Customs processing and subsequent submission to the transfer desk. Rather, after being off-loaded from the arriving aircraft, the baggage will be moved (by the arriving carrier or authorized airport personnel) to a Customs approved security area where some form of inspection, at Customs discretion, may take place. From the security area, whether or not Customs inspects all or some of the baggage, the baggage will be transported to the departing aircraft. The in-transit passengers, in most instances, will proceed through Customs processing upon deplaning, without their checked baggage, to await boarding onto the departing aircraft. (However, some airport facilities provide for secure areas

where deplaning in-transit passengers wait to board the departing aircraft, without going through Customs processing.)

Processing in-transit baggage under the test program will also differ from the procedure provided for under § 122.101(b) (a voluntary alternative to the § 122.101(a) procedure), which allows passengers to have the air carrier treat their baggage as cargo, with different processing requirements and fees, including an air cargo manifest filing requirement. Under the test, the baggage will not be treated as cargo and the air cargo manifest will not be filed (either manually or electronically).

The APIS Program

The APIS program is an already existing and independent voluntary program. Air carrier participants in APIS enter into a memorandum of understanding (MOU) with the Government under which they agree to electronically provide certain information to Customs and the Immigration & Naturalization Service (INS) prior to a flight's arrival in the United States. The information provided pertains, in part, to the passengers on board the aircraft and depends upon the specific terms of the MOU.

Analysis of this information by Customs and the INS, while these flights are enroute to the United States, allows for expedited processing of the vast majority of the passengers when they arrive in the United States. The expedited processing of these flights is referred to as "Blue Lane processing" in the APIS MOU, and flights for which air carriers have transmitted required data at or above minimum standards set forth in the MOU (accuracy rates) are considered "Blue Lane eligible" flights. Customs and the INS monitor the performance of air carriers participating in APIS to evaluate their compliance with the standards of the MOU. Less than acceptable performance can result in a loss of Blue Lane eligibility status for a given flight. (An APIS participating air carrier may have several APIS qualified flights that originate from different foreign places and/or arrive at several different U.S. airports. Loss of Blue Lane eligibility for a given flight (or flights) would not result necessarily in suspension from the APIS program altogether.)

While APIS is a separate and independent program that has been in operation for several years, it has been integrated into and made a component of the announced test (see Condition (1) of the "Conditions of Operation" section). Air carriers operating under the APIS program are not required to

participate in the test (as it is a voluntary program) and election not to participate will not affect their APIS status.

General Test Authority

Pursuant to Title VI (entitled "Customs Modernization") of the North American Free Trade Agreement Implementation Act (the Act; Pub. L. 103-182, 107 Stat. 2057 (December 8, 1993)), Customs amended its regulations, in part, to enable the Commissioner of Customs to conduct limited test programs/procedures designed to evaluate the effectiveness of new technology or operational procedures which have as their goal the more efficient and effective processing of passengers, carriers, and merchandise. Section 101.9(a) of the Customs Regulations (19 CFR 101.9(a)) allows for such general testing. (See TD 95-21 (60 FR 14211, March 16, 1995). This test is established pursuant to those regulations.

Intent of the Test Program

Customs plans to work with the air carrier community, other agencies, and other parties affected by this test program in the design, implementation, and evaluation of the test. Customs intends to use the experience gained in administering the test program to design operational procedures, automated systems, and regulations that are supportive of, and compatible with, the business environment of the air carrier industry, Customs enforcement mission, and the industry's and Customs efforts to improve international passenger processing.

Conditions of Operation

The announced test provides an alternative to the ordinary in-transit baggage processing procedure of § 122.101(a) and replaces the regulatory requirement of § 122.48(e) to file (manually or electronically) with Customs, at the port of arrival, an air cargo manifest (CF 7509) for accompanied in-transit baggage, so long as participants agree to the following test conditions of operation:

(1) The APIS component: The participant must transmit to Customs via APIS, prior to arrival of the aircraft, the information required under the terms of the APIS MOU.

(2) The participant must also submit to Customs an "onward connector listing" a document that identifies the arriving flight number, in-transit passenger names, their checked (in-transit) baggage tag numbers, and their ultimate foreign destination(s). The participant may provide this

information in the form of a computer generated report, screen print, or other hard copy document manually submitted to Customs prior to arrival, or by allowing Customs to electronically access its reservations database in order that Customs may extract an "onward connector listing" containing the required information prior to arrival of the flight.

(3) The participant must affix an in-transit international baggage tag to each piece of in-transit baggage at the foreign point of origin, as provided for under § 18.14 of the Customs Regulations (19 CFR 18.14), to visually identify the baggage for later exportation from the United States.

(4) The participant must perform staging and transferring of in-transit baggage in Customs approved security areas (except for plane-to-plane transfers approved by Customs locally).

(5) The participant must ensure that all carrier employees or contract ramp service employees with access to the in-transit baggage will have and display (or produce upon demand) approved identification issued under the Customs Regulations (19 CFR Part 122, Subpart S, entitled "Access to Customs Security Areas").

(6) The participant must timely deliver in-transit baggage to Customs approved secure areas and to the Federal Inspection Service (FIS) area for inspection, if and when requested.

(7) The participant must maintain direct control of the in-transit baggage until the departing carrier responsible for exporting the baggage has signed a receipt for it, which will transfer bond liability from the participant to the departing carrier.

Test participants agreeing to follow the above conditions of operation will be allowed to participate in the test. If for any reason, however, a participant's APIS or electronic reservations database system becomes inoperative, Customs is unable to receive APIS information transmitted by a participant, or access to the participant's reservations database is otherwise not available, the participant will be required to submit a paper document listing the required APIS passenger information and the in-transit baggage information prior to the arrival of the flight.

Regulatory Provisions Suspended

Section 122.48(e) of the Customs Regulations (19 CFR 122.48(e)), pertaining to the filing of an air cargo manifest for international, in-transit baggage, will be suspended during this test for test participants that provide the information required under the test's

conditions of operation and otherwise meet those conditions.

Eligibility Criteria

To be eligible to participate in the program, an applicant air carrier: (1) must be an APIS participating carrier (having entered into an agreement with the Government by signing an APIS MOU) and (2) must be performing acceptably under the APIS MOU and have been so performing for a period of at least four weeks.

The Application Process

Participation in the test program is open only to APIS participating air carriers in good standing (performing under the MOU at acceptable levels). To apply for participation in the test, these APIS participating air carriers must submit a written statement to the port director with jurisdiction over the airport where the transfer of the in-transit baggage will occur within 30 days following the publication of this notice in the **Federal Register**. The statement (examples of which may be obtained from the port director) must be signed by an authorized official of the carrier. It must state that the air carrier agrees to all the conditions set forth in the "Conditions of Operation" section of this notice and that it wishes to voluntarily participate in the test. The statement must also designate a local point of contact and telephone number for use by Customs personnel at the port.

To apply for participation in the APIS program, a prerequisite to participation in the test program, air carriers should contact the Customs port director with jurisdiction over the airport where they intend to operate or contact Mike Cronin, Acting Associate Commissioner for Programs, U.S. Immigration & Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536.

Revocation and Reinstatement

Customs, in its mission to interdict the flow of illegal narcotics and other contraband into the United States, places enormous reliance on APIS transmissions and in-transit baggage information. Consequently, the port director with jurisdiction over the airport where the test participant is operating may revoke a test participant's privilege to operate under the test program in certain circumstances. A participant's privilege can be revoked altogether (full revocation) or the revocation may be partial (e.g., limited to a certain flight or flights).

Full revocation may be ordered where a test participant has been suspended from operating under the APIS program.

Where the loss of Blue Lane eligibility for a given flight (or flights) does not result in a participant's suspension from the APIS program, it will result in revocation of the participant's privilege to operate under the test program for that flight (or those flights) until the participant's Blue Lane eligibility status for that flight (or those flights) is restored. This is a partial revocation.

A test participant's privilege to operate under the test also can be fully or partially revoked for less than satisfactory performance of any of the conditions of operation. Also, where the port director determines that a participant's test performance is unsatisfactory in any way that may compromise the Customs enforcement mission, the privilege may be fully or partially revoked.

A participant whose privilege to operate under the test has been revoked for any reason will be required to file an air cargo manifest that lists in-transit baggage under ordinary procedures (manually or electronically), in accordance with the requirements of the Customs Regulations (19 CFR 122.48(e) and 122.101), or to have its in-transit passengers take their baggage through Customs processing as provided under § 122.101(a). If there has been a full revocation of test privileges, all covered flights will be affected. If the revocation was limited to a certain flight (or flights) or to a certain airport, only those flights or that airport will be affected.

A participant's reinstatement into the test program, after full or partial revocation of privileges, may be permitted after the participant submits to the appropriate port director a written explanation of the problems that led to the revocation of privileges and the measures taken to correct those problems. Where a full revocation was based on a test participant's suspension from APIS, reinstatement into the test program will require reinstatement into the APIS program. Where test privileges were revoked relative to a given flight, for the reason that the flight lost Blue Lane eligibility status, reinstatement into the test program for that flight will depend upon restoration of Blue Lane eligibility status for that flight. Reinstatement into the test program also may be accomplished by sufficiently improving performance or satisfactorily correcting deficiencies with respect to other test conditions when these performance factors were the reason(s) for full or partial revocation of privileges.

Test Evaluation Criteria

Customs will review all public comments received concerning any

aspect of the test program or procedures, amend procedures as necessary in light of those comments, form problem-solving teams, and establish baseline measures and evaluation methods and criteria.

The following evaluation methods and criteria have been suggested to measure the performance of test participants: (1) measuring participants' APIS data transmissions and other information submissions regarding in-

transit passengers and baggage for timeliness, completeness, and accuracy, (2) tracking the number of deficiencies that occur in the delivery of in-transit baggage to Customs secure areas or, when necessary, to the FIS area, (3) tracking deficiencies in the performance of other test conditions, and (4) assessing the impact on Customs workload, including cycle time and workload shifts.

Six months after implementation of the program, evaluations of the program will be commenced. Results of the test evaluations will be available at the conclusion of the test and will be made available to the public upon request.

Dated: February 17, 2000.

Charles W. Winwood,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 00-4269 Filed 2-22-00; 8:45 am]

BILLING CODE 4820-02-P