

023, dated June 23, 2005, as an additional source of service information for replacing the mini-latches on certain lavatory waste compartment doors required by paragraph (f) of this AD.

#### Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

#### Related Information

(h) Brazilian airworthiness directive 2005-11-01, effective December 8, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on July 20, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. E6-12106 Filed 7-27-06; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

## DEPARTMENT OF THE TREASURY

[USCBP-2006-0015]

### 19 CFR Parts 24, 113, and 128

RIN 1505-AB39

### Fees for Customs Processing at Express Consignment Carrier Facilities

**AGENCY:** Customs and Border Protection, Homeland Security; Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes amendments to title 19 of the Code of Federal Regulations (19 CFR) to reflect changes to the customs user fee statute made by section 337 of the Trade Act of 2002 and section 2004(f) of the Miscellaneous Trade and Technical Corrections Act of 2004. The statutory amendments made by section 337 concern the fees payable for customs services provided in connection with the informal entry or release of shipments at express consignment carrier facilities and centralized hub facilities, and primarily serve to replace the annual lump sum payment procedure with a quarterly payment procedure based on a specific fee for

each individual air waybill or bill of lading. Section 2004(f) amended the user fee statute to authorize, for merchandise that is formally entered at these sites, the assessment of merchandise processing fees provided for in 19 U.S.C. 58c(a)(9), in addition to the fees that are currently assessed on individual air waybills or bills of lading. Lastly, pursuant to the authority established in 19 U.S.C. 58c(b)(9)(B)(i), this document proposes to raise the existing \$0.66 fee assessed on individual air waybills or bills of lading to \$1.00 to more equitably align it with the actual costs incurred by CBP in processing these items.

**DATES:** Comments must be received on or before August 28, 2006.

**ADDRESSES:** You may submit comments, identified by *docket number*, by *one* of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2006-0015.
- Mail: Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

**Instructions:** All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the electronic docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Jackson, Office of Field Operations, Trade Enforcement and Facilitation, Tel.: (202) 344-1196.

#### SUPPLEMENTARY INFORMATION:

##### Public Participation

Interested persons are invited to participate in this rulemaking by

submitting written data, views, or arguments on all aspects of the proposed rule. The Bureau of Customs and Border Protection (CBP) also invites comments that relate to the economic effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

#### Background

##### *I. Statutory Changes Made by Section 337(a) of the Trade Act of 2002*

On August 6, 2002, the President signed into law the Trade Act of 2002, Public Law 107-210, 116 Stat. 933. Section 337(a) of the Trade Act of 2002 amended section 13031(b)(9) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)) by adding new requirements for the payment of user fees for customs services provided by CBP to express consignment carrier facilities and centralized hub facilities in connection with imported letters, documents, shipments or other merchandise to which informal entry procedures apply. The principal changes involve the following:

1. In the introductory text of section 58c(b)(9)(A), which refers to reimbursements and payments required from a centralized hub facility, an express consignment carrier facility, or a small airport or other facility, the words "the processing of merchandise that is informally entered or released" were replaced by the words "the processing of letters, documents, records, shipments, merchandise, or any other item that is valued at an amount that is less than \$2,000 (or such higher amount as the Secretary of the Treasury may set by regulation pursuant to section 498 of the Tariff Act of 1930), except such items entered for transportation and exportation or immediate exportation." [It is noted that the statutory monetary amount was subsequently amended to "\$2,000 or less \* \* \*" as discussed later in this document.]

2. Section 58c(b)(9)(A)(ii) was replaced by new text identifying, in the case of an express consignment carrier facility or a centralized hub facility, a fee of \$0.66 per individual air waybill or bill of lading. Prior to this amendment, clause (ii) required an express consignment carrier facility or a centralized hub facility to make the following reimbursements and payments:

(a) A reimbursement to Customs (hereinafter referred to as "CBP" to reflect the transfer of the U.S. Customs Service to the Department of Homeland Security and the agency's subsequent renaming as Bureau of Customs and Border Protection) of an amount equal to the cost of the services provided by CBP for the facility during the fiscal year; and

(b) An annual payment by the facility to the Secretary of the Treasury in an amount equal to the annual reimbursement made under 19 U.S.C. 58c(b)(9)(A)(ii)(I).

3. Subparagraph (B) was redesignated as subparagraph (C) and a new subparagraph (B) was added. New subparagraph (B) consists of clauses (i) through (iii) which provide as follows:

(a) Clause (i) authorizes the Secretary of the Treasury to adjust the \$0.66 fee prescribed in subparagraph (A)(i) to an amount that is not less than \$0.35 and not more than \$1.00 per individual air waybill or bill of lading. Clause (i) further provides that the adjustment may not be made before fiscal year 2004 and not more than once per fiscal year and must involve publication of notice of the proposed adjustment in the **Federal Register** with opportunity for public comment;

(b) Clause (ii) provides that the payment required by subparagraph (A)(ii) is the only payment required for reimbursement of CBP in connection with the processing of an individual air waybill or bill of lading in accordance with that subparagraph and for providing services at express consignment carrier facilities or centralized hub facilities, except that CBP may require those facilities to cover CBP expenses for adequate office space, equipment, furnishings, supplies, and security.

(c) Clause (iii)(I) provides that the payment required under subparagraphs (A)(ii) and (B)(ii) is to be paid to CBP on a quarterly basis by the carrier using the facility in accordance with regulations prescribed by the Secretary of the Treasury. Clause (iii)(II) states that 50 percent of the amount of payments received under subparagraphs (A)(ii) and (B)(ii) will, in accordance with 19 U.S.C. 1524, be deposited in the Customs (CBP) User Fee Account and used to directly reimburse each appropriation for the amount paid out of that appropriation for costs incurred in providing services to express consignment carrier facilities or centralized hub facilities. Such amounts are to remain available until expended for the provision of customs services to these entities. Clause (iii)(III) directs the remaining 50 percent of the amount of

payments received under subparagraphs (A)(ii) and (B)(ii) to be paid to the Secretary of the Treasury. See 19 U.S.C. 58c(b)(9)(B)(iii)(I)—(III).

Section 337(b) of the Trade Act of 2002 provides that the amendments made by section 337(a) take effect on October 1, 2002.

The following points are noted regarding the effect of the statutory changes made by section 337(a) of the Trade Act of 2002:

1. The overall effect of section 337(a) is to replace two equal annual lump sum payments (one representing a reimbursement of the cost of services provided and the other representing a payment in lieu of the payment of fees for the informal entry or release of merchandise) with a quarterly payment procedure based on a specific fee for each individual air waybill or bill of lading.

2. The \$2,000 limit referred to in the amended statute reflects the amount that CBP, pursuant to section 498 of the Tariff Act of 1930, as amended (19 U.S.C. 1498), has adopted in § 143.21 of title 19 of the Code of Federal Regulations (19 CFR 143.21) as the limit for shipments of merchandise that may be entered under informal entry.

3. The replacement of the word "merchandise" by a reference to "letters, documents, records, shipments, merchandise, or any other item" in the amended statute ensures that other imported articles or items that are eligible for informal entry under § 143.21 will be subject to the new fee. The one exception concerns those articles (for example, articles of plastics or rubber, textiles and textile articles, leather articles, and footwear) for which the informal entry limit is set at \$250 in § 143.21; for those articles having a value greater than \$250 but less than \$2,000, the new fee standard will apply even though those articles are not subject to informal entry procedures under § 143.21.

4. Each shipment transported by affected carriers is issued an individual air waybill that is used, among other things, for tracking purposes. Because the law applies the fee to each individual air waybill, the use of master bills or other practices of consolidation or convenience by these entities, the billing system used by these entities for their customers, and the number of entries filed, are irrelevant to the application of the fee. In effect, the individual air waybill subject to the fee is the bill at the lowest level, *i.e.*, not a master bill. An example of an individual airway bill or bill of lading is a bill representing an individual shipment that has its own unique bill number and

tracking number, where shipment is assigned to a single ultimate consignee, and no lower (more disaggregated) bill unit exists.

5. Under the amended statute, responsibility for payment rests with the carrier rather than with the facility. This does not represent a substantive change in the case of centralized hub facilities because the hub facility owner and the carrier using the facility are always the same. However, it does represent a shift in responsibility for payment, from the facility to the carrier, in the case of express consignment carrier facilities that are not owned and operated by the different carriers that use them.

6. The affected carriers became responsible for payment of the new fee for each individual covered transaction as of October 1, 2002, effective date of the amendments made by section 337(a) of the Trade Act of 2002. Therefore, even though the first payment to CBP under the new payment procedure would not have taken place until after the close of the last quarter of the year 2002, the statute obligated the affected carriers to maintain adequate records to determine the proper amount to be paid starting on the effective date of the statutory amendments.

## *II. Statutory Changes Made by Section 2004(f) of the Miscellaneous Trade and Technical Corrections Act of 2004*

The Miscellaneous Trade and Technical Corrections Act of 2004 ("Trade Act of 2004") was signed into law by the President on December 3, 2004 (Pub. L. 108-429, 18 Stat. 2593). Section 2004(f) of the Trade Act of 2004 made further amendments to section 13031(b)(9) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)). The principal changes made by section 2004(f) are set forth below:

1. In the introductory text of section 58c(b)(9)(A), which refers to reimbursements and payments to CBP required from a centralized hub facility, an express consignment carrier facility, or a small airport or other facility, the words "less than \$2,000" were replaced by the words "\$2,000 or less".

2. Section 58c(b)(9)(A)(ii), which requires an express consignment carrier facility or a centralized hub facility to reimburse CBP in an amount of \$0.66 per individual air waybill or bill of lading, was amended by: (a) Adding the language, "[N]otwithstanding subsection (e)(6)" at the beginning of the section; and (b) restructuring this provision by creating two new sub-clauses. The first new sub-clause, identified as (A)(ii)(I), sets forth the existing reimbursement fee of \$0.66 per

individual air waybill or bill of lading. The second new sub-clause, identified as (A)(ii)(II), pertains to situations where merchandise is formally entered and mandates, in addition to the fee specified in sub-clause (A)(ii)(I), reimbursement to CBP of the fee provided for in subsection (a)(9) (the merchandise processing fee), if applicable. *See* 19 U.S.C. 58c(a)(9).

3. To accommodate the amendments to subparagraph (A)(ii), discussed above, conforming changes were made to section 58c(b)(9)(B)(ii) whereby the statutory reference to “(A)(ii)” was replaced with a reference to “(A)(ii)(I) or (II)”.

### *III. Proposal To Increase Certain Reimbursement Fees Payable by Express Consignment Carrier Facilities and Centralized Hub Facilities*

As noted above, 19 U.S.C. 58c(b)(9)(B)(i), as amended by section 337(a) of the Trade Act of 2002, authorizes the Secretary of the Treasury to adjust the \$0.66 fee prescribed in 19 U.S.C. 58c(b)(9)(A)(ii) to an amount that is not less than \$0.35 and not more than \$1.00 per individual air waybill or bill of lading. This section further provides that notice of any proposed adjustment and the reasons therefore must be published in the **Federal Register** with opportunity for public comment.

Pursuant to this authority, this document proposes to increase the existing \$0.66 reimbursement fee payable to CBP by express consignment carrier facilities and centralized carrier facilities to \$1.00. The proposed fee increase is necessary to more adequately reimburse CBP for the actual costs

incurred by the agency in processing individual air waybills and bills of lading at these sites. It is also noted that in addition to the regular costs associated with processing individual air waybills and bills of lading, CBP must also incur the expenses associated with relocating CBP personnel when a carrier opts to close a carrier-owned express consignment facility and open a new facility at a different location. The current fee schedule does not sufficiently cover CBP's regular expenses at these sites.

As discussed previously, the amendments to section 58c(b)(9)(B) made by section 337(a) of the Trade Act of 2002 direct that the money collected by CBP from this one payment be sent to two different accounts. Section 58c(b)(9)(B)(iii)(II) requires fifty percent of the payment to be deposited in the CBP User Fee Account and used to directly reimburse each appropriation for the amount paid out of that appropriation for the costs incurred in providing services to express consignment carrier facilities and centralized hub facilities. Such amounts are available until expended for the provision of custom services for these facilities. Section 58c(b)(9)(B)(iii)(III) requires the remaining fifty percent to be paid to the Secretary of the Treasury in lieu of an informal entry Merchandise Processing Fee (MPF). Prior to the 2002 amendment, the law provided for two payments: One payment was made to CBP as the fee to cover agency expenses incurred by providing customs services relating to staffing for the onsite processing and release of cargo at express consignment carrier facilities,

and the second payment was made to the Treasury in lieu of the informal entry Merchandise Processing Fee (MPF). Thus, the current payment structure provides for a single payment collected by CBP and deposited in two separate sub-accounts, whereas previously two separate fees were paid to CBP and Treasury. In neither case did fees exceed direct costs. In fact, collected fees were well below direct costs. Under this proposal, fees will approach costs up to the new statutory cap.

CBP has conducted a financial analysis of the costs incurred by CBP in providing services to express consignment facilities and centralized hub facilities in Fiscal Years (FY) 2004 and 2005. The collection/cost data reveals that at the close of FY 2004, the half of the 58c(b)(9)(A)(ii) payment intended to defray the cost of services to express consignment and centralized hub facilities left the agency with a deficit with the agency collecting only 78% of the monies expended to provide those services. In FY 2005, CBP collected only 70% of these costs. Projections for FY 2006 indicate that the deficit will increase again due to the fact that certain CBP expenses, such as reimbursable wages for CBP employees at these sites, will increase.

The following table sets forth the collection/cost data associated with CBP's processing of individual air waybills and bills of lading at express consignment facilities and centralized hub facilities for FY 2004 and 2005, as well as a projected financial analysis for FY 2006:

Fiscal year	Estimated package volume	Total collections (based on \$.66 cents per bill)	CBP's retained portion of collected amount (based on \$.33 cents per bill)	CBP costs	CBP cost per bill	CBP deficit
2004* .....	47,243,205	\$31,180,516	\$15,590,258 .....	\$19,945,704	0.42	(\$4,355,446).
2005* .....	45,364,139	29,940,332	\$14,970,166 .....	21,393,520	0.47	(\$6,423,354).
2006** .....	43,549,574	28,742,718	\$14,371,359 (\$21,774,787 based on \$.50 cents collected per bill if the payment is raised to \$1.00).	22,545,880	0.52	(\$8,174,521) ((\$771,093) based on \$.50 cents collected per bill if the payment is raised to \$1.00).

\* FY 2004 and 2005 costs information from the CBP Cost Management Information System.

\*\* FY 2006 costs equal FY 2005 costs plus 27 new CBP Officer positions Grade 11 Step 1 with a prorated onboard date of April 2006. New position cost information derived from the FY 2006 CBP position model and does not include any equipment, training, travel costs, etc.

The financial projections for FY 2006 indicate that CBP will incur a per bill cost of \$0.52. If the payment is raised to \$1.00, as proposed, CBP will collect \$0.50 per bill (the other \$0.50 to be deposited with the Secretary of the Treasury in lieu of the informal entry Merchandise Processing Fee).

Based on these figures, and subject to the monetary limits set by law, CBP proposes raising the \$0.66 payment to \$1.00 so that the half of the payment associated with providing services to express consignment and centralized hub facilities is aligned with the actual costs incurred by CBP. The other half of the payment, collected in lieu of the

MPF, is set by statute at equal to the payment for providing services to express consignment and centralized hub facilities.

### **Affected Regulatory Provisions**

Regulations implementing those provisions of 19 U.S.C. 58c(b)(9) that were amended by section 337(a) of the

Trade Act of 2002 and section 2004(f) of the Trade Act of 2004 are contained in parts 24 and 128 of title 19 of the CFR (19 CFR parts 24 and 128).

Part 24 sets forth rules pertaining to CBP's financial and accounting procedures. The provision within part 24 most directly affected by the statutory changes discussed above is § 24.23, which concerns fees for processing merchandise and which, in paragraph (b)(2)(ii), reflects the terms of subparagraph (A) of the statute prior to its amendment by sections 337(a) and 2004(f). Also affected is § 24.17, which provides for reimbursable services of CBP employees. Specifically, paragraph (a)(12) of that section refers to reimbursement of the compensation and expenses of a CBP employee assigned to a centralized hub facility for the purpose of processing express consignment shipments under part 128 of the regulations, and paragraph (a)(13) contains a similar reimbursement reference regarding a CBP employee assigned to an express consignment carrier facility, with the facility being responsible for the reimbursement in each case.

Part 128 sets forth regulations that apply specifically to express consignment carrier and hub facilities and their operators and users. The only provision within part 128 that is directly affected by the statutory changes discussed above is § 128.11, which concerns the express consignment carrier and hub facility application process. Paragraphs (b)(7)(iv) and (v) of that section require the express consignment entity to agree to timely pay all reimbursable costs and to pay to CBP all relocation, training and other costs and expenses incurred by CBP in relocating necessary staff to or from the facility.

This document proposes amendments to title 19 of the CFR to address the statutory changes made by section 337(a) of the Trade Act of 2002 and 2004(f) of the Trade Act of 2004. In addition to the proposed changes to parts 24 and 128 mentioned above, this document also contains a proposed amendment to the CBP bond provisions of part 113 of title 19 of the CFR (19 CFR part 113). The proposed changes to the regulations contained in this document are discussed below.

## Discussion of Proposed Amendments

### Section 24.17

In this section, which includes in paragraph (a) a list of various contexts in which parties-in-interest are required to reimburse CBP for services rendered, it is proposed to remove paragraph

(a)(12) (which refers to services rendered at a centralized hub facility) and paragraph (a)(13) (which refers to services rendered at an express consignment carrier facility) and redesignate paragraph (a)(14) as paragraph (a)(12).

The proposed removals are necessary because those two provisions: (1) correspond to clause (ii) of subparagraph (A) of the statute as it existed prior to the amendments made by sections 337(a) and 2004(f); and (2) are inconsistent with the "only payment required" language in clause (ii) of new subparagraph (B) of the statute.

### Section 24.23

In this section, it is proposed to modify paragraph (b) to incorporate the terms of the proposed \$1.00 fee (increased from the existing \$0.66 fee) and paragraph (c) to include conforming cross-reference changes. The following points are noted regarding the proposed paragraph (b) changes:

1. In paragraph (b)(1)(i)(A), which concerns the 0.21 percent *ad valorem* fee (merchandise processing fee) applicable to merchandise that is formally entered or released, a new sentence is added with a cross-reference to new paragraph (b)(4) to reflect the terms of section 2004(f) whereby, in the case of an express consignment carrier facility or centralized hub facility, merchandise that is formally entered is subject to a \$1.00 per individual air waybill or bill of lading fee and, if applicable, to a merchandise processing fee.

2. Paragraph (b)(2), which concerns fees for informal entry or release, is revised to refer to only the \$2, \$6, and \$9 specific fees which, under the statute and the regulations, have never applied to express consignment carrier facilities, centralized hub facilities, and small airports and other facilities. The revised paragraph (b)(2) text includes new exception language regarding merchandise covered by paragraph (b)(3) or paragraph (b)(4).

3. A new paragraph (b)(3) concerning small airports and other facilities is added. It is based on the relevant portion of current paragraph (b)(2)(ii)(A) of § 24.23 that is proposed to be removed in the revision of paragraph (b)(2). The fee for small airports and other facilities is authorized by 19 U.S.C. 58c(b)(9)(A)(i). The fee is determined by application of 31 U.S.C. 9701. New paragraph (b)(3) follows that statutory structure.

4. Paragraph (b)(4) is entirely new. Pursuant to 19 U.S.C. 58c(b)(9)(A)(ii)(I) and (II), as amended by sections 337(a) and 2004(f), paragraph (b)(4) requires

each carrier using an express consignment carrier facility or a centralized hub facility to pay to CBP a fee (set forth in 19 U.S.C. 58c(b)(9)(A)(ii)(I) at \$0.66 and now proposed to be increased to \$1.00, as discussed above) assessed on each individual air waybill or individual bill of lading and, if merchandise is formally entered, the 0.21 *ad valorem* fee, if applicable.

The assessment of this fee on each individual air waybill or bill of lading means that each shipment transported by a carrier and processed by CBP will be assessed the fee. Each shipment transported by a carrier and processed by CBP is represented by an individual air waybill and subject to the fee. Therefore, these proposed regulations apply the fee to each shipment covered by an individual air waybill. For purposes of these proposed regulations, an individual airway bill is the bill at the lowest level, and would not include a master bill. An example of an individual air waybill or bill of lading is a bill representing an individual shipment that has its own unique bill number and tracking number, where the shipment is assigned to a single ultimate consignee, and no lower bill unit exists. The use of master bills of lading, or other practices of consolidation by or for the convenience of the carrier, or its customers or for any other reason is irrelevant to the application of this user fee intended to cover CBP's costs associated with processing each individual shipment as represented by each individual air waybill or bill of lading. Moreover, the number and kind of entries filed, and the carrier's billing system for charging its customers, are irrelevant factors and are not considered in determining the fee's application.

Paragraph (b)(4) also includes the quarterly payment requirement specified in clause (iii) of new subparagraph (B) of the amended statute. As in the case of paragraph (b)(3), discussed above, the text of paragraph (b)(4) includes the "processing of letters, documents \* \* \*" and the "\$2,000 or less (or such higher amount \* \* \*)" language of the introductory text of subparagraph (A) of the amended statute, and also contains the exception reference regarding items entered for transportation and exportation or immediate exportation that clearly is relevant to the transaction-by-transaction assessment of the \$1.00 fee.

The text of paragraph (b)(4) also proposes some additional requirements and conditions regarding the payment of this fee, of which the following points are noted:

1. In addition to identifying the due date for each timely quarterly payment as well as the CBP address to which the payments must be sent, the text sets forth specific information that must accompany the payment. The specified information is necessary to enable CBP to verify whether the proper amount of fees required under the statute has been paid.

2. The text allows carriers to make adjustments of overpayments and underpayments in the next quarterly payment, similar to what is allowed in the case of railroad car and passenger arrival fees under § 24.22(d) and (g) of the CBP regulations (19 CFR 24.22(d) and (g)). However, if an adjustment is not made in the next quarterly payment, a request for a refund of an overpayment must be made within one year, similar to the practice in the case of harbor maintenance fees under § 24.24(e)(4)(ii) of the CBP regulations (19 CFR 24.24(e)(4)(ii)), and interest will accrue in the case of an underpayment from the date payment was initially due.

3. Paragraph (b)(4)(iv) provides that the underpayment or failure of a carrier using an express consignment carrier facility or a centralized hub facility to pay all applicable fees owed pursuant to paragraph (b) may result in the assessment of penalties under 19 U.S.C. 1592 and any other action authorized by law.

#### *Section 113.64*

In this section, which specifies the international carrier bond conditions, it is proposed to add a new sentence at the end of paragraph (a) to refer to the obligation of the carrier and its surety under the bond in the event that the carrier fails to pay the fees required under § 24.23(b)(4). This provision is modeled on the approach taken in the case of quarterly payments of passenger processing fees.

#### *Section 128.11*

In this section, which concerns the express consignment facility application process, the following changes are proposed:

1. Paragraph (b)(2) is revised to require inclusion of a list of users of the facility with the application if the applicant is an express consignment carrier facility (a list of users is not necessary in the case of a hub facility because the operator of the facility and the user of the facility are one and the same). This information is necessary to assist CBP in verifying proper payment of the statutory fees.

2. Paragraphs (b)(7)(iv) and (b)(7)(v), which refer to elements of the superseded statutory reimbursement

concept, have been replaced with new provisions. New paragraph (b)(7)(iv) provides for an agreement on the part of an express consignment carrier facility to provide quarterly, and update, a list of all carriers using the facility and is intended to assist CBP in verifying the proper payment of fees by those carriers. Paragraph (b)(7)(v) refers to an agreement on the part of a hub facility or an express consignment carrier to timely pay all applicable processing fees prescribed in § 24.23.

#### **Comments**

Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b) of title 19 of the CFR (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, 799 9th St., NW., Washington, DC. Arrangements to inspect submitted documents should be made in advance by calling Joseph Clark at (202) 572-8768.

#### **Executive Order 12866**

This rule is not considered a “significant regulatory action” as defined in E.O. 12866. Accordingly, a regulatory assessment is not required.

#### **Initial Regulatory Flexibility Act Analysis**

CBP has examined the impacts of the proposed rule on small entities as required by the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, codified at 5 U.S.C. chapter 6) and has prepared an Initial Regulatory Flexibility Act Analysis (IRFA). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

In this proposed rulemaking, small businesses are those that employ fewer than 1,500 employees or have annual revenues under \$6.5 million. Based on annual data collected by CBP, there are 22 businesses that will be affected by the proposed rule. Of these, 10 are large businesses, 11 are small businesses, and 1 is a small, foreign-owned business. Sixteen of these companies (both large and small) are members of an association that owns and operates a consignment facility. That association acts as a single respondent for its members.

#### *Reason for Agency Action; Objectives of and Legal Basis for the Proposed Rule*

Pursuant to the authority established in 19 U.S.C. 58c(a)(9)(b)(ii), it is proposed to raise the existing \$0.66 fee assessed on individual air waybills or bills of lading to \$1.00 to more equitably align it with the actual costs incurred by CBP in processing these items.

#### *Number and Types of Small Entities to Which the Proposed Rule Will Apply*

As previously noted, there are 12 small businesses that will be affected by the proposed rule. These companies are either courier services (NAICS code 492110) or arrange freight transportation (NAICS code 488510).

An estimated 91 percent of the bills of lading submitted for fee assessment were from the three largest affected companies (approximately 41 million waybills in FY 2005). The waybills from the remaining large companies accounted for 2 percent (approximately 865,000 in FY 2005). The remaining 1.5 million bills of lading were submitted by the 12 small businesses.

Based on data from FY 2003 to FY 2005, half of the large companies have experienced annual increases in bills of lading; the remainder have experienced annual decreases. Data for the 12 small businesses also show increases and decreases in waybills. If current trends continue, a net increase in waybills of approximately 20 percent annually is projected for these small companies over the next several years.

In FY 2005, the 12 small businesses submitted 1.5 million bills of lading at a cost of \$1.0 million (\$0.66 per bill of lading). If, in FY 2006, 1.9 million bills of lading were submitted, this would result in a cost of \$1.3 million under the current fee structure. Under the proposed fee of \$1.00 per bill, we would expect costs to reach \$1.9 million, a difference of \$0.6 million. The \$0.6 million represents only 4 percent of the total increase in fees CBP expects to be incurred as a result of growth in bills of lading and the fee increase proposed in this rule.

CBP collected annual revenue data for the 12 small businesses affected. To determine the impact of the proposed rule on annual revenues, CBP calculated the projected difference in costs between the old and proposed fee and compared that (as a percentage) to average annual revenues. Based on these calculations, CBP estimates that the proposed rule will have a 5-percent impact or less on annual revenues for 5 of the small businesses. The rule will have a 5 to 10-percent impact on one of the companies and a greater than 10-

percent impact on four companies. CBP could not find data for one small business, and one was foreign-owned.

In the course of CBP's examination of the impacts on annual revenues for these small businesses, CBP has determined that these entities will likely pass the cost of the increased fee on to their customers to the extent that they are able.

On the basis of the foregoing analysis, CBP concludes that this proposed rule could have a significant impact on a substantial number of small entities. CBP is seeking comments on any of the regulatory requirements that could minimize the cost to small businesses. Comments may be submitted to the regulatory docket using any of the methods listed under "Comments" or **ADDRESSES** above. All input received during the public comment period will be considered.

#### *Reporting and Recordkeeping*

This proposed rule will change current paperwork requirements. No new professional skills will be necessary for the preparations of the reports and records. For more detail, see "Paperwork Reduction Act" below.

#### *Other Federal Rules*

This proposed rule does not duplicate, overlap, or conflict with other federal regulations.

#### *Regulatory Alternatives*

CBP did not consider any alternatives to the proposed rule.

#### **Paperwork Reduction Act**

The collections of information in this document are contained in §§ 24.23 and 128.11 (19 CFR 24.23 and 128.11). This information is used by CBP to determine whether user fees required by statute have been properly paid. The likely respondents are business organizations including importers and air carriers.

The collections of information for paying fees for customs services provided in connection with the informal entry or release of shipments at express consignment carrier facilities and centralized hub facilities was previously approved by the Office of Management and Budget under control number 1651-0052. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), CBP has submitted to OMB for review the following adjustments to the information provided to OMB for the previously approved OMB control number to account for the changes proposed in this rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it

displays a valid control number assigned by OMB.

#### *Report for quarterly payment under § 24.23(b)(4)(iii):*

Estimated annual reporting and/or recordkeeping burden: 176 hours.

Estimated average annual burden per respondent/recordkeeper: 8 hours.

Estimated number of respondents and/or recordkeepers: 22.

Estimated annual frequency of responses: 4.

#### *Report for refund of overpayment under § 24.23(b)(4)(iii):*

Estimated annual reporting and/or recordkeeping burden: 5 hours.

Estimated average annual burden per respondent/recordkeeper: 1 hour.

Estimated number of respondents and/or recordkeepers: 5.

Estimated annual frequency of responses: 2.

#### *Report by operators including the list of carriers under § 128.11(b):*

Estimated annual reporting and/or recordkeeping burden: 6 hours.

Estimated average annual burden per respondent/recordkeeper: 2 hours.

Estimated number of respondents and/or recordkeepers: 3.

Estimated annual frequency of responses: 4.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the 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.

#### **Signing Authority**

This document is being issued in accordance with § 0.1(a)(1) of the CBP

regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain CBP revenue functions.

#### **List of Subjects**

##### *19 CFR Part 24*

Accounting, Claims, Customs duties and inspection, Exports, Imports, Interest, Reporting and recordkeeping requirements, Taxes, User fees, Wages.

##### *19 CFR Part 113*

Air carriers, Bonds, Customs duties and inspection, Exports, Freight, Imports, Reporting and recordkeeping requirements, Surety bonds.

##### *19 CFR Part 128*

Administrative practice and procedure, Carriers, Couriers, Customs duties and inspection, Entry, Express consignments, Freight, Imports, Informal entry procedures, Reporting and recordkeeping requirements.

#### **Amendments to the Regulations**

For the reasons set forth in the preamble, parts 24, 113, and 128 of title 19 of the CFR (19 CFR parts 24, 113, and 128), are proposed to be amended as set forth below.

#### **PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE**

1. The authority citation for part 24 continues to read in part as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

\* \* \* \* \*

Section 24.17 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1456, 1524, 1557, 1562; 46 U.S.C. 2110, 2111, 2112; Section 24.23 also issued under 19 U.S.C. 3332;

\* \* \* \* \*

2. In § 24.17:

a. The section heading is revised to read as set forth below;

b. Paragraphs (a) through (d) are amended by removing the words "Customs employee" where they appear and adding in each place the term "CBP employee; and

c. Paragraphs (a)(12) and (a)(13) are removed and paragraph (a)(14) is redesignated as paragraph (a)(12).

#### **§ 24.17 Reimbursable services of CBP employees.**

\* \* \* \* \*

3. In § 24.23:

a. Paragraph (a) is amended by removing the word "Customs" each

place that it appears and adding the term "CBP";

b. Paragraphs (b)(1)(i)(A) and paragraph (b)(2) are revised;

c. New paragraphs (b)(3) and (b)(4) are added;

d. The introductory text of paragraph (c)(1) is amended by removing the reference "(b)(2)(i)" and adding, in its place, the reference "(b)(2)";

e. Paragraph (c)(2)(i) is amended by removing the reference "(b)(2)(i)" and adding, in its place, the reference "(b)(2)";

f. The first sentence of paragraph (c)(3) is amended by removing the reference "(b)(2)(i)" and adding, in its place, the reference "(b)(2)"; and

g. Paragraph (c)(5) is amended by removing the reference "(b)(2)(i)" and adding, in its place, the reference "(b)(2)".

The revisions and additions read as follows:

#### **§ 24.23 Fees for processing merchandise.**

\* \* \* \* \*

(b) *Fees* (1) *Formal entry or release* (i) *Ad valorem fee* (A) *General*. Except as provided in paragraph (c) of this section, merchandise that is formally entered or released is subject to the payment to CBP of an *ad valorem* fee of 0.21 percent. The 0.21 *ad valorem* fee is due and payable to CBP by the importer of record of the merchandise at the time of presentation of the entry summary and is based on the value of the merchandise as determined under 19 U.S.C. 1401a. In the case of an express consignment carrier facility or centralized hub facility, merchandise that is formally entered is subject to a \$1.00 per individual air waybill or bill of lading fee and, if applicable, to the 0.21 percent *ad valorem* fee which must be paid by the carrier as provided in paragraph (b)(4) of this section.

\* \* \* \* \*

(2) *Informal entry or release*. Except in the case of merchandise covered by paragraph (b)(3) or paragraph (b)(4) of this section, and except as otherwise provided in paragraph (c) of this section, merchandise that is informally entered or released is subject to the payment to CBP of a fee of:

(i) \$2 if the entry or release is automated and not prepared by CBP personnel;

(ii) \$6 if the entry or release is manual and not prepared by CBP personnel; or

(iii) \$9 if the entry or release, whether automated or manual, is prepared by CBP personnel.

(3) *Small airport or other facility*. With respect to the processing of letters, documents, records, shipments, merchandise, or any other item that is

valued at \$2,000 or less, or any higher amount prescribed for purposes of informal entry in § 143.21 of this chapter, a small airport or other facility must pay to CBP an amount equal to the reimbursement (including overtime) which the facility is required to make during the fiscal year under § 24.17.

(4) *Express consignment carrier and centralized hub facilities*. Each carrier using an express consignment carrier facility or a centralized hub facility must pay to CBP a fee in the amount of \$1.00 per individual air waybill or individual bill of lading and, if merchandise is formally entered, the *ad valorem* fee specified in paragraph (b)(1) of this section, if applicable. An individual air waybill or individual bill of lading is the individual document issued by the carrier for transporting and/or tracking an individual item, letter, package, envelope, record, document, or shipment. An individual air waybill is the bill at the lowest level, and is not a master bill or other consolidated document. An individual air waybill or bill of lading is a bill representing an individual shipment that has its own unique bill number and tracking number, where the shipment is assigned to a single ultimate consignee, and no lower bill unit exists. Payment must be made to CBP on a quarterly basis and must cover the individual fees for all subject transactions that occurred during a calendar quarter. The following additional requirements and conditions apply to each quarterly payment made under this section:

(i) The quarterly payment must conform to the requirements of § 24.1, must be mailed to Customs and Border Protection, Revenue Division/Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278, and must be received by CBP no later than the last day of the month that follows the close of the calendar quarter to which the payment relates.

(ii) The following information must be included with the quarterly payment:

(A) The identity of the calendar quarter to which the payment relates;

(B) The identity of the facility for which the payment is made and the port code that applies to that location and, if the payment covers multiple facilities, the identity of each facility and its port code and the portion of the payment that pertains to each port code; and

(C) The total number of individual air waybills and individual bills of lading covered by the payment, and a breakdown of that total for each facility covered by the payment according to the number covered by formal entry procedures, the number covered by informal entry procedures specified in

§§ 128.24(e) and 143.23(j) of this chapter, and the number covered by other informal entry procedures.

(iii) Overpayments or underpayments may be accounted for by an explanation in, and adjustment of, the next due quarterly payment to CBP. In the case of an overpayment or underpayment that is not accounted for by an adjustment of the next due quarterly payment to CBP:

(A) In the case of an overpayment, the carrier may request a refund by writing to Customs and Border Protection, Revenue Division/Attention:

Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278. The refund request must specify the grounds for the refund and must be received by CBP within one year of the date the fee for which the refund is sought was paid to CBP; and

(B) In the case of an underpayment, interest will accrue on the amount not paid from the date payment was initially due to the date that payment to CBP is made.

(iv) The underpayment or failure of a carrier using an express consignment carrier facility or a centralized hub facility to pay all applicable fees owed to CBP pursuant to paragraph (b)(4) of this section may result in the assessment of penalties under 19 U.S.C. 1592 and any other action authorized by law.

\* \* \* \* \*

#### **PART 113—CUSTOMS BONDS**

4. The authority citation for part 113 continues to read in part as follows:

**Authority:** 19 U.S.C. 66, 1623, 1624.

\* \* \* \* \*

5. In § 113.64, paragraph (a) is amended by adding a new sentence at the end to read as follows:

#### **§ 113.64 International carrier bond conditions.**

\* \* \* \* \*

(a) \* \* \* If the principal (carrier) fails to pay the fees for processing letters, documents, records, shipments, merchandise, or other items on or before the last day of the month that follows the close of the calendar quarter to which the processing fees relate pursuant to § 24.23(b)(4) of this chapter, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to two times the processing fees not timely paid to CBP as prescribed by regulation.

\* \* \* \* \*

#### **PART 128—EXPRESS CONSIGNMENTS**

6. The authority citation for part 128 is revised to read as follows:

**Authority:** 19 U.S.C. 58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

7. In § 128.11, paragraphs (b)(2), (b)(7)(iv) and (b)(7)(v) are revised to read as follows:

**§ 128.11 Express consignment carrier application process.**

\* \* \* \* \*

(b) \* \* \*

(2) A statement of the general character of the express consignment operations that includes, in the case of an express consignment carrier facility, a list of carriers that intend to use the facility.

\* \* \* \* \*

(7) \* \* \*

(iv) If the entity is an express consignment carrier facility, provide to Customs and Border Protection, Revenue Division/Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278, at the beginning of each calendar quarter, a list of all carriers currently using the facility and notify that office whenever a new carrier begins to use the facility or whenever a carrier ceases to use the facility.

(v) If the entity is a hub facility or an express consignment carrier, timely pay all applicable processing fees prescribed in § 24.23 of this chapter.

\* \* \* \* \*

**Deborah J. Spero,**

*Acting Commissioner, Bureau of Customs and Border Protection.*

Approved: July 24, 2006.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*  
[FR Doc. E6-12067 Filed 7-27-06; 8:45 am]

**BILLING CODE 9111-14-P**

## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### 29 CFR Part 2400

#### Regulations Implementing the Privacy Act of 1974

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Occupational Safety and Health Review Commission (OSHRC) is proposing to amend its regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a, as amended. The Privacy Act has been amended multiple times since OSHRC first promulgated its regulations in 1979. The proposed amendments to OSHRC's regulations at

29 CFR part 2400 will assist the agency in complying with the requirements of the Privacy Act.

**DATES:** Comments must be received by OSHRC on or before August 28, 2006.

**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail:* [regsdocket@oshrc.gov](mailto:regsdocket@oshrc.gov).

Include "PRIVACY ACT PROPOSED RULEMAKING" in the subject line of the message.

- *Fax:* (202) 606-5417.

- *Mail:* One Lafayette Centre, 1120-20th Street, NW., Ninth Floor, Washington, DC 20036-3457.

- *Hand Delivery/Courier:* Same as mailing address.

**Instructions:** All submissions must include your name, return address and e-mail address, if applicable. Please clearly label submissions as "PRIVACY ACT PROPOSED RULEMAKING." If you submit comments by e-mail, you will receive an automatic confirmation e-mail from the system indicating that we have received your submission. If, in response to your comment submitted via e-mail, you do not receive a confirmation e-mail within five working days, contact us directly at (202) 606-5410.

**FOR FURTHER INFORMATION CONTACT:** Ron Bailey, Attorney-Advisor, Office of the General Counsel, via telephone at (202) 606-5410, or via e-mail at [rbailey@oshrc.gov](mailto:rbailey@oshrc.gov).

**SUPPLEMENTARY INFORMATION:** OSHRC's regulations implementing the Privacy Act of 1974 were first promulgated on January 19, 1979, 44 FR 3968. These regulations have not been revised, except for changes made to the office address referenced in §§ 2400.6 and 2400.7, 58 FR 26065, April 30, 1993. Since 1979, however, the Privacy Act has been amended on numerous occasions. As explained below, these statutory changes, along with intervening case law, compel OSHRC to propose various amendments to its regulations. Because OSHRC proposes extensive revisions to its existing regulations implementing the Privacy Act, OSHRC has reproduced, for the convenience of the reader, the revised regulations to 29 CFR part 2400 in their entirety in its proposed rulemaking.

The specific amendments that OSHRC proposes include the following changes which are discussed in regulatory sequence.

OSHRC proposes amending its authority citation to exclude all references to popular names and statutes at large. The Office of the Federal Register has expressed a preference for citing only to the United

States Code when referencing a Federal statute.

In § 2400.1 (Purpose and scope), OSHRC proposes making several changes to clarify what 29 CFR part 2400 covers. In accordance with the amendments to the Privacy Act contained in section 2(b), Public Law 97-365 (5 U.S.C. 552a(m)(2)), OSHRC proposes amending § 2400.1 to reflect that part 2400 no longer covers systems of records "that are disclosed to consumer reporting agencies under [section] 3711(e) of title 31, United States Code." Additionally, OSHRC proposes amending § 2400.1 to reflect that part 2400 applies only to "records that are maintained by [OSHRC]." Presently, § 2400.1 states that OSHRC's Privacy Act regulations "are applicable only to such items of information as relate to the agency or are within its custody." However, the term "record" is defined in the Privacy Act at 5 U.S.C. 552a(a)(4) while the term "items of information" is not. Therefore, amending § 2400.1 to substitute "record" for "items of information" would more appropriately limit the purpose and scope of the regulations in accordance with the statute. OSHRC also proposes deleting the last sentence of § 2400.1, which states "[t]his part is intended to protect individual privacy, and affects all personal information collection and usage activity of the agency," because it is overly broad. Based on these proposed amendments, new § 2400.1 would read as follows:

The purpose of the provisions of this part is to provide procedures to implement the Privacy Act of 1974 (5 U.S.C. 552a). This part is applicable only to records that are maintained by the Occupational Safety and Health Review Commission (OSHRC or the Commission), which includes all systems of records operated on behalf of OSHRC, pursuant to a contract, to accomplish an agency function, except for records that are disclosed to consumer reporting agencies under section 3711(e) of title 31, United States Code. This part is not applicable to the rights of parties appearing in adversary proceedings before the Commission to obtain discovery from an adverse party. Such matters are governed by the Commission's Rules of Procedure, which are published at 29 CFR 2200.1 *et seq.*

Revising § 2400.1 in this manner would incorporate a statutory change to the Privacy Act, as well as clarify the proper scope of the agency's regulations under this Part.

In § 2400.2 (Description of agency), OSHRC proposes adding a sentence to the end of the section that provides additional details about the designation of one of the Commissioners as the Chairman and his responsibilities for the administrative operations of the