

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 192

RIN 1515-AC19

Exportation of Used Motor Vehicles

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to the Customs Regulations which relate to the exportation of used self-propelled vehicles. These amendments are being proposed to clarify the intent of the regulations and provide for uniformity and standardized procedures. They are also being proposed to conform the regulations to legislation which was enacted since the regulations were originally written. The overall objective of the proposed amendments is to more efficiently and effectively deter the export of stolen vehicles.

DATES: Comments must be received on or before December 29, 1997.

ADDRESSES: Comments (preferably in triplicate) may be submitted to Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229, and may be inspected at the same location.

FOR FURTHER INFORMATION CONTACT: Hugh Austin, Outbound Process, Office of Field Operations, 202-927-3735.

SUPPLEMENTARY INFORMATION:

Background

Part 192 of the Customs Regulations (19 CFR Part 192) was established by the publication of T.D. 89-46 on April 18, 1989. These regulations implemented a provision of the Trade and Tariff Act of 1984 (19 U.S.C. 1627a) concerning the unlawful exportation of used self-propelled vehicles. Generally, that statute provides for civil penalties for the knowing importation or exportation,

or attempted importation or exportation, of stolen self-propelled vehicles or equipment or any similar activity with respect to any self-propelled vehicle or part of such vehicle from which the vehicle identification number (VIN) has been removed, obliterated, tampered with or altered. The statute also directs that regulations be prescribed by the Secretary of the Treasury with regard to the procedures for the lawful exportation of used self-propelled vehicles. In implementing the existing regulations, both Customs and the public have encountered several difficulties which this proposed amendment to the regulations is intended to resolve.

Proposed Amendments

The first proposed amendment to the existing regulations is to require the presentation to Customs of the original or certified copy of a title as proof of ownership of the vehicle to be exported. This is intended to eliminate a situation where there is a conflict between differences over a certified and a notarized copy of a title and the validity of each type of document. Certified copies can only be obtained from official issuing authorities. While the current regulations do not specifically address notarized copies, the proposed amendments explicitly disallow the use of notarized copies as proof of ownership. Customs field offices are currently accepting a variety of paperwork to establish ownership of vehicles presented for export. There is no national standard. Because all 50 states now have title laws, requiring the presentation of a title to show ownership will provide the field with a standard. By requiring that the documents be certified by the issuing authority, and not merely notarized, Customs will have a greater assurance of the authenticity of the documentation.

In instances when a vehicle owned by a foreign national and registered in a foreign country is being exported, where no title is available, Customs will require production of satisfactory proof of ownership by the exporter.

Realizing that there are instances where a party purchases a "new" car from a dealer and then immediately exports it without registering it in any state, and thus never receives a title in a state, Customs is making a provision for that situation by adding a document

known as a "manufacturer's statement of origin" to the list of items which Customs will accept as proof of ownership. In those instances where a vehicle's purchaser does not intend to operate the vehicle in the U.S., Customs does not want to unnecessarily burden him by requiring that he obtain a state title. The manufacturer's statement of origin can provide a clear chain of possession from the manufacturer through the dealership to the present owner/exporter.

Leased and Liened Vehicles

Today, there are many vehicles being operated legally in the United States by people who do not have title to the vehicle. Since the original regulations in this area were issued, there has been a significant increase in the number of vehicles which are "on the road" by virtue of a lease rather than a sale. In instances where a vehicle has been leased to an operator, the title to the vehicle is never intended to pass to the operator, because the right to use the vehicle will revert to the owner upon termination of the lease. Another instance of legal operation of a vehicle by one not in possession of a title occurs when a vehicle is purchased on time. Most often, in that situation, title is retained by the finance company until the note is paid, at which time the title will be transferred to the owner/operator. In recent years, Customs has seen an increase in the frequency in which either leased or liened vehicles are attempted to be exported without the knowledge or authorization of the actual title holder—the owner or the lien-holder. If the potential exporter keeps either the lease or note payments current until after the vehicle is exported, a check to see whether the vehicle is stolen at the time of export will not reveal anything suspicious. This is because, at the time of exportation, the vehicle is not yet stolen. Once the vehicle has been taken out of the reach of the lienholder or owner, payments are stopped and the theft takes place. In order to prevent this from happening as easily as it does now, Customs is proposing to amend the regulations to require that a party attempting to export a vehicle that is either leased or is subject to a lien present a letter from the lienholder or owner stating that they have knowledge

of and authorize the exportation of the vehicle.

Other Areas of Clarification

There are certain other areas where the current regulations have caused some uncertainty among groups or individuals, which this document proposes to clarify. In § 192.2(b) of the current regulations, the phrase "in other cases" appears at the beginning of the second sentence. Customs proposes to change the phrase to read "in cases other than automobiles, trucks, vans, minivans, motorcycles, and buses". This proposal is being made because some situations have developed where exporters and Customs field locations have interpreted the current phrase "in other cases" to mean situations in which individuals may present other types of documentation to prove ownership.

It is further proposed to amend § 192.2(b) by changing the word "available" to "required" in the phrase "or other document if a certificate of title is not available as a result of a state regulatory requirement". This change is being made to mandate presentation of titles at exportation if titles are required in the state in which the vehicle was purchased. All states require titles. However, some states only require titles for vehicles if they are of a certain age. Older vehicles, depending on the state, may or may not require titles. If the state does not require a title, then acceptable documentation for Customs export purposes would include a bill of sale.

Because of their growing popularity, and to prevent any misunderstanding about the intended coverage of the scope of vehicles intended to be covered by the regulation, the proposed regulation expressly includes vans and minivans as types of vehicles intended to be covered by the regulation.

Time and Place of Presentation

In an attempt to resolve some uncertainty which has arisen in the implementation of § 192.2(c) of the current regulations, which deals with the time when the required documentation must be presented, Customs is proposing the following amendments.

The current regulation states that the documentation must be presented at least 3 days prior to the lading or exportation of the vehicle. Questions have arisen whether that phrase meant calendar or business days. Those questions were made moot, however, by enactment of the Anti Car Theft Act of 1992. That Act amended the Tariff Act of 1930 by adding a new section, 19 U.S.C. 1646c, which requires that all

persons or entities exporting used automobiles provide to Customs both the vehicle identification numbers and proof of ownership at least 72 hours before the export. In order to conform the regulatory requirements to the law and still provide port personnel the opportunity to examine vehicles which are being exported, it is proposed that the time for required presentation of documents in § 192.2(c) be changed to at least 72 hours, to include not less than 2 full business days for air or sea exports. The addition of the phrase "at the port of exit" is also being proposed as the place where documentation must be presented. There have been instances where documentation has been presented at a port which is not the exit port. The addition of this phrase is intended to remove any opportunity for confusion as to where the documentation is to be produced.

Because many vehicles are exported through land border ports, Customs is proposing to permit exporters to transmit copies of the required documentation by facsimile to the port of exit. This means that an exporter will not have to wait at the border for 72 hours after presenting the documentation. However, the original documents required will need to be presented, along with the vehicle, on the date of exit.

The proposed amendments change the terminology used in reference to the type of non-original documents which Customs will accept from "facsimile" to "copy." This change is being made to avoid confusion resulting from current usage of the word "facsimile"; the word is used often interchangeably with "FAX." By using the word "copy," Customs wishes to clarify that it intends to accept photocopies as well as "faxes." In order that the regulations will be consistent, it is proposed to amend paragraph (d) by replacing the word "facsimile" with the word "copy".

A new paragraph (e) is being proposed which states that each Port Director has the authority to establish a time and place for presentation of original documentation and inspection of vehicles. Customs believes that in order to implement the law, it is necessary to impose constraints on times when the original documentation and vehicles will be accepted. By giving the Port Director the authority to set times and places for acceptance of original documents, it is intended that processing of exported used vehicles will be more efficient for both Customs and exporters in this time of limited resources.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m., at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor Washington, D.C.

Regulatory Flexibility Act

In so far as the proposed amendment is intended to assist Customs exercise its law enforcement responsibilities with a minimum burden on legitimate exporters of used vehicles, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

The proposed amendment does not meet the criteria for a "significant regulatory action" under E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this rulemaking has been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995. (44 U.S.C. 3507).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection of information displays a valid control number.

The clarification of the collection of information in these regulations is in § 192.2. All information required by this proposed amendment is contained or identified in the above-cited section. This information is to be maintained and provided in the form of documents which are necessary to ensure that the Customs Service will be able to effectively administer the laws it is charged with enforcing while, at the same time, imposing a minimum burden on the public it is serving. Respondents or recordkeepers are already required by state statute or regulation to maintain or have most of the information covered in

this proposed regulation. The likely respondents or recordkeepers are business organizations and individuals, including exporters.

Estimated total annual reporting and/or recordkeeping burden: 83,330 hours.

Estimated average annual burden per respondent/recordkeeper: 10 minutes.

Estimated number of respondents and/or recordkeepers: 500,000.

Estimated annual frequency of responses: 1.

Comments concerning the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

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

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 192

Customs duties and inspection, Exports, Motor vehicles, Penalties.

Proposed Amendments

It is proposed to amend Part 192, Customs Regulations (19 CFR Part 192), as set forth below:

PART 192—EXPORT CONTROL

1. The authority citation for Part 192, Customs Regulations (19 CFR Part 192),

is proposed to be revised to read as follows:

Authority: 19 U.S.C. 66, 1624, 1627a, 1646a, 1646c.

2. It is proposed to amend § 192.2 by revising paragraphs (b), (c) and (d) and adding a new paragraph (e) to read as follows:

§ 192.2 Requirements for exportation.

* * * * *

(b) *Documentation required.* (1) *For certain registered vehicles owned by the exporter.* In the case of automobiles, trucks, vans, minivans, motorcycles and buses owned by the exporter and registered in any state of the United States, the following documentation is required to be presented at the port of exit:

(i) An original or certified copy of the Certificate of Title from a state issuing authority. A notarized copy of the Certificate of Title is not acceptable; and

(ii) Two copies of the original or certified copy of the Certificate of Title.

(2) *For certain vehicles purchased with the intention of exportation.* In the case of automobiles, trucks, vans, minivans, motorcycles and buses purchased from a dealer and not registered in any state of the United States because of plans to immediately export, an original manufacturer's statement of origin and two copies of the manufacturer's statement of origin are required to be presented at the port of exit.

(3) *For certain vehicles where a Certificate of Title is not required as a result of state or foreign country requirements.* In the case of automobiles, trucks, vans, minivans, motorcycles and buses owned by a foreign national and registered in a foreign country or instances in which a state does not require a Certificate of Title, an original document that provides satisfactory proof of ownership by the exporter and two copies of that document are required to be presented at the port of exit.

(4) *For certain leased or liened vehicles.* In the case of automobiles, trucks, vans, minivans, motorcycles and buses that are leased or on which there is a lien, a letter from the lienholder or, if leased, the owner stating that the lienholder or owner agrees that the vehicle may be exported is required to be presented at the port of exit. The letter must include the name, address and telephone number of the lienholder or owner and must include the Vehicle Identification Number of the vehicle.

(5) *For other self-propelled vehicles.* In the case of self-propelled motorized

vehicles other than automobiles, trucks, vans, minivans, motorcycles, and buses, an original or certified Certificate of Title, memorandum of ownership, or right of possession, or any other document sufficient to prove lawful ownership, such as an original bill of sale or an original sales invoice, as well as 2 copies of the document, shall be presented.

(c) *When presented.* (1) *Exportation by vessel or aircraft.* If the vehicle is to be transported by vessel or aircraft, all documentation and the vehicle must be presented to Customs at the port of exit at least 72 hours, to include not less than 2 full business days, prior to lading in accordance with such directives as may be issued by the Port Director pursuant to paragraph (e) of this part.

(2) *Exportation at land border port.* If the vehicle is to be transported by rail, highway, or under its own power, copies of the required documentation may be sent or transmitted to the port of exit in a manner so that they will arrive at least 72 hours prior to the intended time of exportation. The original documents need to be presented at time of exit along with the vehicle. The vehicle and original documentation shall be presented at the port of exportation in accordance with such directives as may be issued by the Port Director pursuant to paragraph (e) of this part.

(d) *Authentication of documentation.* Customs shall authenticate both copies of the documents submitted, one of which shall remain in the possession of the exporter and one of which shall be collected by Customs. Authentication will include the stamping of the copies of the documents with the date and time of presentation of the documents. The authenticated copy of the document will be the only acceptable evidence from the exporter of compliance with the requirements of this section.

(e) *Time and place of document presentation.* Each Port Director shall establish and publicize the hours and location at which original documentation required by this section will be received and the hours and place for presentation of the vehicle.

George J. Weise,

Commissioner of Customs.

Approved: September 24, 1997.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

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