

III. Ruling

Because the following Houston Fire Code sections do not apply when the transportation of flammable and combustible liquids is subject to regulation under the HMR, these requirements are not preempted by Federal hazardous material transportation law:

- 105.4, 105.8.f.3, 105.h.1, 106.1, 7901.3.1, and 8001.3.1., concerning permits and inspections;
- 209 and 8001.1.2, concerning the definition of "hazardous materials" (as relevant to the permit requirements in Secs. 105.8.f.3 and 8001.3.1);
- 7904.6.1, concerning requirements for the design and construction of tank vehicles;
- Sec. 7904.6.3.4, concerning physical bonding during truck-filling operations to prevent the accumulation of static charges;
- Sec. 7904.6.5.2.1, prohibiting unattended parking of tank vehicles used for flammable or combustible liquids at specific locations or "at any other place that would, in the opinion of the chief, present an extreme life hazard"; and
- Sec. 7904.6.7, requiring a fire extinguisher with a minimum rating of 2-A, 20-B:C on board a tank vehicle used for flammable or combustible liquids.

IV. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.211(a), "[a]ny person aggrieved" by this decision may file a petition for reconsideration within 20 days of publication of this decision in the **Federal Register**. Any party to this proceeding may seek review of RSPA's decision "in an appropriate district court of the United States . . . not later than 60 days after the decision becomes final." 49 U.S.C. 5125(f).

This decision will become RSPA's final decision 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this decision is filed within 20 days of publication in the **Federal Register**, the action by RSPA's Associate

Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 40 CFR 107.211(d).

Issued in Washington, DC, on November 30, 1998.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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DEPARTMENT OF THE TREASURY

Customs Service

Extension of National Customs Automation Program Test Regarding Remote Location Filing

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs second extension of the second prototype of Remote Location Filing (RLF). This notice also invites public comments concerning any aspect of the current test, informs interested members of the public of the eligibility requirements for voluntary participation, describes the basis for selecting participants, and establishes the process for developing evaluation criteria. To participate in the prototype test, the necessary information, as outlined in this notice, must be filed with Customs and approval granted. It is important to note that resources expended by the trade and Customs on these prototypes may not carry forward to the final program.

Based on our experience in the extension of the second prototype of RLF, we have made modifications to the sections detailing Eligibility Criteria, Prototype Two Applications, and Misconduct. The changes to the Prototype Two Applications will affect parties who wish to apply for participation in the extension of the second prototype of RLF. Current participants may continue their participation without reapplying.

EFFECTIVE DATE: The extension of the second prototype will commence no earlier than January 1, 1999, will continue, and be concluded, no earlier than December 31, 1999, by a notice in the **Federal Register**. Comments concerning any aspect of the remote filing prototype test must be received on or before [insert date 30 days after date of publication of this document in the **Federal Register**].

ADDRESSES: Written comments regarding this notice, and information

submitted to be considered for voluntary participation in the prototype should be addressed to the Remote Filing Team, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Room 5.2 A, Washington, DC 20229-0001.

FOR FURTHER INFORMATION CONTACT: For systems or automation issues: Joseph Palmer (202) 927-0173, Jackie Jegels (301) 893-6717, or Patricia Welter (305) 869-2782.

For operational or policy issues: Jennifer Engelbach (202) 927-2293, or Bonnie Brigman (202) 927-0294.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Pub. L. 103-182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of title VI establishes the National Customs Automation Program (NCAP), an automated and electronic system for the processing of commercial importations. Section 631 in Subtitle B of the Act creates sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411-1414). These define and list the existing and planned components of the NCAP (Section 411), promulgate program goals (Section 412), provide for the implementation and evaluation of the program (Section 413), and provide for remote location filing (Section 414).

The Remote Location Filing (RLF) prototype will allow an approved participant to file electronically a formal or informal consumption entry with Customs from a location within the United States other than the port of arrival (POA), or from within the port of arrival with a requested designated exam site (DES) outside of the POA. Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)), implements the testing of NCAP components. See, T.D. 95-21 (60 FR 14211, March 16, 1995).

Since June 1994, the Customs Remote Team has shared the Customs RLF concept through many public meetings and concept papers, as well as posted information on the Customs Electronic Bulletin Board (CEBB), the Customs Administrative Message System, and the Customs Web Site on the Internet at "http://www.customs.treas.gov/rlf." Pursuant to § 101.9, Customs Regulations, Customs has been testing the RLF concept.

On April 6, 1995, Customs announced in the **Federal Register** (60 FR 17605) its plan to conduct the first of at least two prototype tests regarding RLF. The first test, Prototype One, began on June 19,

accomplishing and carry out the HMR). The City is free to adopt the HMR's requirements as local regulations and apply those consistent requirements to the "off-site" transportation of hazardous materials, including flammable and combustible liquids.

1995. On February 27, 1996, Customs announced in the **Federal Register** (61 FR 7300) that it was permitting an extension and expansion of the RLF Prototype One until the implementation of Remote Prototype Two. On November 29, 1996, Customs announced in the **Federal Register** (61 FR 60749) its plan to conclude the first prototype test on December 31, 1996, and conduct a second prototype test of RLF commencing no earlier than January 1, 1997. On December 3, 1997, Customs announced in the **Federal Register** (62 FR 64043) its plan to extend the second prototype through December 31, 1998. In today's document, Customs is announcing that it will permit a second extension of the RLF Prototype Two.

The first remote location prototype test was offered in the Automated Commercial System (ACS). Although the second remote prototype test was originally scheduled to be tested in the Automated Commercial Environment (ACE), the success of Prototype One precipitated the second test under ACS with a larger participant pool. Remote location filing will be a capability of ACE.

Additional prototypes of RLF are being developed by Customs to determine the systemic and operational design of the final RLF program which will allow all filers to participate in this type of entry process at the national level. Prototype participants must recognize that these prototypes test the benefits and potential problems of RLF for Customs, the trade community, and other parties impacted by this program.

Description of RLF Program

The RLF program will be determined by the experiences of the planned remote prototypes and with other Customs initiatives, such as the Trade Compliance Redesign, and ACE. The Customs RLF team's objectives are:

- (1) To work with the trade community, other agencies, and other parties impacted by this program in the design, conduct, and evaluation of the second prototype test of RLF;
- (2) To obtain experience through prototype tests of RLF for use in the design of operational procedures, automated systems, and regulations; and
- (3) To implement RLF at the national level in conjunction with the Trade Compliance Redesign and ACE.

Description of Proposed Test

Prototype Two commenced January 1, 1997, and will run until concluded, no earlier than December 31, 1999, by a notice in the **Federal Register**. Prototype Two will evaluate the operational impact and procedures for a larger

participant base, and test filing from a remote location and alternate location examinations.

Regulatory Provisions Suspended

Certain provisions in Parts 111 and Part 141 of the Customs Regulations will be suspended during this prototype test. This will allow brokers to file remotely to service ports, designated as "broker districts" in accordance with a general notice published in the **Federal Register** (60 FR 49971, dated September 27, 1995), where they currently do not hold permits, and allow for the movement of cargo from its POA to a DES outside of the POA.

Eligibility Criteria

To qualify, a participant must have proven capability to provide electronically, on an entry-by-entry basis, the following: entry; entry summary; invoice information using the Electronic Invoice Program (EIP) when required by Customs; and the payment of duties, fees, and taxes through the Automated Clearinghouse (ACH).

The following eleven requirements and conditions apply:

1. Participants must be operational on ACH 30 days before applying for Prototype Two.
2. Participants must be operational on EIP before applying for Prototype Two.
3. The requested Customs locations must have operational experience with EIP and have received RLF training.

RLF Trained Locations

The following are locations currently operational under the RLF Prototype Two test as both ports of arrival (POA) and designated examination sites (DES).

Anchorage, AK
 Atlanta, GA
 Baltimore, MD
 Baton Rouge, LA
 Boston, MA
 Brunswick, GA
 Buffalo, NY
 Calais, ME
 Champlain-Rouses Point, NY
 Charleston, SC
 Charlotte, NC
 Chattanooga, TN
 Chicago, IL
 Cincinnati, OH
 Cleveland, OH
 Columbus, OH
 Dayton, OH
 Dallas/Fort Worth, TX
 Del Rio, TX
 Detroit, MI
 Durham, Raleigh, NC
 Erie, PA
 Gloucester, MA
 Gramercy, LA
 Greenville-Spartanburg, SC

Gulfport, MS
 Houlton, ME
 Houston, TX
 Huntsville, AL
 Indianapolis, IN
 Jacksonville, FL
 JFK International Airport
 Knoxville, TN
 Lake Charles, LA
 Laredo/Eagle Pass, TX
 LAX International Airport
 Little Rock, AR
 Logan Airport, MA
 Longview, WA
 Los Angeles/Long Beach, CA
 Louisville, KY
 Memphis, TN
 Miami, FL
 Morgan City, LA
 Mobile, AL
 Nashville, TN
 New Bedford, MA
 New Orleans, LA
 Newport News, VA
 Norfolk, VA
 NY/Newark Area
 NY Seaport, NY
 Orlando, FL
 Pascagoula, MS
 Philadelphia/Chester, PA
 Port Everglades, FL
 Port Huron, MI
 Portland, ME
 Portland, OR
 Portland Int'l Airport, OR
 Providence, RI
 Richmond, VA
 Rochester, NY
 San Diego/Otay Mesa, CA
 San Francisco/Oakland, CA
 Savannah, GA
 Seattle, WA
 Shreveport, LA
 Springfield, MA
 Tampa, FL
 Toledo, OH
 Utica/Syracuse, NY
 Vicksburg/Jackson, MS
 West Palm Beach, FL
 Wilmington, NC
 Winston-Salem, NC
 Worcester, MA
 Washington, DC

Future RLF Trained Locations

As the prototype continues and trade interest warrants, ports which are not currently trained in EIP and RLF processing will be trained. Announcements on newly trained ports will be placed on the CEBB, Administrative Message System, and Customs Web Site on the Internet. One criteria for selecting a port for training will be interest from the trade. Participants who would like to expand their participation to a non-trained port, should send the following information to the Remote Filing Team (at the

address listed at the front of this document):

- a. Company name;
- b. Contact name and phone number;
- c. Importer name;
- d. Port(s) of interest; and
- e. The estimated number of entries a month.

4. Participants must maintain a continuous bond which meets or exceeds the national guidelines for bond sufficiency.

5. Only entry types 01 (consumption) and 11 (informal) will be accepted.

6. Cargo release must be certified from the entry summary (EI) transaction with the exception of immediate delivery explained in #7.

7. RLF participants will be allowed to file Immediate Delivery releases for direct arrival road and rail freight at the land border using paper invoices under Line Release, Border Cargo Selectivity (BCS), or Cargo Selectivity (CS). This must be done in accordance with 19 CFR 142.21(a). Submission of all line items at the time of release will be required of Northern Border filers if the release is effected using BCS or CS. If an examination is required for a line release transaction, the filer must submit all relevant line item information through BCS or CS. Under BCS and CS, the examination will be performed at the port of arrival using paper invoices. If the filer wishes the examination to be performed at an alternate site, full entry summary information (an EI transaction in ABI) with electronic invoice must be transmitted.

8. Participants will not be allowed to file an RLF entry involving cargo that has already been moved using in-bond procedures.

9. Participants will be required to use other government agency interfaces where available.

10. When necessary, cargo will be examined at the Customs port of arrival, or, at Customs discretion, a filer's requested DES, which must be the Customs port nearest the final destination. The scheduling (approval) of merchandise for examination at a DES that is not at the port of arrival will be considered a conditional release under permit that automatically obligates the importer's bond pursuant to 19 CFR 113.62 for an immediate redelivery to the DES. This **Federal Register** Notice advises the importer of record for such merchandise that this movement is a redelivery and he/she will not receive an individual notice of redelivery, Customs Form 4647, and that the redelivery clause of the importer's bond is automatically triggered whenever Customs decides to

examine the merchandise at a DES that is not at the port of arrival.

11. If a notice of redelivery is not complied with, or delivery to unauthorized locations, or delivery to the consignee without Customs permission occurs, the obligors agree to pay liquidated damages in the amount specified pursuant to the bond in 19 CFR 113.62(f).

Customs will work with all participants to ensure that:

- (1) Customs contacts and problem solving teams are established, and
- (2) Procedures for remote entry and entry summary processing are prepared.

Prototype Two Applications

This notice solicits applications for participation in Remote Location Filing Prototype Two. All applications must initially be submitted to Customs (at the address listed at the front of this document). Applications will be accepted up to 30 days before the close of the Prototype Two extension.

Since this is an extension of Remote Prototype Two, current participants may continue their participation without reapplying. Note that participation in RLF Prototype Two is not confidential, and that lists of participants will be made available to the public. New applicants will follow a two-step application process.

First Stage Application

During the first step, the filer must submit the following information to U.S. Customs Headquarters (address cited above):

1. Filer or Broker name, address, filer code and IRS#;
2. Electronic Invoicing Program status and starting date;
3. Electronic Payment (ACH) status and starting date;
4. Site(s) from which the broker will be transmitting the electronic information;
5. Type of protocol: AII, EDIFACT or both; and
6. Point of contact.

Second Stage Application

Once a filer has received written approval from U.S. Customs Headquarters to proceed with the second step of the application process, the filer must submit the following information to the Port Director(s) overseeing each requested POA and DES location for each client (importer):

1. Participating importer name, telephone number, contact name, and Importer Number;
2. Supplier name, address, and manufacturer's number;
3. Types of commodities to be imported;

4. Other government agency requirements;

5. Site(s) from which the applicant will be transmitting the electronic information;

6. Port name and port code for port(s) of arrival;

7. Port name and port code for designated examination site(s) located nearest the final destination(s);

8. Monthly entry volume anticipated;

9. Carriers used and their Automated Manifest System (AMS) status;

10. Main contact person and telephone number of filer; and

11. Certification that a copy of this application letter has been provided to the Client named in item 1.

Basis for Participant Selection

The basis for applications approved by Customs Headquarters will be EIP operational experience, electronic abilities, available electronic interfaces with other agency's import requirements, and operational limitations. For application scenarios requesting a DES outside of the POA, the compliance rate of the parties involved will be taken into consideration.

The basis for applications being approved or denied by the Port Director(s) will involve issues such as commodity documentation requirements and whether the port has been trained in EIP/RLF.

Upon receipt of an application, the Port Director or designate, will send the applicant a letter of acknowledgment. If there are no issues to be resolved, the application will be considered approved twenty (20) days from the date of the acknowledgment letter. If there are issues to be resolved prior to a decision on the application, the Port Director or designate will send the applicant, within twenty (20) days, a letter indicating that the application is pending further review until joint resolution of the issues can be achieved. If the application is denied, the Port Director or designate will issue a denial letter with reasons to the applicant. If denied, the applicant may appeal to the Remote Filing Team at Headquarters in writing within twenty (20) days from the date of denial or reapply to the Port Director(s).

Misconduct

If a program participant attempts to submit data for merchandise subject to quota, anti-dumping duties, countervailing duties, or other non-eligible merchandise, or fails to exercise reasonable care in the execution of participant obligations and the filing of information regarding the admissibility

of merchandise, and declaring the classification, value, and rate of duty applicable to the merchandise, or otherwise fails to follow the procedures (outlined herein) or applicable laws and regulations, then the participant may be subject to liquidated damages, penalties, and/or other administrative sanctions, expelled or suspended from the prototype, and/or prevented from participation in future prototypes. Customs has the discretion to suspend prototype participation based on the determination that an unacceptable compliance risk exists. This suspension may be invoked at any time after acceptance in the prototype.

Any decision proposing suspension of a participant may be appealed in writing to the Headquarters Remote Team within twenty (20) days of the decision date. Such proposed suspension will apprise the participant of the facts or conduct warranting suspension. Should the participant appeal the notice of proposed suspension, the participant should address the facts or conduct charges contained in the notice and state how he does or will achieve compliance. However, in the case of willfulness or where public health interests or safety are concerned, the

suspension may be effective immediately.

Any other action commenced by Customs for misconduct may be appealed in writing through existing procedures or, if none exists, to the Headquarters Remote Team within twenty (20) days of the action.

Test Evaluation Criteria

Once participants are selected, Customs and the participants will meet publicly or in an electronic forum to review comments received concerning the methodology of the test program or procedures, complete procedures in light of those comments, and establish baseline measures and evaluation methods and criteria. Evaluations of the prototype will be conducted and the final results will be published in the **Federal Register** as required by § 101.9(b), Customs Regulations.

The following evaluation methods and criteria have been identified.

1. Baseline measurements will be established through data queries and questionnaires.
2. Reports will be run through use of data query throughout the prototype.
3. Questionnaires will be distributed during and after the prototype period.

Participants are required to complete the questionnaires in full and return them within 30 days of receipt.

Customs may evaluate any or all of the following items:

- Workload impact (workload shifts, volume, etc.);
- Policy and procedural accommodation;
- Trade compliance impact;
- Alternate exam site issues (workload shift, coordination/communication, etc.);
- Problem solving;
- System efficiency; and
- The collection of statistics.

The trade will be responsible for evaluating the following items:

- Service in cargo clearance;
- Problem resolution;
- Cost benefits;
- System efficiency;
- Operational efficiency; and
- Other items identified by the participant group.

Dated: December 1, 1998.

Robert S. Trotter,

Assistant Commissioner, Office of Field Operations.

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