

of live cattle, sheep, and pigs (585,200 head) was equivalent to less than 0.5 percent of comparable stock in the United States. Similarly, Estonia's milk production (690,000 metric tons) was less than 1 percent of the total production of milk in the United States in 2001.²

Small Entity Impact

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities. Given the small amount of Estonia's production, domestic producers in the United States are unlikely to be affected in any measurable way. Other entities that might be affected are brokers, agents, and others in the United States who would become involved in any future importation and sale of ruminants or swine or products of ruminants or swine from Estonia. The number and size of those entities is unknown, but it is reasonable to assume that most of those entities would be small according to the standards set by the U.S. Small Business Administration. However, for the reasons discussed above, any economic impact on those entities, as well as any other affected entities in the United States, should be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal disease, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) would be amended by adding, in alphabetical order, the word "Estonia,".

§ 94.11 [Amended]

3. In 94.11, paragraph (1), the first sentence would be amended by adding, in alphabetical order, the word "Estonia,".

Done in Washington, DC, this 28th day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02-2493 Filed 1-31-02; 8:45 am]

BILLING CODE 3410-34-U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 24, 123, 132, and 142

RIN 1515-AC92

Procedures Governing the Border Release Advanced Screening and Selectivity (BRASS) Program

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to provide for the Border Release Advanced Screening and Selectivity (BRASS) Program, an improved automated and electronic system that will replace the Line Release method of processing certain repetitive and high volume shipments of merchandise into the U.S. Like the present Line Release Program, the proposed BRASS Program will continue to provide for the expedited processing, through the use of computers and bar-code technology, of certain high-volume, repetitively-shipped merchandise that is imported at designated locations. The proposed BRASS Program regulations also will provide for the centralized processing of

applications for BRASS processing privileges, and afford administrative appeal rights to applicants who are denied participation in the BRASS Program and to participants whose BRASS processing privileges are subsequently revoked.

DATES: Comments must be received on or before April 2, 2002.

ADDRESSES: Written comments may be addressed to, and inspected at, U.S. Customs Service, Office of Regulations and Rulings—Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT:

Enrique S. Tamayo, Office of Field Operations, Trade Programs, Cargo Release Branch; (202) 927-3112.

SUPPLEMENTARY INFORMATION:

Background

In 1992, Customs amended the Customs Regulations at part 142 (19 CFR part 142), which pertains to the entry process, to add a new subpart D to provide for the Line Release method of processing certain shipments of merchandise entering the U.S. *See*, T.D. 92-93. Line Release is an automated system designed to release and track, through the use of personal computers and bar-code technology, shipments of merchandise deemed by Customs to be repetitive and high-volume and that are imported at designated locations. Line Release was implemented as a Disc Operating System (DOS)-based program that interfaces with the Automated Commercial System (ACS). In 1999, the use of Line Release at certain high-risk locations along the land borders of the U.S. for shipments was conditioned on the imported merchandise being transported by carriers that participated in the Land Border Carrier Initiative Program (LBCIP). *See*, T.D. 99-2.

In the mid 1990s, Customs began developing the Border Release Advanced Screening and Selectivity (BRASS) Program. Like the present Line Release Program, the proposed BRASS Program will continue to provide for the expedited processing, through the use of computers and bar-code technology, of certain high-volume, repetitively-shipped merchandise that is imported at designated locations. Transactions may continue to be designated for either release under entry summary or release for immediate delivery. However, the BRASS Program is a windows-based program designed to improve and replace the DOS-based Line Release Program.

The proposed BRASS Program also improves upon the Line Release Program in two areas. First, the

² Source: Food and Agriculture Organization of the United Nations.

proposed BRASS Program provisions provide for the centralized processing of requests for BRASS privileges at designated border locations. (Under the present Line Release Program, a decentralized application procedure is followed, whereby applications are submitted to local port directors for approval, which can result in multi-port applications being approved at one port but denied at another port. Under the proposed BRASS Program provisions, a centralized application procedure is proposed, so that there will be uniform processing of applications.) The centralized locations are at Saint Albans, Vermont (for merchandise to be entered along the northern border), and San Diego, California (for merchandise to be entered along the southern border).

Second, the proposed BRASS Program provisions improve upon the Line Release Program by affording appeal procedures for applicants who are denied participation in the BRASS Program and participating entry filers whose BRASS privileges are subsequently revoked. Two levels of administrative appeal will be provided. The first level of appeal will be to the Director of Field Operations at the Customs Management Center, which oversees the BRASS Processing Center that issues a notice of nonselection (to applicants) or adverse action (to participants). Should the first appeal result in a negative determination, a second level of appeal may be taken to the Assistant Commissioner, Office of Field Operations. Under the present Line Release Program, there are no appeal provisions for applicants or participating entry filers.

Customs is now proposing in this document to replace the Line Release Program provisions at subpart D of part 142 of the Customs Regulations with provisions regarding the BRASS Program. The current 12 sections of this subpart (§§ 142.41–142.52) will be replaced with 6 sections (§§ 142.41–142.46) that will provide for the BRASS Program. The current provisions at §§ 142.47–142.52 will be removed from the Customs Regulations (19 CFR subpart D of part 142) and the information they contain that relates to BRASS will be consolidated. Conforming reference changes also will be made to §§ 24.23, 123.71, and 132.15. Participants already in the Line Release Program do not need to reapply for participation in the BRASS Program.

It is noted that further descriptive information regarding the BRASS Program will be provided in a new BRASS Handbook, available from Customs Headquarters and at ports of entry designated for BRASS use.

Discussion of Proposed Amendments to the Regulations

Section 142.41—“Description of BRASS Program”

Under the heading “Description of BRASS Program”, this section will explain the BRASS Program in general terms. The BRASS Program is described as an automated and electronic system designed, through the use of computers and bar-code technology, to expedite the processing and release of certain high-volume, repetitively-shipped merchandise that is imported at designated locations. BRASS transactions can be designated for either release under entry summary or release for immediate delivery. Merchandise shipments arriving by motor carrier as well as by rail may be processed through BRASS.

The paragraph provides that participation in the BRASS Program is voluntary and that participants must comply with the program’s requirements, which include the pre-filing of certain import information for qualifying shipments of merchandise and special identification of those shipments with an assigned bar code. While Customs may inspect any shipment of merchandise approved for BRASS processing, in general, BRASS shipments enjoy expedited processing and release through all designated and approved BRASS ports of entry without further Customs processing.

Further, this paragraph will provide that at certain high-risk locations along the land borders of the United States (the locations are published in the **Federal Register**), the use of BRASS processing and release for particular shipments of merchandise may be denied by Customs unless the imported merchandise is transported by carriers that participate in the Land Border Carrier Initiative Program (*see* subpart H of part 123 of this chapter).

This paragraph also will caution that participants should be aware that failure to follow program requirements for BRASS-approved processing can result in revocation of their participation in the program. Further, failure to follow program requirements may result in participants being liable for civil and criminal penalties.

Further information concerning the BRASS Program will be contained in the forthcoming BRASS Handbook, that will be available from U.S. Customs Service Headquarters, BRASS Processing Centers, and at designated ports of entry approved to process BRASS shipments of merchandise.

Section 142.42—“Application for BRASS Processing”

Under the heading “Application for BRASS processing”, this section will explain the application and decision process in 5 paragraphs. The section will discuss: (1) Who is eligible to apply to the BRASS Program, (2) what merchandise qualifies for BRASS processing, (3) how applicants apply to the BRASS Program, (4) how applications are processed through the new centralized BRASS Processing Centers, including how applicants are notified of their approval or denial to participate in the BRASS Program, and the administrative appeal procedures available to applicants denied participation, and (5) what the grounds are for denying an application.

Under the heading “Eligible applicants”, paragraph (a) will provide that only importers that file their own entries and brokers may be applicants for the BRASS Program. The paragraph provides that applicants must be of good character.

Under the heading “Merchandise criteria”, paragraph (b) will explain what types of merchandise qualify for BRASS processing and explain the volume requirements and examination compliance rates applicable to qualifying import transactions. Qualifying merchandise cannot be prohibited or restricted, subject to absolute quota, denied approval for importation by another Federal government agency required to approve the merchandise, or subsequently determined to be unsuitable for expedited processing under BRASS for reasons pertaining to trade policy.

Further regarding BRASS qualifying merchandise, the examination compliance rate for the qualifying import transactions must be relatively high, as established by the centralized processing center where the application will be submitted.

Because the BRASS Program exists to process and release high-volume, repetitively-shipped merchandise, an applicant will be required to establish, for each port of entry at which he requests BRASS processing, that the annual number of import transactions between the parties designated is sufficient to qualify for BRASS processing. This is a quantitative measure of the number of import transactions in which the applicant engaged in the previous year and is established by the centralized processing center where the application will be submitted. The one-year-parameter on an applicant’s import transactions at the designated port of

entry is necessary to give Customs sufficient enough background to determine, in part, whether the applicant should be granted BRASS processing privileges at that requested location.

For BRASS processing privileges along the northern border, the number of import transactions claimed for eligibility must have been with the same manufacturer or shipper, and the same importer. For BRASS processing privileges along the southern border, the number of import transactions claimed for eligibility must have been with the same manufacturer or shipper, importer, and commodity. (The reason no precise number of qualifying shipments is provided for in the regulations is because each port of entry designated for BRASS use has different processing facilities and varying staff and merchandise processing levels. Specific numbers for qualifying shipments along each border will be provided for in the BRASS Handbook, which will account for shifting risk factors associated with the BRASS Program.)

Under the heading "Application procedure", paragraph (c) will explain that a broker or importer who files his own entries applies for participation in the BRASS Program by submitting an application for each commodity to be processed, accompanied by a representative sample of an actual commercial invoice for the product(s) sought to be processed under BRASS, to the 8 appropriate BRASS Processing Center. An application is filed on new Customs Form (CF) 7600 (Application for BRASS). On the application, the applicant must provide identification information on any other party, such as the shipper or manufacturer of the qualifying merchandise, that may be involved with the proposed BRASS transactions. Each of the parties identified will be evaluated to determine whether they are of good character.

Copies of the CF 7600 are available at any Customs BRASS port of entry. The information required to be submitted on the CF 7600 will be explained in the BRASS Handbook.

Applications for BRASS processing privileges along the southern border should be submitted to the centralized Southern Border BRASS Processing Center. The address for this processing center will be: U.S. Customs Service, 9777 Via De La Amistad, San Diego, California 92154, Attn: BRASS Processing Center.

Applications for BRASS processing privileges along the northern border should be submitted to the centralized Northern Border BRASS Processing

Center. The address for this processing center will be: U.S. Customs Service, 50 S. Main St., Saint Albans, Vermont, 05478-2198, Attn: BRASS Processing Center.

Under the heading "Notice of action on application", paragraph (d) will explain the new centralized processing of applications through BRASS Processing Centers, how applicants are notified concerning their approval or denial to participate in the BRASS Program, and the administrative appeal procedures available to applicants denied participation. Applications will be evaluated by the appropriate BRASS Processing Center. Based on the information provided on the BRASS application, Customs makes a determination as to whether the applicant, any party listed on the BRASS application, and the merchandise meet the standards set forth in the BRASS regulations. The BRASS Processing Center then notifies the applicant in writing as to whether the application is approved or denied. (Where an application is incomplete or otherwise contains information that cannot be verified by the appropriate BRASS Processing Center, it will be returned for clarification.)

When an application is approved, Customs assigns the appropriate number of C-4 identifiers, which must be used by the entry filer for those shipments that will be processed through BRASS. A C-4 identifier (Common Commodity Classification Code) is a unique, four-element bar code assigned by the appropriate BRASS Processing Center that identifies the shipper or manufacturer, importer, entry filer, and commodity. If multiple commodities are to be processed at a designated location, then the C-4 identifier assigned for each commodity must be used.

When an application is denied, Customs will issue a notice of nonselection to the applicant. The notice of nonselection will state the reason(s) for the decision and inform the applicant of the administrative appeal procedures that he may pursue under proposed § 142.46.

Under the heading "Grounds for denial", paragraph (e) will delineate the specific grounds for not approving an application. This paragraph will provide that the appropriate BRASS Processing Center may deny an applicant's application for any of the following reasons:

1. A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of that conduct;
2. Failure of the merchandise to meet the standards set forth in the regulation;

3. Evidence that the application contains false or misleading information concerning a material fact; or

4. A determination is made that participation in the BRASS Program would endanger the revenue or security of the Customs area.

Section 142.43—"Responsibilities of Participant Accepted for BRASS Processing"

Under the heading "Responsibilities of participant accepted for BRASS processing", this section will provide that, when approved to participate in the BRASS Program, the applicant is denominated an "entry filer" for BRASS purposes. Entry filers agree to certain responsibilities. These responsibilities include the following:

1. To provide the port director, in writing, with a range of numbers for BRASS processing use, so that Customs can assign a BRASS entry number automatically to each BRASS transaction. A separate range must be provided for each BRASS site and mode of transportation. Entry filers must not assign these numbers to other import transactions. As the previously supplied range nears exhaustion, the entry filer must provide the local port director with new ranges of BRASS entry numbers;

2. To properly prepare, distribute, and use C-4 identifier(s) for BRASS shipments. If multiple commodities are to be processed at a designated location, then the C-4 identifier assigned for each commodity must be used. When multiple commodity processing is desired, the entry filer should consult with the local port director as to the number of commodities allowed to be processed per shipment at the port;

3. To immediately notify Customs in writing of any changes in the C-4 identification information that was provided on the originally-approved BRASS application by submitting a corrected BRASS application with a copy of the originally-approved application. These changes concern the identification of the shipper or manufacturer, importer, entry filer, or the commodity. The notice must include the C-4 identifier to be changed and the date the change is to be effective; and

4. To immediately notify Customs in writing of any changes regarding their method of release for BRASS shipments (from entry or immediate delivery to the other). If the release procedure is to be changed permanently, the request must include the date the change is to be effective and must be submitted to the BRASS Processing Center that issued the C-4 identifier. If the release

procedure is to be changed temporarily, the request must include the date the releases are to return to the release type originally approved. Further information concerning requests for a change in the method of release will be found in the BRASS Handbook.

Section 142.44—“BRASS Processing Procedures”

Under the heading “BRASS processing procedures”, this section will explain the expedited processing and release procedures of the BRASS Program and the procedure when a compliance examination is ordered. Because the processing procedures for merchandise carried by motor and rail carriers are different, they are explained in separate paragraphs: the motor carrier provisions are explained at paragraph (a); and the rail carrier provisions are explained at paragraph (b). It is noted that for rail carriers, only Automated Manifest System (AMS) rail carriers are eligible for BRASS processing. In general, when shipments are presented for expedited processing and release under BRASS:

1. The merchandise must be specially identified with the proper C-4 code(s) by the entry filer and presented at a designated port (s) of entry approved to process BRASS shipments;

2. For motor carriers, the documentation to be submitted includes an original manifest (and as many copies as the particular BRASS site requires) and an original invoice, with the appropriate C-4 bar code(s) attached. For rail carriers, the documentation data must be submitted electronically;

3. Customs assigns a BRASS entry number to the transaction from the range of numbers previously provided by the entry filer for BRASS processing; and

4. Customs processes the merchandise as a BRASS transaction and the release information is either stamped on the original manifest and invoice documents or sent electronically, whichever procedure is applicable.

(a) For motor carriers, the original paper documents are stamped and the drivers are provided with a copy of the manifest, so that they may depart the port; entry filers are provided with the invoice stamped with the BRASS entry number assigned and the appropriate C-4 identifier information; and Customs retains the original, stamped manifest document;

(b) For rail carriers, the release data is electronically sent to the entry filer and to the carrier.

Occasionally, a compliance examination may be ordered by

Customs. When BRASS shipments undergo a compliance examination:

1. The first three steps indicated above are followed, except that the appropriate documentation submitted to Customs is returned to the entry filer; and

2. The entry filer then either:
(a) Enters the merchandise, by preparing either a Customs Form (CF) 3461 or CF 3461 Alternate that utilizes the BRASS entry number assigned by Customs, or

(b) Applies for a special permit for immediate delivery of the merchandise, by preparing either a CF 3461 or CF 3461 Alternate with the required supporting documentation, that utilizes the BRASS entry number assigned by Customs.

Section 142.45—“Revocation of BRASS participation”

Under the heading “Revocation of BRASS participation”, this section will explain how Customs can revoke an entry filer’s privilege to participate in the BRASS Program.

Under the heading “Immediate revocation”, paragraph (a) will delineate the specific reasons when the appropriate BRASS Processing Center or port director may immediately revoke a participant’s BRASS privileges. These reasons include:

1. The application contained false or misleading information concerning a material fact;

2. Any of the parties listed on the application is subsequently indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, Customs has probable cause to believe the proscribed acts occurred;

3. An entry filer allows an unauthorized person or entity to use his BRASS processing privileges;

4. An entry filer refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation;

5. Reasonable grounds exist to believe that Federal rules and regulations pertaining to public health or safety, Customs, or other inspectional activities have not been followed;

6. Evidence of any subsequent dishonest conduct by any of the parties listed on the application; or

7. Continuation of the entry filer’s participation in the BRASS Program would endanger the revenue or security of the Customs area.

Under the heading “Proposed revocation”, paragraph (b) will provide when the appropriate BRASS Processing

Center or port director may propose to revoke a participant’s BRASS privileges. These reasons will include:

1. The entry filer fails to adhere to the conditions or restrictions imposed by the BRASS Program; or

2. The entry filer does not maintain the minimal number of qualifying import transactions for a period of one year.

Under the heading “Notice of adverse action”, paragraph (c) will explain Customs notification procedure when a decision is made to revoke an entry filer’s participation in the BRASS Program. The appropriate BRASS Processing Center will notify the participant of the decision in writing. The notice will indicate whether the action is effective immediately or is proposed and will include the appropriate directions and information the nature of the decision requires.

Where the revocation of participation is to be effective immediately, the notice issued will be a notice of immediate revocation. The notice of immediate revocation will direct the entry filer to cease using his C-4 identifier on import transactions, state the reason(s) for the revocation decision, and inform the entry filer of the administrative appeal procedures that he may pursue under proposed § 142.46.

Where the revocation of participation is proposed, the notice issued will be a notice of proposed revocation. The notice of proposed revocation will inform the entry filer that he may continue to use his C-4 identifier on import transactions until such time as a notice of revocation is issued by the BRASS Processing Center, state the reason(s) for the proposed revocation, and inform the entry filer that he may file a response with the BRASS Processing Center that addresses the grounds for the action proposed within 30 calendar days of the date of issuance of the notice of proposed revocation. The entry filer may respond by accepting responsibility, explaining extenuating circumstances, and/or providing rebuttal evidence.

If the entry filer does not respond to the preliminary notice, the BRASS Processing Center will issue a notice of revocation 60 calendar days after the date the notice of proposed revocation was issued. The notice of revocation will direct the entry filer to cease using his C-4 identifier on import transactions, state the reason(s) for the revocation decision, and inform the entry filer of the administrative appeal procedures that he may pursue under proposed § 142.46.

If the entry filer files a timely response, the BRASS Processing Center

will issue a final determination regarding the entry filer's participation in the BRASS Program within 30 calendar days of the date the entry filer's response is received by the BRASS Processing Center. If this final determination is adverse, then the notice of revocation will direct the entry filer to cease using his C-4 identifier on import transactions, state the reason(s) for the revocation decision, and inform the entry filer of the administrative appeal procedures that he may pursue under proposed § 142.46.

Section 142.46—Appeals Regarding Decisions Concerning BRASS Participation

Under the heading "Appeals regarding decisions concerning BRASS participation", § 142.46 will explain the new administrative appeal procedures that will be provided to BRASS Program participants who receive a notice of revocation and to BRASS Program applicants who receive a notice of nonselection for participation in the BRASS Program. Two levels of administrative review are established. Appeals must be filed within 30 calendar days of the date of issuance of the notice of adverse action (nonselection or revocation). Appeals must be filed in duplicate and must set forth the appellant's responses to the grounds specified in the respective notice issued.

Paragraph (a) will explain the procedure an appellant must follow to file the first level of appeal with the Director of Field Operations at the Management Center which oversees the BRASS Processing Center that issued the notice of adverse action. Within 60 days of receipt of the appeal, the Director of Field Operations, or his designee, will make a determination regarding the appeal and notify the appellant of the decision in writing. If the determination is adverse to the appellant, the notice of appeal decision will state the reason(s) for the appeal decision and inform the appellant that within 30 calendar days of the date of issuance of the appeal decision he may administratively appeal the decision to the final level of appeal.

Paragraph (b) will explain the procedure an appellant must follow to file the final level of appeal with the Assistant Commissioner, Office of Field Operations, at Customs Headquarters. Within 60 days of receipt of the appeal, the Assistant Commissioner, or his designee, will make a determination regarding the appeal and notify the appellant of the decision in writing. If the determination is adverse to the appellant, the notice of appeal decision

will state the reason(s) for the appeal decision.

Comments

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

The Regulatory Flexibility Act and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities, because the proposed amendments concern a voluntary program that confers a benefit on those filers of imported merchandise that meet the eligibility requirements for BRASS processing privileges. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Further, these amendments do not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information in the current regulations has already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB control number 1515-0181 (Line Release application). This notice of proposed rulemaking does not involve any material change to the existing approved information collection.

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 assigned by OMB.

Part 178 of the Customs Regulations (19 CFR part 178), which lists the information collections contained in the regulations and control numbers

assigned by OMB, would be amended accordingly if this proposal is adopted.

List of Subjects

19 CFR Part 24

Customs duties and inspection, Fees, Imports, Reporting and recordkeeping requirements.

19 CFR Part 123

Administrative practice and procedure, Aircraft, Canada, Common carriers, Customs duties and inspection, Entry of merchandise, Freight, Imports, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vehicles, Vessels.

19 CFR Part 132

Agriculture and agricultural products, Customs duties and inspection, Quotas, Reporting and recordkeeping requirements.

19 CFR Part 142

Administrative practice and procedure, Common carriers, Customs duties and inspection, Computer technology, Entry of merchandise, Imports, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons set forth above, it is proposed to amend parts 24, 123, 132, and subpart D of part 142 of the Customs Regulations (19 CFR parts 24, 123, 132, and subpart D of part 142), as set forth below:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for part 24 and the specific authority for § 24.23 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a-58c, 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * *

Section 24.23 also issued under 19 U.S.C. 3332;

* * * * *

2. Section 24.23 is amended at paragraph (a)(4)(iii) by removing the words "any Line Release filed at a part" and adding, in their place, the words "import transaction under Border Release Advanced Screening and Selectivity (BRASS) at a port".

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 and the specific authority for § 123.71 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * * *

Sections 123.71–123.76 also issued under 19 U.S.C. 1618;

* * * * *

2. In § 123.71:

a. The seventh sentence is amended by removing the words “Line Release” and “Line Release entry” and adding, in their place, respectively, the words “Border Release Advanced Screening and Selectivity (BRASS) processing and release” and “BRASS processing and release”; and

b. The eighth sentence is amended by removing the words “Line Release” and adding, in their place, the words “BRASS processing and release”.

PART 132—QUOTAS

1. The general authority citation for part 132 and the specific authority citation for § 132.15 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

Sections 132.15 through 132.17 also issued under 19 U.S.C. 1202 (additional U.S. Note 3 to Chapter 2, HTSUS; subchapter III of Chapter 99, HTSUS; and additional U.S. Note 8 to Chapter 17, HTSUS, respectively), 1484, 1508.

2. In § 132.15, paragraph (b)(2) is amended by removing the parenthetical words “(see § 142.42(d) of this chapter)” before the semi-colon.

PART 142—ENTRY PROCESS

1. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Subpart D of part 142 is revised to read as follows:

Subpart D—Border Release Advanced Screening and Selectivity (BRASS) Merchandise Processing

- 142.41 Description of BRASS program.
- 142.42 Application for BRASS processing.
- 142.43 Responsibilities of participant accepted for BRASS processing.
- 142.44 BRASS processing procedures.
- 142.45 Revocation of BRASS participation.
- 142.46 Appeals regarding decisions concerning BRASS participation.

Subpart D—Border Release Advanced Screening and Selectivity (BRASS) merchandise processing.

§ 142.41 Description of BRASS program.

The Border Release Advanced Screening and Selectivity (BRASS) Program is an automated and electronic system designed, through the use of

personal computers and bar-code technology, to expedite the processing and release of certain high-volume, repetitively-shipped merchandise that is imported at designated locations. BRASS transactions may be designated for either release under entry summary or release for immediate delivery. The BRASS Program encompasses merchandise shipments arriving by motor carrier as well as by rail. Participation in the BRASS Program is voluntary and participants must comply with the program’s requirements, which include the pre-filing of certain import information for qualifying shipments of merchandise and special identification of those shipments with an assigned bar code. While Customs may inspect any shipment of merchandise approved for BRASS processing, in general, BRASS shipments enjoy expedited processing and release through all designated and approved BRASS ports of entry without further Customs processing. At certain high-risk locations along the land borders of the United States (the locations are published in the **Federal Register**), the use of BRASS processing and release for particular shipments of merchandise may be denied by Customs unless the imported merchandise is transported by carriers that participate in the Land Border Carrier Initiative Program (see, subpart H of part 123 of this chapter). Applicants should be aware that failure to follow BRASS Program requirements can result in revocation of their participation in the program. Further, failure to follow program requirements may result in participants being liable for certain civil and criminal penalties. Further information concerning the BRASS Program is contained in the BRASS Handbook, available from U.S. Customs Service Headquarters, BRASS Processing Centers, and at designated ports of entry approved to process BRASS shipments of merchandise.

§ 142.42 Application for BRASS processing.

(a) *Eligible applicants.* Only importers that file their own entries and brokers may apply to participate in the BRASS Program. Applicants must be of good character.

(b) *Merchandise criteria.*—(1) *Non-qualifying merchandise.* Merchandise qualifying for BRASS processing privileges cannot be:

- (i) Prohibited or restricted;
- (ii) Subject to absolute quota;
- (iii) Denied approval for importation by another Federal government agency required to approve the merchandise; or
- (iv) Subsequently determined to be unsuitable for expedited processing

under BRASS for reasons pertaining to trade policy.

(2) *Volume requirements.* The level of import transactions, measured in quantitative terms regarding the number of high-volume, repetitively-shipped merchandise entries for the previous year at the port(s) of entry where the shipments will be entered for BRASS processing, will be considered by Customs in determining, in part, whether BRASS processing privileges should be granted to the applicant at the requested location. The level of import transactions necessary to qualify for BRASS processing is established by the centralized processing center where the application will be submitted and is determined differently based on whether the requested port(s) of entry is along the northern or southern border.

(i) *Northern border.* On the northern border, the number of import transactions with the same shipper or manufacturer and the same importer at the port(s) of entry where the shipments will be presented for BRASS processing is considered.

(ii) *Southern border.* On the southern border, the number of import transactions with the same shipper or manufacturer, importer, and commodity at the port(s) of entry where the shipments will be presented for BRASS processing is considered.

(3) *Compliance rate.* The examination compliance rate for the qualifying importations must meet Customs requirements, as established by the centralized processing center where the application will be submitted.

(c) *Application procedure.* To participate in the BRASS Program, a broker or an importer who files his own entries must submit an application for each commodity to be processed, accompanied by a representative sample of an actual commercial invoice for the product(s) sought to be processed under BRASS, to the appropriate BRASS Processing Center. Participants already in the former Line Release Program do not need to reapply for participation in the BRASS Program, provided they conduct their business in a manner consistent with the administrative portions of this subpart. An application is filed on Customs Form (CF) 7600 (Application for BRASS). On the application, the applicant must provide, among other information, identification information on any other party, such as the shipper or manufacturer of the qualifying merchandise, that may be involved with the proposed BRASS transactions. Each of the parties identified will be evaluated to determine whether they are of good character. (Copies of the CF 7600 are

available at any Customs BRASS port of entry. Additional information to be submitted on the CF 7600 is explained in the BRASS Handbook.)

(d) *Notice of action on application.* Following an evaluation of the information submitted on the CF 7600 and Customs determination as to whether the applicant, any other party listed on the application, and the merchandise meet the standards set forth in this section, the appropriate BRASS Processing Center will notify the applicant in writing as to whether the application is approved or denied. (Where an application is incomplete or otherwise contains information that cannot be verified by the appropriate BRASS Processing Center, it will be returned for clarification.) When an application is approved, Customs assigns the appropriate number of C-4 identifiers, which are to be used for those shipments that will be processed through BRASS. (A C-4 identifier (Common Commodity Classification Code), is a unique, four-element bar code assigned by the appropriate BRASS Processing Center that identifies the shipper or manufacturer, importer, filer, and commodity.) When an application is denied, Customs will issue a notice of nonselection to the applicant. The notice of nonselection will state the reason(s) for the nonselection and inform the applicant that he may administratively appeal the nonselection decision in accordance with the procedures set forth in § 142.46.

(e) *Grounds for denial.* The BRASS Processing Center may deny an application for any of the following reasons:

- (1) A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of that conduct;
- (2) Failure of the merchandise to meet the standards set forth in this section;
- (3) Evidence that the application contains false or misleading information concerning a material fact; or
- (4) A determination is made that participation in the BRASS Program would endanger the revenue or security of the Customs area.

§ 142.43 Responsibilities of participant accepted for BRASS processing.

When approved to participate in the BRASS Program, the applicant is denominated an "entry filer" for BRASS purposes. Entry filers agree to the following responsibilities:

(a) *BRASS entry number range.* Entry filers must provide the local port director, in writing, with a range of numbers for BRASS processing use, so

that Customs can assign a BRASS entry number automatically to each BRASS transaction. A separate range must be provided for each BRASS site and mode of transportation. Entry filers must not assign these numbers to other import transactions. As the previously supplied range nears exhaustion, the entry filer must provide the local port director with new ranges of BRASS entry numbers;

(b) *C-4 identifier.* Entry filers are responsible for the proper preparation, distribution, and use of C-4 identifier(s). If multiple commodities are to be processed at a designated location, then the C-4 identifier assigned for each commodity must be used. When multiple commodity processing is desired, the entry filer should consult with the local port director as to the number of commodities allowed to be processed per shipment at the port;

(c) *Notification of changes in information set forth on application.* Entry filers must notify Customs immediately of any changes in information provided on the originally-approved application by submitting a corrected BRASS application, with a copy of the originally-approved application. This includes any changes regarding the shipper or manufacturer or the commodity; and

(d) *Changing election of release procedure.* Entry filers who wish to change their election of release procedure for BRASS shipments (from entry or immediate delivery to the other) from that approved in their initial BRASS application must request such change in writing. If the release procedure is to be changed permanently, the request must include the date the change is to be effective and must be submitted to the BRASS Processing Center that issued the C-4 identifier. If the release procedure is to be changed temporarily, the request must include the date the releases are to return to the release procedure originally approved. (Further information concerning requests for a change in BRASS processing can be found in the BRASS Handbook.)

§ 142.44 BRASS processing procedures.

(a) *BRASS processing procedures for motor carriers.—(1) Expedited processing and release.* A shipment of merchandise arriving by motor carrier is expeditiously processed and released under the BRASS Program when:

(i) *Merchandise specially designated.* The merchandise presented is specially identified with the proper C-4 code(s) and the merchandise is presented at a

designated port of entry approved to process BRASS shipments;

(ii) *Documentation required to be presented.* The documentation submitted includes an original manifest (and as many copies as the particular BRASS site requires) and an original invoice that contain the C-4 identifier (as described in § 142.42(d));

(iii) *Customs processing.* Customs assigns a BRASS processing number to the transaction from the range of numbers previously provided by the entry filer for BRASS processing; and

(iv) *Customs release.* Following the BRASS processing of the merchandise, the release information is stamped on the original manifest and the invoice documents. The motor carrier is then provided with a copy of the manifest, entry filers are provided with the invoice stamped with the BRASS entry number assigned and the appropriate C-4 identifier information, and Customs retains the original, stamped manifest and may retain any other documents submitted.

(2) *Compliance examination.* When a shipment of merchandise presented for BRASS processing is ordered by Customs to undergo a compliance examination, the entry filer must then either make an entry of the merchandise, by preparing either a Customs Form (CF) 3461 or CF 3461 Alternate, or apply for a special permit for immediate delivery of the merchandise, by preparing a CF 3461 or CF 3461 Alternate with the required supporting documentation, that utilizes the BRASS processing number assigned by Customs. Customs will not accept entry or immediate delivery documentation that does not contain the Customs-assigned BRASS entry number.

(b) *BRASS processing procedures for rail carriers.—(1) Expedited processing and release.* A shipment of merchandise arriving by rail carrier is expeditiously processed and released under the BRASS Program when:

(i) *Merchandise specially designated.* The merchandise presented is specially identified with the proper C-4 code(s) and the merchandise is presented at a designated port of entry approved to process BRASS shipments. The BRASS rail program is limited to rail AMS carriers;

(ii) *Data required to be presented.* The C-4 identifier (as described in § 142.42(d)) must be submitted electronically with the manifest; and

(iii) *Customs processing.* Customs assigns a BRASS entry number to the transaction from the range of numbers previously provided by the entry filer for BRASS processing; and

(iv) *Customs release.* Following the BRASS processing of the merchandise, the release information is electronically sent to the entry filer and to the carrier.

(2) *Compliance examination.* When a shipment of merchandise presented for BRASS processing is ordered by Customs to undergo a compliance examination, the entry filer must then either make an entry of the merchandise, by preparing either a Customs Form (CF) 3461 or 3461 Alternate, or apply for a special permit for immediate delivery of the merchandise, by preparing a CF 3461 or CF 3461 Alternate with the required supporting 22 documentation, that utilizes the BRASS processing number assigned by Customs. Customs will not accept entry or immediate delivery documentation which does not contain the Customs-assigned BRASS entry number.

§ 142.45 Revocation of BRASS participation.

(a) *Immediate revocation.* The appropriate BRASS Processing Center or port director may immediately revoke a participant's BRASS privileges for any of the following reasons:

(1) The application contained false or misleading information concerning a material fact;

(2) Any of the parties listed on the application is subsequently indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, Customs must have probable cause to believe the proscribed acts occurred;

(3) An entry filer allows an unauthorized person or entity to use his BRASS processing privileges;

(4) An entry filer refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation;

(5) Reasonable grounds exist to believe that Federal rules and regulations pertaining to public health or safety, Customs, or other inspectional activities have not been followed;

(6) Evidence of any subsequent dishonest conduct by any of the parties listed on the application; or

(7) Continuation in the BRASS Program would endanger the revenue or security of the Customs area.

(b) *Proposed revocation.* The appropriate BRASS Processing Center or port director may propose to revoke a participant's BRASS privileges for any of the following reasons:

(1) The entry filer fails to adhere to the conditions or restrictions imposed by the BRASS Program; or

(2) The entry filer does not maintain the minimal number of qualifying import transactions for a period of one year.

(c) *Notice of adverse action.* When a decision to revoke an entry filer's participation in the BRASS Program is made, the appropriate BRASS Processing Center will notify the participant in writing. The notice will indicate whether the action is effective immediately or is proposed and will include the appropriate directions and information the nature of the decision requires:

(1) *Immediate revocation.* Where the revocation of participation is effective immediately, the notice issued will be a notice of immediate revocation. The notice of immediate revocation will direct the entry filer to cease using his C-4 identifier on import transactions, state the reason(s) for the revocation decision, and inform the entry filer that he may administratively appeal the revocation decision in accordance with the procedures set forth in § 142.46.

(2) *Proposed revocation.*—(i) *Preliminary notice.* Where the revocation of participation is proposed, the notice issued will be a notice of proposed revocation. The notice of proposed revocation will inform the entry filer that he may continue to use his C-4 identifier on import transactions until a notice of revocation is issued, state the reason(s) for the proposed revocation, and inform the participant that he may file a response with the BRASS Processing Center that addresses the grounds for the action proposed within 30 calendar days of the date of issuance of the notice of proposed revocation. The entry filer may respond by accepting responsibility, explaining extenuating circumstances, and/or providing rebuttal evidence.

(ii) *Final notice.*—(A) *Based on nonresponse.* If the entry filer does not respond to the notice of proposed revocation, the BRASS Processing Center will issue a notice of revocation 60 calendar days after the date of issuance of the notice of proposed revocation. The notice of revocation will direct the entry filer to cease using his C-4 identifier on import transactions, state the reason(s) for the revocation decision, and inform the entry filer that he may administratively appeal the revocation decision in accordance with the procedures set forth in § 142.46.

(B) *Based on response.* If the entry filer files a timely response, the BRASS Processing Center will issue a final determination regarding the entry filer's

participation in the BRASS Program within 30 calendar days of the date the entry filer's response is received by the BRASS Processing Center. If this final determination is adverse, then the notice of revocation will direct the entry filer to cease using his C-4 identifier on import transactions, state the reason(s) for the revocation decision, and inform the entry filer that he may administratively appeal the revocation decision in accordance with the procedures set forth in § 142.46.

§ 142.46 Appeals regarding decisions concerning BRASS participation.

A BRASS Program participant who receives a notice of revocation or a BRASS Program applicant who receives a notice of nonselection for participation in the BRASS Program may administratively appeal Customs decision by filing an appeal in writing within 30 calendar days of the date of issuance of the notice of adverse action (nonselection or revocation). Appeals must be filed in duplicate and must set forth the appellant's responses to the grounds specified in the respective notice issued.

(a) *The Director of Field Operations.* The first appeal is to the Director of Field Operations at the Customs Management Center that oversees the BRASS Processing Center that issued the notice of adverse action (nonselection or revocation). Within 60 days of receipt of the appeal, the Director of Field Operations, or his designee, will make a determination regarding the appeal and notify the appellant of the decision in writing. If the determination is adverse to the appellant, the notice of appeal decision will state the reason(s) for the adverse determination and inform the appellant that within 30 calendar days of the date of issuance of the appeal decision he may administratively appeal the decision to the final level of appeal: The Assistant Commissioner, Office of Field Operations.

(b) *The Assistant Commissioner.* The final appeal is to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, Washington, DC 20229. Within 60 days of receipt of the appeal, the Assistant Commissioner, or his designee, will make a determination regarding the appeal and notify the appellant of the decision in writing. If the determination is adverse to the appellant, the notice of appeal decision

will state the reason(s) for the adverse determination.

Charles W. Winwood,

Acting Commissioner of Customs.

Approved: January 29, 2002.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 02-2466 Filed 1-31-02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-120135-01]

RIN 1545-AY94

Definition of Agent for Certain Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the definition of agent for certain purposes. The proposed regulations clarify that the term agent in certain provisions of section 6103 of the Internal Revenue Code includes contractors.

DATES: Written and electronic comments and requests for a public hearing must be received by May 2, 2002.

ADDRESSES: Send submissions to CC:ITA:RU (REG-120135-01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG-120135-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site: http://www.irs.ustreas.gov/tax_regs/regslst.html.

FOR FURTHER INFORMATION CONTACT: Helene R. Newsome, 202-622-4580 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Generally, returns and return information are confidential under section 6103 of the Internal Revenue Code (Code) unless a specific statutory exception applies. In cases of non-tax-related disclosures, returns and return

information generally may only be disclosed to officers and employees of Federal, state, and local government agencies, and not to contractors or agents of such agencies. In certain limited circumstances, however, Congress has permitted disclosures to agents of these agencies. See sections 6103(l)(6)(B), 6103(l)(12), 6103(m)(2), 6103(m)(4), 6103(m)(5), and 6103(m)(7).

This document contains proposed regulations that clarify that the term agent in sections 6103(l) and (m) includes contractors. Clarification that the term agent includes contractors is necessary for the purpose of bringing certain statutory grants of disclosure authority into alignment with the reality of many agencies' operations. Agencies generally procure the services of third parties under public contracting laws, which do not necessarily correlate with common law concepts of agent. This clarification is also consistent with Congressional intent. For example, the Senate Finance Committee, in amending section 6103(m)(2), stated, "Agents are those who are engaged directly in performing or assisting in collection functions for the federal government, presumably, private collection agencies who have contracted with the government to collect claims . . ." S. Rep. No. 97-378, at 15 (1982).

This clarification does not provide any new disclosure authority, nor does it authorize the disclosure of return information to contractors that Congress has not previously specifically authorized in the Code. With regard to protection of taxpayer data, agents/contractors are subject to safeguard requirements, redisclosure prohibitions, and civil and criminal penalties for unauthorized disclosures. Accordingly, the proposed regulations do not have an impact on taxpayer privacy.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel of the Small Business Administration for comment on its impact on small businesses.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Helene R. Newsome, Office of the Associate Chief Counsel (Procedure & Administration), Disclosure & Privacy Law Division.

List of Subjects in 26 CFR part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 301.6103(l)-1 also issued under 26 U.S.C. 6103(q); * * *
Section 301.6103(m)-1 also issued under 26 U.S.C. 6103(q); * * *

Par. 2. Section 301.6103(l)-1 is added to read as follows:

§ 301.6103(l)-1 Disclosure of returns and return information for purposes other than tax administration.

(a) *Definition.* For purposes of applying the provisions of section 6103(l) of the Internal Revenue Code, the term *agent* includes a contractor.

(b) *Effective date.* This section is applicable on or after the date of publication of the Treasury decision adopting these regulations as final regulations in the **Federal Register**.

Par. 3. Section 301.6103(m)-1 is added to read as follows: