

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR PART 12

CBP DEC. 10-32

RIN 1515-AD70

EXTENSION OF IMPORT RESTRICTIONS IMPOSED ON CERTAIN CATEGORIES OF ARCHAEOLOGICAL MATERIAL FROM THE PRE-HISPANIC CULTURES OF THE REPUBLIC OF NICARAGUA

AGENCY: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends Customs and Border Protection (CBP) regulations to reflect the extension of import restrictions on certain categories of archaeological material from the Pre-Hispanic cultures of the Republic of Nicaragua. The restrictions, which were originally imposed by Treasury Decision (T.D.) 00-75 and extended by CBP Decision (Dec.) 05-33, are due to expire on October 20, 2010. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has determined that factors continue to warrant the imposition of import restrictions. Accordingly, these import restrictions will remain in effect for an additional 5 years, and the CBP regulations are being amended to reflect this extension until October 20, 2015. These restrictions are being extended pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act that implemented the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. T.D. 00-75 contains the Designated List of archaeological material representing Pre-Hispanic cultures of Nicaragua to which the restrictions apply.

EFFECTIVE DATE: October 20, 2010.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Charles Steuart, Chief, Intellectual Property Rights and Restricted Merchandise Branch, Regulations and Rulings, Office of International Trade, (202) 325-0020. For operational aspects, Michael Craig, Chief, Interagency Requirements Branch, Trade Policy and Programs, Office of International Trade, (202) 863-6558.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention, implemented by the Convention on Cultural Property Implementation Act (Pub. L. 97-446, 19 U.S.C. 2601 *et seq.*), the United States entered into a bilateral agreement with the Republic of Nicaragua concerning the imposition of import restrictions on certain categories of archeological material from the Pre-Hispanic cultures of the Republic of Nicaragua on June 16, 1999, and following completion by the Government of Nicaragua of all internal legal requirements, the agreement entered into force on October 20, 2000. On October 26, 2000, the former U.S. Customs Service (now U.S. Customs and Border Protection (CBP)) published T.D. 00-75 in the **Federal Register** (65 FR 64140), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions and included a list designating the types of articles covered by the restrictions.

Import restrictions listed in 19 CFR 12.104g(a) are “effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period can be extended for additional periods not to exceed five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists” (19 CFR 12.104g(a)). On October 20, 2005, CBP published CBP Dec. 05-33 in the **Federal Register** (70 FR 61031) which amended 19 CFR 12.104g(a) to reflect the extension for an additional period of 5 years.

On February 23, 2010, the Department of State received a request by the Government of the Republic of Nicaragua to extend the Agreement, and after the Department of State proposed to extend the Agreement and reviewed the findings and recommendations of the Cultural Property Advisory Committee, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, determined that the cultural heritage of Nicaragua continues to be in jeopardy from pillage of Pre-Hispanic archaeological resources and made the necessary determinations to extend the import restrictions

for an additional five years. Diplomatic notes have been exchanged on October 15, 2010, reflecting the extension of those restrictions for an additional five year period. Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect this extension of the import restrictions.

The Designated List of Pre-Hispanic Archaeological Material from Nicaragua covered by these import restrictions is set forth in T.D. 00–75. The Designated List and accompanying image database may also be found at the following Internet Web site address: <http://exchanges.state.gov/heritage/culprop/nifact.html>.

The restrictions on the importation of these archaeological materials from the Republic of Nicaragua are to continue in effect until October 20, 2015. Importation of such material continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). In addition, CBP has determined that such notice or public procedure would be impracticable and contrary to the public interest because the action being taken is essential to avoid interruption of the application of the existing import restrictions (5 U.S.C. 553(b)(B)). For the same reasons, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12 — SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

2. In § 12.104g, paragraph (a), the table is amended in the entry for Nicaragua by removing the reference to “CBP Dec. 05–33” and adding in its place “CBP Dec. 10–32”.

Dated: October 15, 2010

ALAN BERSIN
Commissioner
U.S. Customs and Border Protection

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

[Published in the Federal Register, October 20, 2010 (75 FR 64654)]



DOCKET NO. USCBP-2010-0031

Notice of Meeting of the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC)

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

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Advisory Committee on Commercial Operations of U.S. Customs and Border Protection (COAC) will meet on November 9, 2010, in Washington, DC. The meeting will be open to the public.

DATES: COAC will meet on Tuesday, November 9, 2010, from 1:00 p.m. – 5:00 p.m. Please note that the meeting may close early if the committee completes its business. If you plan on attending, please register either online at https://apps.cbp.gov/te_registration/index.asp?w=31, or by e-mail to tradeevents@dhs.gov by close-of-business on November 4, 2010.

ADDRESSES: The meeting will be held at the Ronald Reagan Building in the Horizon Ballroom, 1300 Pennsylvania Avenue, NW, Washington, DC 20229. The public is invited to submit comments and/or written material on any of the identified agenda items as set forth below. Please note that any comments or written materials that are mailed should reach the contact person at the address listed below before November 4, 2010, so that copies of your submitted materials can be distributed to committee members prior to the meeting. Comments must be identified by USCBP-2010-0031 and may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** *http://www.regulations.gov*. Follow the instructions for submitting comments.
- **E-mail:** *tradeevents@dhs.gov*. Include the docket number in the subject line of the message.
- **Fax:** 202-325-4290.
- **Mail:** Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW, Room 5.2-A, Washington, DC 20229.

Instructions: All submissions received must include the words “Department of Homeland Security” and the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by COAC, please go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW, Room 5.2-A, Washington, DC 20229; *tradeevents@dhs.gov*; telephone 202-344-1440; facsimile 202-325-4290.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), DHS hereby announces the meeting of the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC). COAC is tasked with providing advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border

Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of the Treasury.

The seventh meeting of the eleventh term of COAC will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

Tentative Agenda

1. Management by Account — CBP's Future Trade Vision.
2. Importer Security Filing ("10+2").
3. Intellectual Property Rights Enforcement.
4. Agriculture Program Update.
5. Air Cargo Security.
6. Automation/International Trade Data System.
7. The National Strategies to Secure the Flow of Commerce in the Global Supply Chain.
8. Bond Issues.

Procedural

This meeting is open to the public; however, participation in COAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations. Please note that the meeting may close early if all business is finished.

All visitors to the Ronald Reagan Building will have to go through a security checkpoint to be admitted to the building. Since seating is limited, all persons attending this meeting should provide notice by close-of-business on November 4, 2010, by registering online at https://apps.cbp.gov/te_registration/index.asp?w=31 or, alternatively, by contacting Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW, Washington, DC 20229; tradeevents@dhs.gov; telephone 202-344-1440; facsimile 202-325-4290.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

Dated: October 12, 2010

MICHAEL SCHREFFLER
Acting Director,
Office of Trade Relations U.S. Customs and
Border Protection

[Published in the Federal Register, October 18, 2010 (75 FR 63847)]

**NOTICE OF ISSUANCE OF FINAL DETERMINATION
CONCERNING FAIRPLAY LEGACY ELECTRIC VEHICLES**

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of the Fairplay Legacy line of golf and recreational electric vehicles. Based upon the facts presented, CBP has concluded in the final determination that the United States is the country of origin of the Fairplay Legacy line of electric vehicles for purposes of U.S. Government procurement.

DATES: The final determination was issued on October 13, 2010. A copy of the final determination is attached. Any party-at-interest, as defined in 19 C.F.R. § 177.22(d), may seek judicial review of this final determination on or before November 18, 2010.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Valuation and Special Programs Branch: (202) 325–0034.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on October 13, 2010, pursuant to subpart B of part 177, Customs Regulations (19 C.F.R. Part 177, subpart B), CBP issued a final determination concerning the country of origin of the Fairplay Legacy line of golf and recreational electric vehicles which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H118435, was issued at the request of Fairplay Electric Cars, LLC (“Fairplay”), under procedures set forth at 19 C.F.R. Part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511–18). In the final determination, CBP concluded that, based upon the facts presented, the Fairplay Legacy line of electric vehicles, assembled to completion in the United States from parts made in non-TAA

countries and TAA countries and/or the United States, are substantially transformed in the United States, such that the United States is the country of origin of the finished articles for purposes of U.S. Government procurement.

Section 177.29, Customs Regulations (19 C.F.R. § 177.29), provides that notice of final determinations shall be published in the *Federal Register* within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 C.F.R. § 177.30), provides that any party-at-interest, as defined in 19 C.F.R. § 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the *Federal Register*.

Dated: October 13, 2010

SANDRA L. BELL
Executive Director
Regulations and Rulings Office of
International Trade

Attachment

HQ H118435

October 13, 2010

CLA-2 OT:RR:CT:VS H118435 HkP

CATEGORY: Marking

MR. KEITH ANDREWS, PRESIDENT
FAIRPLAY ELECTRIC CARS
743 HORIZON CT., SUITE 333
GRAND JUNCTION, CO 81506

RE: Government Procurement; Country of Origin of Electric Vehicles; Substantial Transformation

DEAR MR. ANDREWS:

This is in response to your letter dated July 20, 2010, requesting a final determination on behalf of Fairplay Electric Cars, LLC (“Fairplay”), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection Regulations (19 C.F.R. Part 177).

Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (TAA), as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of the Fairplay Legacy line of golf and recreational vehicles. We note that as a U.S. importer and manufacturer, Fairplay is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination. In reaching our decision, we have taken into account additional information submitted to this office on August 31, 2010.

FACTS:

The models of vehicles at issue are the following: Legacy Eco 2P, Legacy Eco 2P XR, Legacy Eco 4P, Legacy Deluxe 2P, Legacy Deluxe XR 2P, Legacy Deluxe LTD 2P, Legacy Deluxe HP 2P, and the Legacy Transport.

According to the information submitted, Fairplay imports parts for these vehicles from China. These include chassis, plastic body parts and various miscellaneous pieces of plastic trim, which are assembled together in the United States with U.S.-made battery packs, motors, electronics, wiring assemblies, seats, and chargers. The bill of materials (BOM) submitted with the request indicates that, depending on the model, a vehicle may have between approximately 53 and 62 inputs, when items such as logos/decals, warranty registration cards, and labor are counted along with the parts. Of these, between 12 and 17 inputs are of U.S. origin or are performed in the U.S. Between 44.8% and 53.5% of actual manufacturing costs are attributed to U.S. or TAA country manufacturing operations.

Assembly in the U.S. takes place at five different stations and takes between 11 hours (660 minutes) and 14.25 hours (855 minutes). The operations performed at each assembly station are described as follows:

Station 0: The electronic controller plate is assembled and tested. Approximate assembly time: 90–135 minutes.

Station 1: The chassis is unloaded and given a vehicle identification number. Wheels, tires, and the steering column are installed on the chassis using rivets, nuts, bolts, screws, and plastic push-ins. Approximate assembly time: 180–240 minutes.

Station 2: The batteries, motor, controller, solenoid, wiring harness and other crucial electronic parts are installed using rivets, nuts, bolts, and screws or special Molex connectors and plastic push-ins that must be soldered. Approximate assembly time: 90–120 minutes.

Station 3: The plastic front and rear body, bumpers and dashboard are installed over the chassis and electronic assembly, which gives the vehicle its finished appearance. Parts are attached with rivets, nuts and bolts. The vehicle is then removed from the assembly rack. Approximate assembly time: 150–180 minutes.

Station 4: The deep cycle batteries, upright canopy supports, canopy top, seat bottom and back, seat belts, lights, reflectors, decals, logos and final wiring are installed and tested. The parts are installed using rivets, Molex connectors, nuts, bolts, screws, and/or plastic push-ins, as required. Approximate assembly time: 150–180 minutes.

Testing of the fully assembled vehicle lasts between 90 and 195 minutes, depending on the vehicle. In addition, quality control inspections are performed at each station as well as randomly. Packing and shipping operations last between 30 and 45 minutes. The Standard Operating Procedures to assemble the vehicles are designed by staff engineers, who also select, approve and advise on the appropriate parts to be used for the manufacture of the vehicles.

ISSUE:

What is the country of origin of the Fairplay Legacy line of golf and recreational electric vehicles for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. See 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. See 48 C.F.R. § 25.403(c)(1). The Federal Procurement Regulations define "U.S.-made end product" as:

[A]n article that is mined, produces, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See C.S.D. 80-111, C.S.D. 85-25, C.S.D. 89-110, C.S.D. 89-118, C.S.D. 90-51, and C.S.D. 90-97. For example, in C.S.D. 85-25, 19 Cust. Bull. 844 (1985), CBP held that for purposes of the Generalized System of Preferences ("GSP"), the assembly of a large number of fabricated components onto a printed circuit board in a process involving a considerable amount of time and skill resulted in a substantial transformation. In that case, in excess of 50 discrete fabricated components (such as resistors, capacitors, diodes, integrated circuits, sockets, and connectors) were assembled. Whether an operation is complex and meaningful depends on the nature of the operation, including the number of components assembled, number of different operations, time, skill level required, attention to detail, quality control, the value added to the article, and the overall employment generated by the manufacturing process.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

You believe that the assembly operations that take place in the U.S. result in a substantial transformation of the imported parts. You note that these parts, by themselves, cannot function and must be assembled with the U.S.-made parts to constitute a working electric self-propelled vehicle. Given these considerations, you argue that the U.S. content along with the fact that 100% of the assembly operations takes place in the U.S. warrants a determination that the U.S. is the country of origin of the vehicles. In support of

your argument, you cite Headquarters Ruling Letter (“HQ”) H022169 (May 2, 2008) and HQ 558919 (Mar. 20, 1995).

In HQ H022169, CBP found that an imported mini-truck glider was substantially transformed as a result of assembly operations performed in the Untied States to produce an electric mini-truck. Our decision was based on the fact that, under the described assembly process, the imported glider lost its individual identity and became an integral part of a new article possessing a new name, character and use. In addition, a substantial number of the components added to the imported glider were of U.S. origin.

In HQ 558919, a country of origin marking case relied upon in HQ H022169, U.S. Customs (now CBP) held that an extruder assembly manufactured in England was substantially transformed in the United States when it was wired and combined with U.S. components (motor, electric controls and extruder screw) to create a vertical extruder. In reaching that decision, Customs emphasized that the imported extruder subassembly and the U.S. components each had important attributes that were functionally necessary to the operation of the extruder. Consequently, we found that the imported subassemblies should be excepted from individual marking, provided that the cartons in which the U.S. manufacturer received them were properly marked with their country of origin.

In both HQ 558919 and HQ H022169, CBP found that assembly of the imported parts together with the U.S. made components were “functionally necessary” to the operation of the finished product. The same is true in this situation. None of the imported parts, on their own, can function as an electric vehicle but must be assembled with other necessary U.S. components, such as the battery pack, motor, electronics, wiring assemblies and charger. Moreover, given the complexity and duration of the U.S. manufacturing process, we consider those operations to be more than mere assembly.

Based on the information before us, and consistent with the CBP rulings cited above, we find that the Chinese-origin chassis, plastic body parts and plastic pieces of trim are substantially transformed by the assembly operations performed in the United States to produce electric vehicles. Under the described assembly process, the imported parts lose their individual identities and become integral parts of a new article possessing a new name, character and use. Further, components crucial to the making of an electric vehicle (the battery pack, motor, electronics, wiring assemblies, and charger) are of U.S. origin. We conclude, based upon these specific facts, that the country of origin of the Fairplay Legacy line of electric vehicles for purposes of U.S. Government procurement is the United States.

HOLDING:

The chassis, plastic body parts and plastic pieces of trim imported from China are substantially transformed when they are assembled in the United States with domestic components. As a result, the country of origin of Fairplay’s line of golf and recreational electric vehicles, specifically the Legacy Eco 2P, Legacy Eco 2P XR, Legacy Eco 4P, Legacy Deluxe 2P, Legacy Deluxe XR 2P, Legacy Deluxe LTD 2P, Legacy Deluxe HP 2P, and the Legacy Transport, for purposes of U.S. Government procurement is the United States.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R.

§ 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.


Sincerely,

SANDRA L. BELL,

Executive Director

*Regulations and Rulings Office of
International Trade*

[Published in the Federal Register, October 19, 2010 (75 FR 64318)]



**AUTOMATED COMMERCIAL ENVIRONMENT (ACE):
ANNOUNCEMENT OF A NATIONAL CUSTOMS
AUTOMATION PROGRAM TEST OF AUTOMATED
MANIFEST CAPABILITIES FOR OCEAN AND RAIL
CARRIERS**

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

ACTION: General notice.

SUMMARY: U.S. Customs and Border Protection (CBP) will be conducting a National Customs Automation Program test concerning the transmission of required advance ocean and rail data through the Automated Commercial Environment (ACE). This notice provides a description of the test process, sets forth eligibility criteria for participation, opens the application period for participation, outlines the development and evaluation methodology to be used, and invites public comments. Additionally, this notice advises the public that shortly after the successful completion of the test, CBP intends to publish a notice in the **Federal Register** announcing that ACE will be the only CBP-approved electronic data interchange (EDI) for submitting advance ocean and rail data and intends to amend the regulations as necessary.

DATES: CBP will start accepting applications on October 20, 2010. Selected applicants will be notified by CBP and will then undergo a certification process to be followed by active testing. The active test will commence no earlier than December 22, 2010 and will run for no less than 90 days. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

ADDRESSES: Applications to participate in the test should be sent to Susan Maskell at *Susan.Maskell@dhs.gov*. Please describe in the body of the email any past EDI history with CBP. Written comments concerning program and policy issues should be sent to *ACEM1POLICY@cbp.dhs.gov*. Please indicate in the subject line whether the comment relates to ocean carriers, rail carriers, or both.

FOR FURTHER INFORMATION CONTACT: Interested parties should direct any questions to their assigned Client Representative. Interested parties without an assigned Client Representative should direct their questions to the Client Representative Branch at 571-468-5500.

SUPPLEMENTARY INFORMATION:

Background

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI — Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057, 2170, December 8, 1993) (Customs Modernization Act). *See* 19 U.S.C. 1411. Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest.

The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace a specific legacy ACS function. Each release will begin with a test and will end with mandatory compliance with the new ACE feature, thus retiring the legacy ACS function. Each release builds on previous releases and sets the foundation for subsequent releases.

Ocean and Rail Data

This document is announcing a test to allow ocean and rail data to be transmitted to ACE. The data includes the advance cargo information required by section 343 of the Trade Act of 2002, as amended

by the Maritime Transportation Security Act of 2002 (see 68 FR 68140, December 5, 2003), and the advance data ocean carriers are required to provide pursuant to the importer security filing and additional carrier requirements interim final rule, commonly known as 10+2 (see 73 FR 71730, November 25, 2008).¹ Currently, this information is required to be transmitted via ACS in advance of arrival through a CBP-approved electronic data interchange (EDI). For ocean and rail carriers, the CBP-approved EDI is the Automated Manifest System (AMS). Ocean carriers use Vessel AMS and rail carriers use Rail AMS and the data is transmitted using one of the following AMS-compatible software data standards: ANSI X12, CAMIR, UN/EDIFACT, or BAPLIE. Currently, brokers submitting the advance data required by 10+2 use the Automated Broker Interface (ABI)-compatible software data standard known as CATAIR. See the Implementation of the Test section below for further explanation concerning the different software data standards.

As explained in further detail below, test participants will retain all of their current functionality. However, test participants will receive the additional benefits and functionality ACE provides. The deployment of ocean and rail manifest data through ACE continues to lay the foundation for a multimodal database that will eventually host all modes of transportation, including air.

Upon commencement of this test, ACE will be the system of record for ocean and rail data at all ports for test participants, therefore replacing ACS as their system of record. See ACE Systems of Record Notice (71 FR 3109), published in the **Federal Register** on January 19, 2006. As such, the creation and maintenance of specified data elements will originate in ACE and will be distributed to other CBP systems.

Authorization for the Test

The Customs Modernization Act provides the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. This test is authorized pursuant to § 101.9(b) of the CBP Regulations (19 CFR 101.9(b)) which provides for the testing of NCAP programs or procedures. This test is being conducted pursuant to this authority.

¹ For specific information about the requirements to provide advance cargo information to CBP, please see the following sections of title 19 of the Code of Federal Regulations (CFR): 4.7 Inward foreign manifest; production on demand; contents and form; advance filing of cargo declaration; 4.7a Inward manifest; information required; alternative forms; 4.7c Vessel stow plan; 4.7d Container status messages, 123.91 Electronic information for rail cargo required in advance of arrival; and part 149 Importer Security Filing.

Implementation of the Test

With the publication of this notice CBP will begin accepting applications from all transmitters of required advance ocean and rail data who wish to participate in the test. Interested applicants should contact Susan Maskell (susan.maskell@dhs.gov) in the form of an e-mail stating their qualifications based on the below referenced selection criteria, past EDI history with CBP, and their technical specifications. The e-mail should also include a point of contact. Applications will be accepted throughout the duration of the test and will be processed in the order in which they are received. Test participants will be chosen based on the selection criteria established by CBP (explained below in the Test Participant Selection Criteria section) and will be notified directly if they are chosen to participate in the initial test.

Currently, AMS and ABI users are responsible for developing or procuring AMS or ABI-compatible software for transmitting the required advance data to CBP. The following is a list of current AMS or ABI-compatible software:

- ANSI X12 — The proprietary EDI data standard of the American National Standards Institute (ANSI). This is the standard currently used by most rail and many ocean AMS transmitters.
- CAMIR — Customs Automated Manifest Interface Requirements. This is the CBP proprietary EDI data standard developed to allow ocean manifest transmitters a standard format to send their data to CBP.
- UN/EDIFACT — The United Nations Electronic Data Interchange for Administration of Commerce and Transport. This is the EDI data standard developed and maintained by the United Nations.
- BAPLIE — Bayplan/Stowage Plan Occupied and Empty Locations. This is a data message set of the UN/EDIFACT EDI data format to standardize the transmission of stowage plans associated with containerized cargo.
- CATAIR — Customs And Trade Automated Interface Requirements. This is a CBP proprietary EDI data standard used primarily for the ABI but also used for in-bond transactions, ISF, and customhouse broker queries of CBP manifest systems.

Test Participant Selection Criteria

CBP has selected its criteria for test participants to include each type of current transmitter of required advance data for ocean and

rail and each type of AMS or ABI-compatible software during the test to ensure compatibility with ACE. Specifically, CBP is looking for test participants to include:

- 2 – 3 Ocean Carriers. At least one must be filing manifests and transmitting unified manifest/ISF data using X12 and one must be using CAMIR message formats. Carrier applicants must also be submitting stow plans via BAPLIE (UN/EDIFACT).
- 2 Service Centers. One using X12 message formats and one using CAMIR message formats. Each service center must have at least one client filing manifests and transmitting unified manifest/ISF data and who is also submitting stow plans via BAPLIE (UN/EDIFACT).
- 1 Port Authority. Preferably one that both sends and receives data.
- 2 Terminal Operators. One using X12 message formats and one using CAMIR message formats.
- 2 – 3 Rail Carriers. At least one from the Northern Border and one from the Southern Border.
- 1 – 2 ABI filers currently filing the following information electronically: in-bond applications (ABI Applications, commonly known as “QP/WP”), Bill of Lading Update (ABI Application “LN”), and Cargo/Manifest Status Query (ABI Application “IN”) transactions and processing Broker Download (ABI Application “BD”) and Status Notifications (ABI Application “NS”).
- 2 – 3 stand-alone ISF filers. This will ensure that both X12 and CAMIR message formats are represented.

Additional Eligibility Requirements:

- Participant must be a current AMS EDI transmitter for ocean or rail modes of transportation using ANSI X12 or the CAMIR interfaces or an ABI transmitter using the CATAIR interface for in-bond transactions (QP/WP);
- Participant must have, or agree to establish, an ACE Secure Data Portal account; and
- Participant must have their software ready to test with CBP once CBP begins the certification process.

CBP will post the appropriate standards needed to enable each specific type of AMS or ABI-compatible software to work with ACE on the CBP.gov web site approximately 90 days prior to the start of the

active test stage. This will enable transmitters of the required advance ocean and rail data to conform their own software or acquire new software that is compatible with ACE, in anticipation of ACE becoming the only CBP-approved EDI for submitting required ocean and rail data.

I. Certification Stage

Applicants will be notified of their selection as participants. After notification, CBP will begin a certification process with the participants. The certification process is the first step towards being able to utilize ACE and it consists of two preliminary tests designed to ensure the successful transmission of data through ACE: the systems interface test and the software test.

The systems interface test is used to verify the accuracy of the participant's communications software and hardware. Any communications problems encountered during the test will be resolved. A pre-defined test scenario must be followed by each participant to evaluate its software's effectiveness in transmitting and receiving manifest, site, user, and other data. The systems interface test is complete when the participant has retrieved and verified CBP-created client-specific files from the ACE database.

The software test allows final adjustments to the participant's system and provides an opportunity for error detection without risk to the ACE production system. CBP will process sample messages and generate error messages, reject messages, and status notifications. The software test is complete when the participant has demonstrated that its software is able to transmit sample manifests, various messages, amendments, and General Order (GO) status replies according to established test procedures.

II. Active Test Stage

After completion of the certification process, but no earlier than December 22, 2010, CBP will deploy ACE ocean and rail functionality capabilities for the initial group of test participants. Throughout the test, CBP will maintain communication with the participants in order to receive comments, address issues, and measure the functionality of ACE.

ACE Functionality

Test participants will retain all of the existing functionality currently available through ACS, including the capability to:

- Submit ocean bills of lading and rail preliminary and transit bills of lading;

- Report conveyance itinerary for ocean and rail conveyances;
- Process conveyance arrivals and departures for ocean and rail;
- Process in-bond arrivals and exports;
- Process consist information for rail;
- Process general order transactions;
- Manage holds on bills of lading, conveyances, in-bond moves, empty equipment;
- Report Freight Remaining On Board;
- Process automated line release for rail cargo;
- Process permit to transfer requests;
- Submit Bio-Terrorism Act prior notification data for the Food and Drug Administration;
- Receive general order, overdue for arrival or export in-bond advisories;
- Share status notifications with other trade partners;
- Process transfer of liability requests between bonded carriers;
- Request that bill of lading data be sent to entry filers to expedite cargo clearance;
- Receive entry advisories in advance of arrival;
- Add secondary in-bond movements;
- Receive shipment status advice from other Federal agencies; and
- Submit vessel stowage plans.

In addition to the above-referenced capabilities, the following new functionalities will be available through ACE:

- Broker Download

The broker download functionality, currently available for rail transportation, will be available for ocean transportation as well. The broker download process allows for the EDI conversion of the carrier bill of lading that CBP receives in advance of shipment arrival into the CATAIR record format used by participants in the CBP ABI application. ACE will send the ABI formatted bill of lading to the customs broker designated in the bill of lading. The broker download

serves as an electronic “notification” for the broker that a shipment is incoming. This will expedite the cargo clearance process at the port of arrival.

- **Holds at the Container Level**

CBP will have the ability to place and remove holds at the container level. This will allow one container to be held and the balance of the containers on the bill of lading to be moved to the premises of the importer pending final delivery authorization from CBP.

- **Expansion of Shipment Status Disposition Codes**

The shipment status disposition code will be expanded to three positions to accommodate the participation of additional Federal Agencies that will use ACE under the International Trade Data System (ITDS) initiative of the ACE project. While this new EDI functionality is being announced in this Notice, this expansion to three positions will not be part of the initial commencement of this test, but will occur sometime thereafter. The expansion will be communicated to CBP trade partners well in advance through CSMS, publication of implementation guides on cbp.gov and outreach through trade associations and liaison groups.

- **Enhanced Transaction Sets**

The migration to the new ACE system will require changes to the EDI transaction sets that are used between CBP and the trade to send and receive cargo data and shipment status notifications. These changes will allow CBP to provide significantly more discrete and specific error messages that will allow the transmitter to quickly amend and resubmit. Error messages may be provided for multiple lines and specifically identify sections of submissions containing errors. Standardized system edits will be added to reduce the amount of customized coding that was previously required. All updated transaction sets will be posted to the CBP.gov web site. Information regarding any changes to the ocean and/or rail manifest transaction sets will also be communicated via CSMS.

ACE Portal Account Enhancements

On October 18, 2007, CBP published a Notice in the **Federal Register** (72 FR 59105) announcing, among other things, the establishment of carrier portal accounts for all modes of transportation, including ocean and rail carriers. Carriers interested in establishing ocean and/or rail portal accounts were requested to provide CBP with their Standard Carrier Alpha Code (SCAC) and method of transpor-

tation (*i.e.*, ocean, rail). Upon establishment of those accounts, ocean and rail carriers were advised that they would only have access to the static data and basic account profile information necessary to establish their portal account.

For participants of this test, ocean and rail portal carrier accounts will now also have the following additional capabilities:

- **Conveyance Maintenance for Ocean Carriers**

Ocean portal carrier account users will have the ability to create and maintain vessel data via the portal using portal input screens and/or using the Excel spreadsheet upload capability. Ocean portal carrier account users will also have the ability to download their vessel data into the Excel spreadsheet.

- **Custodial Bond Authorization and Verification**

The bond authorization capability will be managed by the principal of the custodial bond (*i.e.*, the bonded carrier) to cover the movement of in-bond cargo between CBP ports of entry. Via the ACE Portal, the bond principal will be able to designate (by either the SCAC or ABI Filer code) those entities that are authorized to obligate the bond principal's custodial bond. A date range for this authorization is also available. Additionally, the bond principal will be able to set one of two levels of authorization:

1. **All Ports:** This level of authorization allows the bond principal to grant an authorized user the authority to obligate its Activity Code 2 custodial bond for the movement of in-bond cargo between all CBP ports, with the optional feature of setting an expiration date. If the bond principal chooses the optional expiration date, the permission to obligate the custodial bond expires at midnight on the expiration date.
2. **Specific Ports:** This level of authorization allows the bond principal to grant an authorized user the authority to obligate its bond for the movement of in-bond cargo between specified CBP ports, with an optional feature of setting an expiration date. There is no limit to how many port pairings the bond principal can establish for the authorized user. If the bond principal chooses the optional expiration, the permission to obligate the custodial bond expires at midnight on the expiration date.

The new custodial bond authorized user verification functionality is an optional feature of this test and will only work with entities that are also ACE test participants. This functionality will not apply to bonds authorized via AMS. Custodial bond principals that do not want to invoke this new authorized user validation feature need not

create any authorized user records. In the absence of any authorized user records associated to a custodial bond, the bond principal may enter its own SCAC Code as the only authorized user in its account. Such processing is consistent with current custodial bond verifications in the legacy ACS ocean and rail manifest and QP/WP software applications and truck QP/WP software applications. A bonded carrier may restrict all other entities from obligating its bond by entering its own SCAC code as the only authorized user in its account.

Conversely, as soon as one party is added as an authorized user to this new “custodial bond user verification” file, the principal of the custodial bond must enter authorizing records for each of the parties that is allowed to invoke its custodial bond. For example, if a custodial bond principal allows four other parties to obligate its bond, the bond principal must enter authorizations for each one of the four parties. If the bond principal chooses not to allow any party to obligate its custodial bond, then the bond principal must enter its own SCAC Code as the only authorized user in its account.

ACE will continuously verify that the party attempting to obligate a custodial bond is authorized to do so. If the party obligating the custodial bond is NOT the bond owner, ACE will check the data base of authorized users on that bond. If the party using the custodial bond is not authorized, the bill of lading submission or ABI electronic in bond request (commonly known as “QP”), will be rejected back to the data processing site of origination with the following error message, “Not Authorized To Use Custodial Bond.” A message will also be sent to the bond owner identifying the bill of lading number and the coded identity of the party that attempted to invoke the bond.

- Report Capability

Ocean and rail portal carrier account users will have the ability to run various standard bill of lading, in-bond, manifest, and equipment reports. Carrier account users will also be able to modify standard reports as well as create customized reports from scratch. Reports can be saved to a “Shared Folder” for use by others within the account.

All data submitted and entered into the ACE Portal is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law (*see* 19 U.S.C. 1431(c)). Participation in this or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

III. Expansion of the Test for All AMS Transmitters Not Chosen Initially

Once the initial group of participants has demonstrated the capability to operate in ACE in the active test stage, CBP intends to expand the number of test participants until all interested ocean and rail transmitters are participating in the test. This expansion will be done on a rolling basis, beginning some time around the start of the active test stage for the initial group of participants. All ocean and rail transmitters not using ACE, including applicants not chosen to participate in the initial test group, will be contacted via CBP.gov, CSMS, and other trade outreach efforts to determine their interest in participating in the test. Later added participants must follow the same procedures as those explained above in Section I — Certification Stage and Section II — Active Test Stage.

CBP's ultimate goal is the full transition of ocean and rail data transmission to ACE. This transition would be announced in the **Federal Register** in a manner consistent with the Administrative Procedure Act and would occur no earlier than 90 days after the commencement of the active test stage. As indicated, the active test stage will start no earlier than December 22, 2010.

Misconduct Under the Test

An ACE test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages and/or suspension from this test for any of the following:

- Failure to follow the terms and conditions of this test;
- Failure to exercise reasonable care in the execution of participant obligations;
- Failure to abide by applicable laws and regulations;
- Misuse of the ACE Portal;
- Engagement in any unauthorized disclosure or access to the ACE Portal; and
- Engagement in any activity which interferes with the successful evaluation of the new technology.

A notice proposing suspension will be provided in writing to the participant. Such notice will apprise the participant of the facts or conduct warranting suspension and will inform the participant of the date that the suspension will begin.

Any decision proposing suspension of a participant may be appealed in writing to the Assistant Commissioner, Office of Field Operations, within 15 calendar days of the notification date. Should the

participant appeal the notice of proposed suspension, the participant must address the facts or conduct charges contained in the notice and state how compliance will be achieved. In cases of willful misconduct or where public health interests or safety is concerned, the suspension may be effective immediately.

Test Evaluation Criteria

To ensure adequate feedback, participants are required to participate in an evaluation of this test. CBP also invites all interested parties to comment on the design, implementation and functionality of ACE or the test program at any time during the test period. CBP will publish the final results in the **Federal Register** and the Customs Bulletin as required by 19 CFR 101.9(b).

CBP will use questionnaires to address such issues as:

- Problem resolution;
- System efficiency;
- Operational issues; and
- Other issues identified by the participants

Next Steps

Shortly after the successful completion of the test, but no earlier than March 22, 2011, CBP plans to publish a notice in the **Federal Register** announcing that ACE will be the only CBP-approved EDI for required advance ocean and rail data.

Dated: October 15, 2010

THOMAS WINKOWSKI
Assistant Commissioner
Office of Field Operations

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