

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

## DEPARTMENT OF THE TREASURY

### 19 CFR Part 159

[USCBP-2010-0008]

RIN 1505-AC21

### Courtesy Notice of Liquidation

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend title 19 of the Code of Federal Regulations (CFR) pertaining to the method by which CBP issues courtesy notices of liquidation. Courtesy notices of liquidation provide informal, advanced notice of the liquidation date and are not required by statute. Currently, CBP provides an electronic and a paper courtesy notice for importers of record whose entry summaries are electronically filed in the Automated Broker Interface (ABI). In an effort to streamline the notification process and reduce printing and mailing costs, CBP proposes to discontinue mailing paper courtesy notices of liquidation to importers of record whose entry summaries are filed in ABI.

**DATE:** Comments must be received on or before May 17, 2010.

**ADDRESSES:** You may submit comments, identified by *USCBP 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-2010-0008.

- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW. (Mint Annex), Washington, DC 20229-1179.

*Instructions:* All submissions received must include the agency name and USCBP 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 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 Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. 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) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Laurie Dempsey, Trade Policy and Programs, Office of International Trade, Customs and Border Protection, 202-863-6509.

#### 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. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism 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

Section 1500(e) of title 19 of the United States Code (19 U.S.C. 1500(e)) requires CBP to provide notice of liquidation to the importer or his agent and authorizes CBP to determine the form and manner by which to issue the notice. Section 159.1 of the CBP regulations (19 CFR 159.1) defines "liquidation" as the final calculation of duties (not including vessel repair duties) or drawback accruing on an entry. "Duties" is defined in 19 CFR 101.1 as "[c]ustoms duties and any internal revenue taxes which attach upon importation." Accordingly, in the customs house at each port of entry, CBP posts the official bulletin notice of liquidation indicating the date of liquidation for the entries listed therein. 19 CFR 159.9(c). The posting of the

bulletin notice of liquidation is "legal evidence of liquidation." 19 CFR 159.9(c).

CBP also has the discretion to provide advance notice of the liquidation date to the importer or his agent by issuing informal, courtesy notices of liquidation (hereinafter "courtesy notice" or "courtesy notices"). 19 CFR 159.9(d). The courtesy notice is not required by 19 U.S.C. 1500(e) and does not trigger the date upon which an importer may file a protest under 19 U.S.C. 1514 challenging certain aspects of the liquidation.

CBP intends to make certain changes to the distribution of courtesy notices of liquidation. Courtesy notices are mailed and/or issued electronically to two parties who use the Automated Broker Interface (ABI) to file their entry summaries: Importers of record and customs brokers who are duly authorized agents of the Importers.

Currently, CBP's Technology Center transmits, on a weekly basis, electronic courtesy notices to all ABI filers and mails paper courtesy notices, on CBP Form 4333-A, to all importers of record whose entry summaries are set to liquidate by each port of entry. As a result, two courtesy notices are issued for importers of record whose electronic entry summaries are filed in ABI: the ABI filer receives an electronic courtesy notice on behalf of the importer of record; and, the importer of record receives a paper courtesy notice. If the importer of record is the ABI filer, then the importer of record receives both an electronic and a paper courtesy notice. See 19 CFR part 143. If an importer files a paper formal entry with CBP, that importer receives a mailed courtesy notice. See 19 CFR parts 141 and 142.

In an effort to streamline the notification process and reduce printing and mailing costs, CBP is proposing to discontinue mailing the paper courtesy notice to importers of record whose entry summaries are filed in ABI. The ABI filer, who is either the importer of record or a customs broker, already receives an electronic courtesy notice thereby rendering the paper courtesy notice duplicative. If the proposal is adopted, ABI filers would only receive electronic courtesy notices. Below is an analysis of the cost savings that will result if CBP discontinues paper courtesy notices to these recipients.

##### Cost Savings

The following analysis details the cost savings that would be realized by the agency as a result of eliminating paper courtesy notices to importers of record who personally receive an electronic courtesy notice or whose broker receives

an electronic courtesy notice on their behalf. In FY 2009, CBP sent approximately 7.2 million paper courtesy notices. CBP estimates that 99.6 percent of all summaries are currently filed electronically using ABI. Under the proposed rule, CBP estimates that over 90 percent of paper courtesy notices will be eliminated. For the purpose of this analysis, we assume 6.5 million paper notices (90 percent) will be eliminated. Additionally, we assume that the number of notices does not change from year to year.

**Quantified Savings**

*1. Postage*

By decreasing the number of paper courtesy notices distributed, CBP will significantly reduce postage costs required to mail the notices. Current U.S. Postal Service first-class letter rates are 44 cents within the United States, 75 cents to Canada, 79 cents to Mexico, and 98 cents to the rest of the world. Exhibit 1 shows the total estimated savings on postage in 2010, an estimated \$3 million.

**EXHIBIT 1—TOTAL SAVINGS ON POSTAGE IN 2010**  
[Undiscounted]

Notice destination	Number of notices	Total cost
Domestic .....	5,899,816	\$2,595,919
Canada .....	379,301	284,475
Mexico .....	57,371	45,323
Other Foreign ...	167,193	163,849
<b>Total .....</b>	<b>6,503,681</b>	<b>3,089,566</b>

*2. Forms*

CBP estimates that each courtesy notice form costs \$0.027. Decreasing the number of paper forms by 6.5 million will save the agency approximately \$175,599 per year.

*3. Labor*

CBP employs contractors to print the paper courtesy notices and estimates the cost of labor is \$0.08 per copy. Based on this estimate, the cost savings of labor for printing is approximately \$520,294 per year.

**Total Quantified Savings**

Exhibit 2 displays all of the cost savings that have been quantified for this analysis.

**EXHIBIT 2—TOTAL SAVINGS FROM REDUCING PAPER COURTESY NOTICES IN 2010**  
[Undiscounted]

Cost	Annual savings
Postage .....	\$3,089,566
Forms .....	175,599
Labor .....	520,294
<b>Total .....</b>	<b>3,785,460</b>

We total these savings over the next 10 years at a 3 and 7 percent discount rate, per guidance provided in the OMB's Circular A-4. Total estimated savings range from \$28.4 million to \$33.3 million over the period of analysis. Annualized savings are \$3.8 million. Total present value and annualized savings are presented in Exhibit 3.

**EXHIBIT 3—TOTAL PRESENT VALUE AND ANNUALIZED COSTS OF ADDITIONAL DATA ELEMENTS, 2010–2019, \$2010**

Total present value costs (\$millions)		Annualized costs (\$millions)	
3%	7%	3%	7%
\$33.3	\$28.4	\$3.8	\$3.8

**Additional Savings Not Quantified**

CBP has service contracts with fixed monthly costs for the equipment used to print and mail the paper courtesy notices. Current maintenance costs are approximately \$45,048 per year for two printers and approximately \$3,478 per year for a finishing machine. CBP is exploring lower cost options to replace these machines, but we are unable to quantify these savings or predict when they might occur.

Additional costs associated with the printing and distribution of paper courtesy notices include labor by government employees on the CBP Mail Management Team and mainframe processing time. Reducing the number of paper notices will allow both Mail Management Team and mainframe resources to be used for other purposes. While we do not have enough data to quantify these savings at this time, they are important to consider in the analysis of the total impact of the reduction of paper courtesy notices.

**Summary of Cost Savings**

CBP estimates that this proposed rule will save the agency \$3.8 million annually by eliminating 90%, or approximately 6.5 million, of the paper courtesy notices currently sent to importers. Quantified savings include reduced postage, forms, and contract labor costs. Additional savings may be realized by reducing maintenance costs on equipment used to produce the paper notices and allowing more efficient use of other government resources, but we do not have enough data to quantify these at this time.

**Explanation of Proposed Amendments**

This document proposes to amend section 159 of the CBP regulations (19 CFR 159) by removing any reference to Customs Form 4333-A, when used in connection with courtesy notices. This change is necessary to reflect that electronic courtesy notices in ABI are not set forth on CBP Form 4333-A; however, the form will continue to be used when paper courtesy notices are distributed. Moreover, this document proposes to amend 19 CFR 159.9(c)(1)

by removing the last sentence, which refers to electronic courtesy notices, because section 159.9(d) discusses courtesy notices generally.

The proposed changes will not affect CBP's continuing legal obligation to post the official bulletin notice of liquidation in the customhouse at all ports of entry pursuant to 19 CFR 159.9(b). Moreover, the proposed amendment will not affect the use of CBP Form 4333-A as a notice of extension and suspension. 19 CFR 159.12(b)-(c).

In addition, this document proposes non-substantive amendments to §§ 159.9, 159.10, 159.11, and 159.12 of the CFR to reflect the nomenclature changes effected by the transfer of CBP to the Department of Homeland Security and other minor editorial edits.

**Executive Order 12866**

This proposed rule is not a "significant regulatory action" per Executive Order 12866 because it will not result in expenditures totaling \$100 million or more in any one year. The Office of Management and Budget (OMB) has not reviewed this regulation

under that order. The proposed rule would result in cost savings as discussed earlier in the preamble.

### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to examine the impact a rule would have on small entities. 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).

It is noted that this proposal does not directly affect small entities because these proposed amendments place no new regulatory requirements on small entities to change their business practices. This proposed rule will eliminate paper courtesy notices that are sent to importers who file entry summaries via ABI or who hire a third party to file via ABI on their behalf. Those importers who do not file using ABI are likely to be small businesses or individuals making entry on personal goods, all of whom will continue to receive paper courtesy notices. As such, this rule should not adversely impact those importers. The primary impact of this proposed rule will be the savings realized by CBP as a result of eliminating a large portion of its annual printing and mailing costs associated with paper courtesy notices. For these reasons, we believe the effects of this proposed rule will not have an impact on a substantial number of small entities and that any effect would not rise to the level of a "significant" economic impact.

We welcome comments on this conclusion.

### Paperwork Reduction Act

As there is no collection of information proposed in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

### Signing Authority

This proposed regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

### List of Subjects in 19 CFR Part 159

Antidumping, Countervailing duties, Customs duties and inspection, Foreign currencies.

### Proposed Amendments to the CBP Regulations

For the reasons set forth in the preamble, part 159 of title 19 of the CFR (19 CFR Part 159) is proposed to be amended as set forth below.

#### PART 159—LIQUIDATION OF DUTIES

1. The general authority citation for part 159 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1500, 1504, 1624.

\* \* \* \* \*

2. In § 159.9:

a. Paragraph (a) is amended by removing the word "Customs" and adding in its place the term "CBP".

b. Paragraph (c)(1) is amended by removing the word "shall" from the first and second sentence and adding in its place the word "will"; and, by removing the last sentence.

c. Paragraph (d) is revised.

The revision reads as follows:

#### § 159.9 Notice of liquidation and date of liquidation for formal entries.

\* \* \* \* \*

(d) *Courtesy notice of liquidation.*

CBP will endeavor to provide importers or their agents with a courtesy notice of liquidation for all entries scheduled to be liquidated or deemed liquidated by operation of law. The courtesy notice of liquidation that CBP will endeavor to provide will be electronically transmitted pursuant to an authorized electronic data interchange system if the entry summary was filed electronically in accordance with part 143 of this chapter or on CBP Form 4333-A if the entry was filed on paper pursuant to parts 141 and 142 of this chapter. This notice will serve as an informal, courtesy notice and not as a direct, formal, and decisive notice of liquidation.

#### § 159.10 [Amended]

3. In § 159.10:

a. Paragraph (a)(2) is amended by removing the word "Customs" and adding in its place the term "CBP".

b. Paragraphs (c)(1) and (3) are amended by removing the word "Customs" where it appears and adding in each place the term "CBP"; and in paragraphs (c)(1) through (3) by removing the word "shall" each place that it appears and adding in its place the word "will".

#### § 159.11 [Amended]

4. In § 159.11:

a. Paragraph (a) is amended by removing the word "shall" each place that it appears and adding in its place the word "will", by removing the word "Customs" the first two places it appears

and adding in its place the term "CBP", and, in the last sentence, by removing the words "on Customs Form 4333-A".

b. Paragraph (b) is amended by removing the word "shall" each place that it appears and adding in its place the word "will".

#### § 159.12 [Amended]

5. In § 159.12:

a. Paragraphs (a)(1)(i) and (ii), (b), (c), and (d)(1) are amended by removing the word "Customs" each place that it appears and adding in its place the term "CBP".

b. Paragraph (f)(1) is amended, in the first sentence, by removing the word "shall" and adding in its place the word "will" and, in the last sentence, by removing the word "Customs" at its first occurrence and adding in its place the term "CBP" and removing the words "on Customs Form 4333-A".

c. Paragraph (f)(2) is amended by removing the word "shall" and adding in its place the word "will".

d. Paragraph (g) is amended, in the first sentence, by removing the word "shall" and adding in its place the word "will", and by removing the word "Customs" and adding in its place the term "CBP"; and, in the last sentence, by removing the word "Customs" at its first occurrence and adding in its place the term "CBP", and by removing the words "on Customs Form 4333-A".

Approved: March 10, 2010.

**David V. Aguilar,**

*Acting Deputy Commissioner, U.S. Customs and Border Protection.*

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Parts 1910, 1915, 1926

[Docket No. OSHA-H054a-2006-0064]

RIN 1218-AC43

### Revising the Notification Requirements in the Exposure Determination; Provisions of the Hexavalent Chromium Standards

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** On February 28, 2006, OSHA published a final rule for Occupational Exposure to Hexavalent Chromium (Cr