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**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**

**DEPARTMENT OF THE TREASURY**

**19 CFR Parts 4, 10, 18, 19, 113, 122, 123, 141, 142, 143, 144, 146, 151, and 181**

**USCBP-2012-0002**

**CBP Dec. 17-13**

**RIN 1515-AD81**

**Changes to the In-Bond Process**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts, with several changes, proposed amendments to U.S. Customs and Border Protection (CBP) regulations regarding changes to the in-bond process published in the **Federal Register** on February 22, 2012. The in-bond process allows imported merchandise to be entered at one U.S. port of entry without appraisal or payment of duties and transported by a bonded carrier to another U.S. port of entry or other authorized destination provided all statutory and regulatory conditions are met. At the destination port, the merchandise is entered or exported. The changes in this rule, including the automation of the in-bond process, will enhance CBP's ability to regulate and track in-bond merchandise and ensure that in-bond merchandise is

properly entered or exported. This document addresses comments received in response to the proposed rule and makes several changes in response to the comments that further simplify and facilitate the in-bond process.

**DATES:** This rule is effective on [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** James Swanson, Director, Cargo Security and Controls, Cargo Conveyance & Security, Office of Field Operations, (202) 325-1257.

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**List of Acronyms and Technical Terms**

ABI Automated Broker Interface

ACE Automated Commercial Environment

AMS Automated Manifest System

CBP Customs and Border Protection

DHS Department of Homeland Security

EDI Electronic Data Interchange

EIN Employer Identification Number

FIRMS Facilities Information and Resources Management System

FTZ Foreign Trade Zone

GAO Government Accountability Office

HTSUS Harmonized Tariff Schedule of the United States

ISF Importer Security Filing

IE Immediate Exportation

IT Immediate Transportation

NVOCC Non-Vessel Operating Common Carrier

SCAC Standard Carrier Alpha Code

SNP Secondary Notify Party

T&E Transportation and Exportation

VOC Vessel Operating Carrier

QP/WP – An ABI hosted in-bond system for all modes that allows all parties, carriers and non-carriers, to submit electronic in-bond applications directly to CBP, as well as report their arrival and export. The “QP” half is the application function, the “WP” half is the arrival/export function.

## **I. Background**

Pursuant to 19 U.S.C. 1552 and 19 U.S.C. 1553, merchandise may be entered at a U.S. port of entry, without appraisalment or the payment of duties, for transportation to another port for entry, or for exportation, provided that all statutory and regulatory conditions are met. The applicable regulations governing the transportation of in-bond merchandise under the above authorities are set forth in title 19 of the Code of Federal Regulations (19 CFR), parts 18, 122, and 123. Part 18 covers “Transportation in bond and merchandise in transit”; part 122 covers “Air Commerce regulations”; and part 123 covers “CBP relations with Canada and Mexico.” For a detailed discussion of the statutory and regulatory histories, and the factors governing development of these regulations, see the notice of proposed rulemaking (NPRM), “Changes to the In-Bond Process,” published in the **Federal Register** on February 22, 2012 (77 FR 10622).

Generally, when merchandise reaches the United States, the merchandise may be entered for consumption, entered for warehouse, admitted into a foreign trade zone, or entered for transportation in-bond to another port. The focus of this rule is on merchandise that is entered for transportation in-bond. Transportation of merchandise in-bond is the movement of imported merchandise, secured by a bond, from one port to another prior to the appraisalment of the merchandise and without the payment of duties.

The transportation of in-bond merchandise is frequently referred to as an in-bond movement or shipment.

There are three types of in-bond transportation entries: Immediate Transportation (IT), Transportation and Exportation (T&E), and Immediate Exportation (IE). An IT entry allows merchandise upon its arrival at a U.S. port to be transported to another U.S. port, where a subsequent entry must be filed. See 19 U.S.C. 1552 and 19 CFR 18.11. A T&E entry allows merchandise to be entered at a U.S. port for transit through the United States to another U.S. port, where the merchandise is exported without the payment of duties. See 19 U.S.C. 1553 and 19 CFR 18.20. An IE entry allows cargo that has arrived at a U.S. port to be immediately exported from that same port without the payment of duties. See 19 CFR 18.7 and 18.25.

#### **A. Notice of Proposed Rulemaking**

On February 22, 2012, Customs and Border Protection (CBP) published a NPRM titled “Changes to the In-Bond Process” in the **Federal Register** (77 FR 10622), proposing to revise the in-bond regulations in part 18 as well as other applicable parts of the CBP regulations. The proposed amendments would change the in-bond process from a paper-dependent process to an automated paperless process, provide CBP with the necessary tools to better track in-bond merchandise to improve security and trade compliance, and address certain weaknesses in the in-bond system identified by the Government Accountability Office (GAO) in a report to Congress dated April 17, 2007 (GAO Report).

CBP proposed making the following five major changes to the in-bond process:

(1) except for merchandise transported by pipeline and truck shipments transiting the

United States from Canada, eliminate the paper in-bond application (CBP Form 7512) and require carriers or their agents to electronically file the in-bond application; (2) require additional information on the in-bond application including the six-digit Harmonized Tariff Schedule of the United States number if available; (3) establish a 30-day maximum transit time to transport in-bond merchandise between U.S. ports, for all modes of transportation except pipeline; (4) require carriers to electronically request and receive permission from CBP before diverting in-bond merchandise from its intended destination port to another port; and (5) require carriers to report the arrival and location of the in-bond merchandise within 24 hours of arrival at the port of destination or port of exportation. CBP did not propose changing the in-bond procedures found in the air commerce regulations at 19 CFR part 122, subparts J and L, except to change the specified maximum transit and export times to conform to the proposed changes in Part 18. For a detailed discussion of the proposed changes to the regulations and the GAO Report see the NPRM.

CBP requested public comments on the NPRM. In response, CBP received 51 comments from the trade community including carriers, brokers, importers, freight forwarders, zone operators, and trade groups. The comments were generally favorable to the rule as a whole. However, commenters raised concerns about specific proposed amendments and how the amendments would affect their operations. Many comments and questions related to the automated systems for the electronic filing of in-bond transactions. After consideration of all the comments, CBP has decided to issue this final rule, which adopts the proposed amendments with several changes in response to the comments. The main changes are summarized in Section I.B., Summary of Main

Changes from NPRM, and explained in more detail in Section II, Discussion of Comments. Additional technical and conforming changes are also explained in Section II, Discussion of Comments. CBP is also adding a flexible implementation and enforcement period, as described in Section I.C.

## **B. Summary of Main Changes from NPRM**

### **1. In-Transit Time for Merchandise Transported by Barge**

CBP received many comments regarding the proposed requirement that all in-bond movements must be completed within 30 days. Specifically, commenters expressed concern that due to the specific circumstances of barge transportation, it is not feasible for all in-bond shipments transported by barge to be completed within 30 days and stated that the current 60-day in-bond barge transit time should be maintained. The specific comments are addressed in more detail in Section II, Discussion of Comments.

Because of the unique nature of barge transportation and because of the various factors that can delay barge shipments, CBP is changing proposed § 18.1(i)(1) in the final rule to extend the in-transit time for in-bond merchandise transported by barge to 60 days, while maintaining the proposed 30-day transit time for the other modes of transportation.

### **2. Uniform Timeframe for Report of Arrival, Notice of Export, and Other Events**

The current regulations require the bonded carrier to report to CBP the arrival of any portion of the in-bond shipment promptly, but no more than two working days after the arrival of the merchandise at the port of destination or the port of exportation. The

bonded carrier generally must manually surrender the in-bond document, CBP Form 7512, to the port director, as notice of arrival of the merchandise. See 19 CFR 18.2(d).

To allow for better tracking, CBP proposed to amend §§ 18.1, 18.7, and 18.20 to require that the report of arrival for each in-bond shipment be made within 24 hours of the arrival of the merchandise at the port of destination or the port of exportation and to require the delivering bonded carrier to transmit the notice of arrival electronically via a CBP-approved EDI system. CBP also proposed that when in-bond merchandise is exported, CBP be notified of the export within 24 hours of export.

CBP received many comments expressing concern that the requirement to report the arrival of merchandise within 24 hours of arrival would result in firms having to increase their staffing levels and suggested that CBP retain or extend the current two-day reporting requirement. The specific comments are discussed in Section II, Discussion of Comments.

CBP proposed shortening the above timeframes to improve CBP's ability to track in-bond merchandise. However, after further consideration and a review of the comments, CBP decided not to shorten the reporting timeframe. Therefore, CBP is changing proposed § 18.1(j) in the final rule to retain the current time limit of two working days for bonded carriers to report the arrival of merchandise at the port of destination or port of exportation with one technical change. CBP is also changing proposed § 18.7(a)(3) regarding the timeframe for submitting the notice of export from 24 hours to two business days. In addition, CBP is changing all the provisions in part 18 that impose a timeframe for reporting or updating the in-bond record to two business days so that the requirements are uniform. The sections in part 18 where these changes have

been made are §§ 18.1(d)(1)(v), 18.1(h), 18.1(j), 18.7(a)(1), 18.7(a)(3), 18.20, 18.23(a), 18.24(b), 18.25(f), and 18.26(e).

### 3. Description of the Merchandise

CBP received many comments about the proposed required information on the in-bond application as specified in proposed § 18.1(d)(1). Among other things, CBP proposed requiring the six-digit Harmonized Tariff Schedule of the United States (HTSUS) number if the number is available. If the six-digit HTSUS number is not available, then a detailed description must be provided setting forth the exact nature of the merchandise with sufficient detail to enable CBP and other government agencies to determine if the merchandise is subject to a rule, regulation, law, standard or ban relating to health, safety or conservation. CBP also proposed that if the carrier or other responsible party submitting the in-bond application knows that the merchandise is subject to a rule, regulation, law, standard or ban relating to health, safety or conservation enforced by CBP or another government agency, a statement must be provided setting forth the rule, regulation, law, standard or ban to which the merchandise is subject and the name of the government agency responsible for enforcing the rule, regulation, law, standard or ban. Many commenters thought the proposed requirements were too onerous and that carriers would not have access to the required information.

In response to the above concerns, CBP is eliminating or changing several proposed required data elements on the in-bond application. First, CBP is removing the requirement in proposed § 18.1(d)(1)(ii) that, if the party submitting the in-bond application knows that the merchandise is subject to a rule, regulation, law, standard or ban relating to healthy safety or conservation, the filer must provide that information to

CBP along with the name of the government agency responsible for enforcing the rule, regulation, law, standard or ban. In its place, CBP is changing proposed §18.1(d)(1)(ii) in the final rule to require that in-bond merchandise subject to the authority of a U.S. government agency be described with sufficient accuracy to enable the agency concerned to determine the contents of the shipment.

Second, CBP is removing the requirement in proposed § 18.1(d)(1)(iii) that the in-bond filer identify prohibited or restricted merchandise.

Third, CBP is removing the requirement in proposed § 18.1(d)(1)(iv) to provide information regarding textiles and textile products for all in-bond applications. This requirement will be retained in a new paragraph (d) in § 18.11 governing T&E in-bond movements. This is consistent with current regulations and should therefore provide no additional burden to parties moving merchandise in-bond.

Fourth, CBP is eliminating the requirement in proposed § 18.1(d)(1)(v) that the filer of the in-bond application “must provide” information regarding merchandise for which the U.S. Government, foreign government or other issuing authority, has issued a visa, permit, license, or other similar number or identifying information and stating instead that the filer “may provide” this information. In lieu of requiring all of the information above, CBP is changing proposed § 18.1(d)(1)(i) to require the filer to provide the six-digit HTSUS number. This is necessary to ensure that CBP knows what merchandise is being transported in-bond in light of the above changes to the required information. The six-digit HTSUS number should be available to in-bond filers because importers need this information to determine duty, cost and admissibility status prior to finalizing purchase contracts or shipment contracts. The six-digit HTSUS number is one

of the required data elements for the Importer Security Filing (ISF) for all merchandise arriving by vessel.

#### 4. Reporting the Quantity of In-Bond Merchandise

CBP received many comments about the requirement in proposed § 18.1(d)(1)(vi) to provide “the quantity of the merchandise to be transported to the smallest piece count” in the in-bond application. Commenters found this proposal confusing and requested clarification. To address this concern, CBP is changing proposed § 18.1(d)(1)(vi) to incorporate similar language used in §§ 4.7a (inward manifest) and 123.92 (electronic information for truck cargo required in advance of arrival) regarding quantity. Specifically, CBP is changing the text in the final rule to require “the quantity of the smallest external packing unit.”

#### 5. Divided Shipments

The current regulations allow an in-bond shipment to be split after the shipment reaches the port of destination with a portion of the shipment entered for consumption or warehouse while the remainder of the shipment is forwarded under a new in-bond to a different port of destination. That provision is contained in § 18.5, which governs in-bond shipments diverted from one destination port to another. Because the provisions for splitting a shipment are not limited to diverted shipments we are moving the text of this provision, currently proposed § 18.5(d), to a new paragraph (m) in § 18.1.

#### 6. Clarification of the Term “Bonded Carrier”

CBP received several comments and questions about which party would be considered the “bonded carrier” and would therefore be liable for a failure to comply with the in-bond requirements. To address these comments, CBP is adding a definition of the

term “bonded carrier” in § 18.0(b). “Bonded carrier” is defined as a “carrier of merchandise whose bond under § 113.63 of this title is obligated for the transportation and delivery of merchandise.” The party that will be ultimately liable is the party whose bond is obligated in the in-bond record for the in-bond movement.

7. Transfers (Transshipment) from One Conveyance to Another

A review of the comments addressing proposed § 18.3, revealed that there is some confusion regarding the scope of the term “transshipment” and how the provision should be applied. In order to clarify the rules that apply when merchandise is transferred from one conveyance to another, CBP is replacing the term “transshipment” with the term “transfer.” Accordingly, CBP is renaming § 18.3 from “Transshipment; transfer by bonded cartmen” to “Transfers.” In the discussion that follows, the term “transfer” will be used instead of “transshipment.”

The main concern of the commenters with regard to proposed § 18.3 is with the requirement to report to CBP each time the merchandise is transferred from one conveyance to another. Because in-bond merchandise may be transferred several times during the course of its journey, it is claimed that this reporting requirement places a substantial burden on the bonded carrier liable under the bond.

CBP has reevaluated this requirement in light of the comments and has concluded that the requirement to notify CBP when in-bond merchandise is transferred from one conveyance to another is not necessary. The important information for CBP is which party has assumed liability for the shipment of the in-bond merchandise. Accordingly, CBP is changing proposed § 18.3 by removing the requirement to notify CBP when merchandise is transferred from one conveyance to another.

In addition, CBP is changing proposed §18.3 to require that when in-bond merchandise is taken over by a subsequent bonded carrier which assumes liability for the merchandise, a report of arrival must be filed by the original bonded carrier and the subsequent carrier must submit a new in-bond application pursuant to § 18.1 for the merchandise to be transported in-bond.

8. Seals – Transportation of Bonded Merchandise with Non-Bonded Merchandise

CBP received many comments expressing concern about proposed amendments to § 18.4 governing the sealing of conveyances and containers. One of the principal concerns was that the proposed regulations do not allow for the transportation of in-bond merchandise with non-bonded merchandise in the same container, unless all of the merchandise, bonded and non-bonded, is destined for the same port. The result is that in-bond merchandise would not be able to be shipped in “less than container loads” with non-bonded merchandise.<sup>1</sup>

CBP has reviewed these comments and concurs that, as proposed, the limitations on transporting in-bond merchandise with non-bonded merchandise would unnecessarily hamper the transportation of in-bond merchandise. Accordingly, CBP is changing the sealing requirements in proposed § 18.4 by adding new provisions § 18.4(b)(2) and (3) in the final rule that allow for the transportation of in-bond merchandise with non-bonded merchandise in a container or compartment that is not sealed, if the in-bond merchandise is corded and sealed, or labeled as in-bond merchandise. This will allow in-bond merchandise to be transported with non-bonded merchandise in a container that is not

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<sup>1</sup> Less than container load, or LCL, is a term commonly used in the transportation industry to refer to cargo containers that hold goods belonging to more than one shipper or consignee. Carriers use LCL shipments when a load of merchandise is not large enough to fill an entire cargo container. Freight in an LCL shipment is frequently transported to multiple destinations.

sealed and will facilitate the filling of containers that would otherwise be less than container load shipments.

Additionally, for clarity, the provision regarding the breaking of seals in case of an emergency or for some other reason is being moved from § 18.3 (transshipment) to § 18.4 (sealing conveyances, compartments and containers). In response to comments, CBP is removing the requirements to obtain CBP permission to break and replace a seal. However, as provided in § 163.1, the transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States is an activity covered by the general recordkeeping requirements of part 163. Such activity would include the breaking and replacing of seals on merchandise transported in-bond. Therefore, records pertaining to such activity would be covered under part 163.

#### 9. Other Changes

CBP is making additional wording changes and minor editorial changes for better organization or to improve clarity. Among other changes, CBP is no longer using the term “ultimate destination” in proposed § 18.1(d)(1)(vi) to avoid inconsistency with other export laws and regulations and is revising paragraph (vi) to clarify the destination information that is required on the in-bond application for IT shipments and T&E/IE shipments. In addition, CBP is adding a sentence to proposed § 18.1(i)(1), which sets forth the maximum in-transit time, to clarify that in-bond merchandise transported by pipeline is not subject to the time limits in that section. CBP is also revising proposed § 18.1(i)(2), which provides procedures on requesting an extension of the in-transit time, to clarify that the decision to extend the in-transit time period is within CBP’s discretion and

to describe some of the factors that may be considered in CBP's decision to extend the in-transit time period. For further discussion, see Section II, Discussion of Comments.

### **C. Flexible Enforcement Period**

In order to provide the trade with sufficient time to adjust to the new requirements and in consideration of the business process changes that may be necessary to achieve full compliance, CBP in implementing and enforcing the rule, will take into account challenges that carriers may face in complying with the rule, so long as carriers are making satisfactory progress toward compliance and are making a good faith effort to comply with the rule to the extent of their ability. This flexible enforcement will last for 90 days after the effective date of this rule. Additionally, CBP will provide guidance on the new requirements and endeavor to conduct outreach to interested parties in order to facilitate a smooth transition to the new requirements.

## **II. Discussion of Comments**

### **A. Comments Regarding this Rulemaking Generally**

#### **1. Elimination of In-Bond Types**

##### **Comment:**

The specific types of transportation entries (IE, T&E, IT) are outdated and have no effect on cargo security and the movement of goods. Therefore, CBP should consider eliminating them and apply a generic in-bond transportation entry to cover all movement types. CBP currently receives data elements indicating a domestic (D) and international export (I) during the in-bond request process and would know the anticipated movement as a result of these designations.

##### **CBP Response:**

The current system using specific bond types is derived from 19 U.S.C. 1552 and 1553 which provide for “entry for immediate transportation” and “entry for transportation and exportation,” respectively. Therefore, CBP cannot eliminate them. The current system is beneficial in that it clearly specifies the intended disposition of the goods, *i.e.*, whether the goods will be exported, transported to another port for possible consumption entry, or transported to another port for exportation. There are separate rules for the handling and processing of in-bond merchandise depending on the type of in-bond entry, for example an Importer Security Filing (ISF) is required for a T&E and not an IT.

#### **2. Scope**

##### **Comment:**

CBP should clarify the relationship between proposed § 18.0(a), with respect to requirements and procedures in part 18 of the in-bond regulations and the requirements and procedures of parts 122 and 123 (Air Commerce, and Customs Relations with Canada and Mexico, respectively).

CBP Response:

Proposed § 18.0 (Scope; definitions), provides that except as provided in parts 122 and 123, part 18 sets forth the requirements and procedures pertaining to the transportation of merchandise in-bond. Parts 122 (Air Commerce) and 123 (Customs Relations with Canada and Mexico) govern the rules and procedures for the transportation of in-bond merchandise in the air environment and merchandise traveling through and into the United States by truck and train. This means that the provisions of part 18 are applicable to the in-bond procedures not addressed by specific instruction in parts 122 and 123. For example, proposed § 18.8 governing the liability of in-bond carriers is applicable to all in-bond movements, regardless of the mode of transportation. Conversely, proposed § 18.4(a)(1) requiring the sealing of containers does not apply to in-bond merchandise traveling by air, because § 122.92(f) specifically provides that the sealing of aircraft, aircraft compartments carrying bonded merchandise, or the cording and sealing of bonded packages carried by the aircraft, is not required. More information on the in-bond transport of air cargo is discussed in Section II.G., Air Cargo.

3. Outreach

Comment:

CBP should conduct multiple public meetings well in advance of publication of the final rule. These meetings will allow a necessary forum by which the entire trade

community (exporters, freight forwarders, warehouse operators, agents, and carriers) can engage with government to learn about the justifications behind these significant modifications to the current in-bond process. This will also provide all affected parties the opportunity to discuss mutually beneficial alternatives which may accomplish the government's objectives without putting any sector of the trade at an economic disadvantage when competing in the increasingly fast paced global marketplace.

Should CBP decide to adopt a final rule which does not adopt many of the suggested changes included in the comments, CBP should meet with the affected commenter prior to the finalization and publication of the rule in the **Federal Register**.

CBP Response:

CBP worked closely with the various sectors of the trade community, the Trade Support Network (TSN), the Customs Electronic Systems Action Committee (CESAC), and the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC), before publishing the NPRM regarding the general changes to the in-bond system that were being considered, and CBP took into account extensive feedback from the trade community in the formation of the NPRM. Although CBP has not conducted public meetings or met privately with interested parties regarding the proposals published in the NPRM, CBP has carefully analyzed the various comments that have been submitted and has incorporated numerous suggestions made by the commenters in the drafting of this final rule. In order to provide the trade sufficient time to adjust to the new requirements and in consideration of the business process changes that may be necessary to achieve full compliance, CBP is providing a 60-day delayed effective date to be followed by a 90-day flexible enforcement period. This means that

CBP will show flexibility in enforcing the rule, taking into account challenges that carriers may face in complying with the rule, so long as carriers are making satisfactory progress toward compliance and are making a good faith effort to comply with the rule to the extent of their current ability. CBP will also provide guidance on the new requirements and endeavor to conduct outreach to interested parties in order to facilitate a smooth transition to the new requirements.

4. In-Bond Shipments between the United States and Canada

Comment:

The United States and Canada should harmonize the Canadian and U.S. rules on in-transit shipments: Canada could adopt the U.S. approach and require full commercial information, effectively terminating in-transit movements in both countries; or CBP could revise its position on the requirement for full commercial information and harmonize with the current Canadian rules which would restore in-transit shipments through the United States.

CBP Response:

The NPRM did not address this issue, and this comment is beyond the scope of this rulemaking.

**B. Electronic Filing and Processing of In-Bonds**

1. Filing the In-Bond Application

Comment:

Many commenters requested further information on the filing process, the systems that will be used, how to file an in-bond application, what functions will be available and how the different systems will work for the various modes of

transportation. Some commenters wanted to know how CBP will advise the trade about CBP-approved systems.

CBP Response:

Under this rule, an electronic in-bond application is required for in-bond merchandise transported by ocean, rail and truck. The methods available to submit an in-bond application are the Automated Commercial Environment (ACE) or QP/WP. QP/WP is an ABI hosted in-bond system that allows all parties, carriers and non-carriers, to submit electronic in-bond applications directly to CBP, as well as report their arrival and export. The “QP” half is the application function, the “WP” half is the arrival/export function. ACE can be used to file the in-bond application in conjunction with advance or arriving manifest information. For in-bond merchandise transported by air, carriers can file the in-bond application also using ACE or QP/WP.

For reference purposes, the table below lists the EDI systems used for filing in-bond applications for the various modes of transportation and provides links to the websites that contain the relevant filing instructions or implementation guides. CBP will promptly inform the public of new CBP approved systems via CBP’s website and regular communication systems.

| Mode of Transportation      | CBP EDI System                   | In-bond Application Procedures   |
|-----------------------------|----------------------------------|--|
| Ocean                       | ACE                              | The in-bond application for cargo arriving by vessel may be filed as part of the arriving ocean manifest or as a subsequent/supplemental filing. Filing instructions are available on the ACE website at: <a href="http://www.cbp.gov/trade/ace/ocean-manifest">http://www.cbp.gov/trade/ace/ocean-manifest</a>  |
| Rail                        | ACE                              | The in-bond application for cargo arriving by rail may be filed as part of the arriving rail manifest or as a subsequent/supplemental filing. Filing instructions are available on the ACE website at: <a href="http://www.cbp.gov/trade/ace/rail-manifest">http://www.cbp.gov/trade/ace/rail-manifest</a>   |
| Truck                       | ACE                              | The in-bond application for cargo arriving by truck may be filed as part of the arriving truck manifest. Filing instructions are available on the ACE website at: <a href="http://www.cbp.gov/trade/ace/truck-manifest/edi/message/electronic-truck-manifest">http://www.cbp.gov/trade/ace/truck-manifest/edi/message/electronic-truck-manifest</a>  |
| Air                         | ACE                              | The in-bond application for cargo arriving by air may be filed as part of the arriving air manifest or as a subsequent/supplemental filing. Filing instructions are available on the ACE website at: <a href="http://www.cbp.gov/trade/ace/air-manifest">http://www.cbp.gov/trade/ace/air-manifest</a>   |
| Ocean, Rail, Truck, and Air | Automated Broker Interface (ABI) | The automated broker interface (ABI) for in-bond entries, known as QP/WP, allows in-bond entries filed for a particular shipment to be associated with arriving manifests or subsequent/supplemental in-bond entries filed for merchandise arriving by any mode. In-bond entries are associated with the arriving manifest by using the Standard Carrier Alpha Code (SCAC) in addition to a unique number to identify the bill of lading. This process covers cargo arriving by ocean, rail, truck, and air, as well as bonded warehouse withdrawals, foreign trade zone movements, pipeline arrivals, etc. Data messages are found in the ACE implementation guides located at: <a href="http://www.cbp.gov/document/guidance/bond">http://www.cbp.gov/document/guidance/bond</a> |

Comment:

CBP needs to explain the requirements and procedures for ACE as they may apply to the in-bond process from now until such time as all ACE modules are fully developed and implemented.

CBP Response:

Information regarding the requirements and procedures for ACE as they may apply to the in-bond process is available on the CBP website at the links listed in the table above. Additionally, CBP will issue additional guidance on the ACE requirements and procedures as ACE modules are developed and deployed. Additional information on messages (e.g. arrival, exportation, amendments and diversions) for in-bond entries using the appropriate data interfaces can be found in the following implementation guides:

ACE: <http://www.cbp.gov/trade/ace>. Air: AMS <http://www.cbp.gov/site-page/camir-air-chapters>.

Comment:

Will the ACE Secure Data Portal (“Portal”) be a viable option for those carriers that do not have EDI capabilities, elect to utilize the ACE Portal as opposed to EDI, or utilize both technologies depending on the situation? Will any function available to EDI users also be available to users of the ACE Secure Data Portal? Will the ACE Portal be available to use for diversion requests?

CBP Response:

The ACE Portal does not provide any in-bond functionality and there are no plans to use it for in-bond transactions in the future.

Comment:

Bonded carriers will have to electronically report the arrival and exportation of in-bond merchandise in separate CBP-approved systems (Air AMS for air, ACE for ground, ocean and rail). CBP should design its systems so that the arrival and departure messages are communicated between the various systems that have to be used by carriers. This will provide greater visibility and reduce redundancy for in-bond shipments that are

transported by air and other modes of transportation. CBP should automate the arrival and export of electronic in-bond shipments regardless of the system used to initiate the in-bond shipment.

CBP Response:

CBP agrees that messaging between the systems for in-bond transactions would greatly facilitate the processing of in-bond transactions. This functionality is now available through Air ACE.

Comment:

CBP should expand the availability of the Document Imaging System to motor carriers in order to eliminate the use of paper.

CBP Response:

There is no need to use the Document Imaging System (DIS) for the processing of in-bond shipments by truck. CBP is discontinuing the use of the CBP Form 7512 for in-bond shipments transported by truck. Manifest information must be filed using an approved Electronic Data Interchange method.

Comment:

CBP should create a web-based technology to allow the broadest level of compliance by the trade. A web-based portal would allow CBP to receive real time in-bond information. CBP must consider the development of a web-based portal where the bonded carrier, FTZ operator or authorized agent can electronically request the status of the in-bond movement. This web-based tool should be used across all modes. A web-based portal would be ideal and would help to serve CBP's objective to maximize the automation of in-bonds with minimum impact to the trade.

CBP Response:

CBP is using its current systems to implement the new in-bond requirements and is not creating web-based technology or using a web-based portal for the processing of in-bond transactions beyond what it has already developed within ACE, at this time.

Comment:

Current functionality does not allow for the filing of an electronic in-bond application without access to QP and QP requires ABI connectivity which carriers do not currently need to access during their normal business operations.

CBP Response:

Although the commenter is correct that in order to file an in-bond application using QP, the filer must have ABI connectivity, an in-bond applicant can also use ACE when the in-bond application is filed as part of the advance or arriving manifest. When filing an in-bond application using QP, the in-bond application is filed as a stand-alone filing that will be reported on the manifest when all the data has been transmitted.

Comment:

Will there be a stand-alone in-bond system available within ACE that is not linked to the manifest record of the original importation?

CBP Response:

In order to facilitate processing of in-bond shipments and to reduce redundant filing requirements, CBP has designed the in-bond systems so that they are linked to the manifest record. There will not be a stand-alone in-bond system within ACE that is not linked to the manifest record of the original importation.

Comment:

How will responses to diversion requests be transmitted to the carrier? How long will it take for CBP to respond to the diversion request?

CBP Response:

The carrier will submit the diversion request using a ACE EDI or a QP/WP message. CBP's response will be immediate. CBP's disposition of the diversion request will be automated so that the carrier will receive authorization for, or denial of, the diversion immediately. The updating of the destination port code in the system will constitute approval of the diversion request. If the destination port code is rejected, that will constitute a denial of the diversion request.

Comment:

Will the in-bond application be fully paperless, meaning that there will be no requirement to file hard copies at the origination port for authorization? Some origination ports currently require that the in-bond documentation be validated through the use of perforation machines (e.g., Los Angeles).

CBP Response:

When this rule is effective, the in-bond process for in-bond merchandise transported by ocean, rail, or truck, will be fully paperless. It is expected that air will eventually be fully paperless as well, but CBP would propose that through a separate rulemaking.

Comment:

With regard to an in-bond application consisting of a transportation entry and manifest, the manifest or its electronic equivalent should only be required at the origination port of entry when the merchandise is first imported into the United States.

Subsequent in-bond applications for the same merchandise should require only a transportation entry.

CBP Response:

ACE links all phases of the in-bond movement. When a subsequent in-bond application is filed, the first movement is closed and the second is initiated. The system will require the previous in-bond number, and will then link the two in-bond movements. The manifest information will not have to be submitted a second time.

2. Elimination of the CBP Form 7512

Comment:

Some commenters stated that they support eliminating the paper in-bond application (CBP Form 7512) and requiring carriers to file electronically. Carriers already file in-bond entries electronically, so electronic filing will not impose new burdens. It will, however, provide CBP with real time information on goods in transit and allow for easy reconciliation of shipments as goods are arrived and entered at another U.S. port or exported. The Automated Commercial System (ACS) currently allows for electronic in-bond filing now, but does not collect all the information CBP needs. These commenters support the proposal to utilize the increasingly functional ACE for this purpose. Because shippers are already familiar with ACE, this should not cause problems for them and it will increase efficiency.

CBP Response:

CBP appreciates the positive feedback and agrees that changing the in-bond process from a paper to an electronic process will increase efficiency, allow for easier

reconciliation for carriers, and facilitate the collection of information by CBP without further burdening the trade.

Comment:

Some commenters, who agree that the in-bond application (the filing) should be electronically submitted to CBP, stated that the CBP Form 7512 should not be completely eliminated. The common trade practice is to maintain a hard-copy of the actual CBP Form 7512 which is used as an attachment to the bill of lading to properly identify the shipment as an in-bond shipment. It accompanies the shipment as it moves from trucking terminal to trucking terminal. Eliminating the CBP Form 7512 form will require many carriers to redesign their internal systems at great expense.

CBP Response:

Many carriers are already filing in-bonds electronically and are not using a paper CBP Form 7512. While there are some carriers that will have to revise their business practices as a result of CBP's efforts to modernize the in-bond process, CBP does not plan to maintain a two tiered in-bond system with both electronic filing and paper filing in order to accommodate those carriers that currently use the CBP Form 7512 for tracking purposes. If, for their own use for internal tracking purposes, carriers prefer a hard-copy document to accompany the shipment, carriers can choose to create a form with the same information as the CBP Form 7512 or print a hard-copy of the electronic in-bond application.

Comment:

Many bonded carriers are not automated and rely upon the CBP Form 7512 as their control document. Unless CBP is prepared to mandate that bonded carriers become AMS certified, the CBP Form 7512 will continue to be needed.

CBP Response:

CBP is requiring automated filing of in-bond entries. How bonded carriers manage their own internal controls is up to each bonded carrier.

3. Information Required

Comment:

The current flow of commercial information is not structured in such a way that all of the new in-bond information requirements would be readily available. CBP should work with the various sectors of the trade community in identifying what information is truly necessary, and in developing a phased-in compliance schedule that would afford business the time to adjust its procedures to the new regime. CBP's program for implementation of the ISF requirements is a good model for phased-in compliance.

CBP Response:

CBP worked closely with the various sectors of the trade community before publishing the NPRM regarding the general changes to the in-bond system that were being considered. CBP received and took into account extensive feedback from the trade community in the formulation of the NPRM. Moreover, as a result of the comments CBP received in response to the NPRM regarding the required information on the in-bond application, CBP is making several changes regarding these requirements so that they are less burdensome but still provide CBP with the necessary information. The rule will have a 60-day delayed effective date to enable the trade to make required adjustments to

comply with the rule. CBP is also providing a 90-day flexible enforcement period similar to that used for implementation of the ISF requirements that will start from the effective date of this rule. Additionally, CBP will work closely with the trade to resolve compliance issues that the trade might experience as a result of this rule.

Comment:

The list of proposed changes in the NPRM includes a statement that an in-bond application must be filed for each conveyance transporting the shipment. However, this requirement is absent from the proposed regulatory language. Further guidance should be given regarding the requirement to file an in-bond for each conveyance.

CBP Response:

The statement in the list of proposed changes of the NPRM that an in-bond application must be filed for each conveyance was incorrect. A separate in-bond will not be required for each conveyance. One in-bond application can cover merchandise that is transported by multiple conveyances.

Comment:

Some carriers move in-bond merchandise via centralized hubs wherein in-bond merchandise is transported to a hub and consolidated in a new container before being transported to the port of exportation. If an in-bond shipment is moved in this manner, will one T&E application covering the entire movement of the in-bond merchandise be acceptable?

CBP Response:

Only one T&E in-bond application is necessary to move an in-bond shipment from the origination port to the port of exportation. In-bond merchandise can be moved

from one container to another container in a centralized hub, if the sealing procedures in § 18.4 are followed. However, multiple in-bond shipments from different origination ports cannot be entered under a single T&E and consolidated in a centralized hub.

#### 4. Updating and Amending the In-Bond Record

##### Comment:

Will CBP allow all data elements to be amended within the in-bond record or will there be restrictions? CBP must provide guidance with respect to which elements can be amended.

##### CBP Response:

Prior to departure from the originating port, all data elements related to the in-bond may be updated or amended. After departure (during transit), the in-bond data may not be updated or amended, except for the quantity, destination, and seal numbers. If the reported quantity is not correct or if it changes, the in-bond record must be updated. Updating the quantity does not relieve the initial bonded carrier from liability for any shortages based on the quantity originally reported in the in-bond application. If the seal number is not known when the in-bond application is filed, the in-bond record must be updated with the seal number within two business days. It is also necessary to update the in-bond record with notice and proof of export and with information regarding divided shipments at the port of exportation.

##### Comment:

Will other parties be allowed to amend the in-bond record or does the amendment have to be made by the original in-bond filer? CBP needs to define what is considered "permission." The filer is not the appropriate party to grant permission to amend the

official record and this authorization should be obtained from the owner of the commercial information since that is the true party in interest. Guidance should be provided indicating the appropriate method of notification or permission to both CBP and other parties who are authorized to make changes.

CBP Response:

Any party that files an in-bond application as provided in proposed § 18.1(c) can amend the in-bond record. This may be the carrier or agent that is authorized by the carrier to obligate the carrier's bond and that brings the merchandise to the origination port; the carrier, or authorized agent of the carrier that accepts the merchandise under the carrier's bond; or any person who has a sufficient interest in the merchandise as shown by the bill of lading, manifest or other document. To provide additional clarity, CBP is changing proposed § 18.1(h) to eliminate the requirement that the party updating or amending the in-bond record receive "permission" from the "filer" and requiring instead that the party that is updating or amending the in-bond application obtain the "authorization" of the "party whose bond is obligated." CBP is requiring "authorization" from the party whose bond is obligated, as opposed to the filer because the party whose bond is obligated bears the responsibility for ensuring the proper movement of the merchandise.

Comment:

CBP should explain how the amending and updating of the in-bond record will work (process, time limits for amending, etc.).

CBP Response:

The in-bond record can be updated and amended by entering the new information in the CBP approved electronic system. The system will automatically update the in-bond record, barring any system edits in place prohibiting the update. CBP will provide additional procedures for amending and updating the in-bond record as necessary, using its normal trade outreach and by posting the information on the CBP website. CBP is also changing proposed § 18.1(h) in the final rule to specify a timeframe for amending the in-bond record. That timeframe is “within two business days of the event that requires amendment.”

#### 5. Who May File

##### Comment:

Proposed § 18.1(c)(3) stating that a transportation entry may be filed by “[a]ny person who has a sufficient interest in the merchandise as shown by the bill of lading or manifest, a certificate of the importing carrier, or by any other document satisfactory to CBP” is an overly broad grant of authority. CBP should limit the term "sufficient interest" to those persons with a property right in the merchandise or those persons who have been properly authorized by the owner of the goods. The right to file an in-bond application should be further restricted to the originating bonded carrier or a licensed customs broker. CBP should identify examples of such “other documents” that will be acceptable to CBP to include a properly executed power of attorney, a letter of authorization, etc. Alternatively, the term “other documents” should be deleted because it is unnecessary.

##### CBP Response:

The quoted language in proposed § 18.1(c)(3) is not new. It is derived from § 18.11(b) of the existing regulations which similarly allows a person who has sufficient interest in the merchandise as shown by the bill of lading or manifest, a certificate of the importing carrier, or by any other document satisfactory to CBP to transport merchandise in-bond. CBP has not experienced problems with parties without sufficient interest transporting merchandise in-bond and prefers to maintain the existing standard to facilitate trade. With regard to the documents that are acceptable to demonstrate sufficient interest, CBP believes it should provide the trade with some flexibility to present documentation to demonstrate that a party has sufficient interest in the merchandise.

Comment:

As filing of the in-bond is often made by an authorized agent of a party with sufficient interest, the proposed language in § 18.1(c)(3) should be updated to read, “[a]ny person, or the authorized agent of any person with sufficient interest in the merchandise, as shown by the bill of lading or manifest, a certificate of the importing carrier, or by any other document satisfactory to CBP.”

CBP Response:

CBP agrees. CBP is modifying the regulatory text in § 18.1(c)(3) to allow the authorized agent of any person who has a sufficient interest in the merchandise to file the in-bond application.

Comment:

Proposed § 18.1(c)(1) refers to a transportation entry made by “the carrier that brings the merchandise to the origination port.” CBP should modify this to read: “the

carrier, or authorized agent of the carrier, that brings the merchandise to the origination port.” Proposed § 18.1(c)(2) refers to a transportation entry made by “the carrier that is to accept the merchandise under its bond or a carnet for transportation to the port of destination or port of exportation;” CBP should modify this provision to read “the carrier, or authorized agent of the carrier, that is to accept the merchandise under its bond or a carnet for transportation to the port of destination or port of exportation;”

CBP Response:

CBP agrees and is changing proposed §§ 18.1(c)(1) and (c)(2) to include the phrase “or authorized agent of the carrier.”

Comment:

The referenced "certificate of the importing carrier" is not defined. This reference is in addition to a person having an interest in the shipment as shown by the bill of lading or manifest, so it is vague and confusing to refer to an undefined "certificate." CBP should delete this reference as it may be unnecessary, or define what may constitute an acceptable certificate.

CBP Response:

The provision allowing for the use of a “certificate from the importing carrier” in proposed § 18.1(c)(3) is contained in the existing regulations in § 18.11(b). A power of attorney or letter of authorization would constitute an acceptable certificate. CBP will not establish a specific definition of what constitutes an acceptable certificate, but will accept a document or electronic request from the importing carrier that authorizes another party to file an in-bond application.

Comment:

CBP should require the party obligating the bond to provide all shipment information to the carrier when requested for investigation and audit purposes.

CBP Response:

CBP will not require third parties to provide shipment information to the carrier. This is a matter to be resolved contractually between carriers and those parties with whom they do business. However, as provided in 19 U.S.C. 1508(a)(1)(B) and 19 CFR 163.2, persons who knowingly cause the transportation of merchandise carried or held under bond are responsible for maintaining the appropriate in-bond records, which must be supplied to CBP upon request.

6. Licensed Customs Brokers

Comment:

Only a licensed customs broker should be able to file the in-bond application; bonded carriers should only be able to file in limited cases when they simply file data without exercising discretion. The classification of merchandise, even at the six-digit level, and determining the “admissibility of merchandise” is customs business and should be done only by a licensed customs broker. Customs brokers have the knowledge and experience to identify prohibited and restricted merchandise and will more accurately identify whether merchandise is subject to a rule, regulation, law, standard or ban relating to health, safety or conservation.

CBP Response:

An entry for transportation in bond is an excepted activity pursuant to 19 CFR 111.2(a)(2)(iv) for which a customs broker’s license is not required.. See 19 CFR 111.2(a)(2)(iv). Moreover, customs business does not involve the mere electronic

transmission of data received for transmission to CBP, but does involve classification for entry purposes. See 19 CFR 111.1. The six-digit HTSUS number required on the in-bond application is necessary to ensure cargo safety and security and not to determine merchandise entry procedures that fall within the scope of customs business. This is in contrast to a 10-digit HTSUS number which does involve classification for entry purposes. Although the proposed rule does require more information to be provided than in the past, this information is generally available to the carrier and does not require the expertise of a customs broker and does not require making admissibility determinations. Moreover, as discussed in Section I.B.3., Description of the Merchandise, and Section II.C., New Information Requirements for In-Bond Shipments, CBP is requiring much less information about the in-bond merchandise on the in-bond application than was proposed. For example, CBP is eliminating the requirement in proposed § 18.1(d)(1)(ii) for carriers to provide the rule, regulation, law, standard or ban relating to health, safety or conservation enforced by CBP or another government agency that is applicable to the in-bond merchandise. This, and other changes relating to the description of the merchandise, will lessen the burden on carriers and ensure that admissibility determinations are not required in order to file an in-bond application.

Comment:

The bonded carrier should only be allowed to file the in-bond application when it does not have to make decisions regarding the classification or whether merchandise is restricted, prohibited, or subject to a rule, regulation, law, standard or ban relating to health, safety or conservation. The bonded carrier should be allowed to file the in-bond application only when it has received written documentation from a party that 1) has the

right to make a consumption entry, 2) has an active continuous customs importer bond, 3) is required to exercise reasonable care in ascertaining and proving all of the required data elements to the bonded carrier, and 4) is responsible for liquidated damages on its continuous customs bond and/or penalties under 19 U.S.C. 1592 for false, inaccurate or incomplete information.

CBP Response:

CBP will not restrict who can file an in-bond application in the manner proposed in this comment.

7. Unauthorized Use of a Bond

Comment:

Several commenters raised concerns related to a bonded party's ability to restrict usage of its bond by other parties and to monitor the obligations made to its bond. These commenters said that the bonded party should be able to prohibit the obligation of its bond by third parties. In addition, these commenters indicated that the bonded party should be able to see, within the new proposed automated paperless environment, all in-bond movements that obligate its custodial bond. Without such functionality in the electronic in-bond system, the bonded party may be exposed to fraudulent activity and liquidated damages assessed by CBP when a carrier files an in-bond application without authorization from the bonded party.

CBP Response:

We agree that the bonded carrier should be able to look into the in-bond record and restrict usage of its bond by other parties. In ACE and QP/WP, bonded parties can prevent the unauthorized use of their bond by restricting use of their bond by other parties

and by setting conditions on the use of their bond. These in-bond systems are designed to allow an approved bonded carrier that has a CBP-approved ACE account to allow restricted or unrestricted use of its bonds. If the bonded carrier's account is unrestricted, any other party may open an in-bond application using the bonded carrier's account number. If the bonded carrier restricts the usage of the bond account number, that carrier can log into its account and select the other parties that are authorized to obligate its bond. If the bonded carrier selects parties that are authorized, all other parties will be unauthorized and any attempt to use the bond by an unauthorized user will be rejected. In addition, the bonded party will receive notifications when the in-bond record is amended or updated if the in-bond filer designates the bonded party as a Secondary Notify Party (SNP) in ACE.

A party who moves bonded merchandise without authorization, either as a non-bonded carrier holding itself out as a bonded carrier or as a non-bonded carrier using the identity/bond information of a bonded carrier without the latter's authorization, may be subject to a penalty pursuant to 19 U.S.C. 1595a(b) for violation of 19 U.S.C. 1551, 19 CFR 18.1 and 19 CFR 112.12, or 19 U.S.C. 1592.

#### 8. Procedures

##### Comment:

Under current electronic in-bond processing in AMS, it is possible for an ocean carrier's taxpayer identification (IRS) number to be used by a third party to file an in-bond movement without the carrier's knowledge. While the ACE M1 functionality will allow ocean carriers to better control which parties are authorized to use the carrier's IRS number to file an in-bond application, carriers need to be able to know when their bonds

are used by a third party so that the carrier can close any in-bond applications filed against the carrier's IRS number that the third party filer fails to close.

To enable ocean carriers to monitor when their IRS numbers are used to file in-bonds, CBP should modify the EDI in-bond message set for M1 to include two additional pieces of information: 1) the SCAC of the bonded party, and 2) the SCAC or filer code of the party that filed the initial in-bond application.

CBP should also develop a mechanism within ACE M1 that would allow an ocean carrier to electronically close an in-bond that the in-bond filer created in the Automated Broker Interface (ABI) using the ocean carrier's IRS number but then never closed in ABI. This would enable ocean carriers, none of whom use ABI (a broker filing system) to use ACE M1 to close in-bonds cut against the carrier's IRS number.

CBP Response:

CBP agrees that more accurate information should be provided to bonded parties regarding the use of their bond and thanks the commenter for these suggestions. Now that the ACE eManifest Rail and Sea (M1) has been successfully deployed, enhancements such as this will be considered and prioritized based on the needs of the trade and CBP. M1 currently allows any EDI filer (ABI or carrier) to provide updates on in-bond transactions including arrivals and exports. CBP encourages the party with the most accurate information to provide those updates.

9. Change of Foreign Destination

Comment:

CBP should clarify the difference between proposed § 18.23 requiring the carrier to notify CBP of a change in foreign destination of an in-bond shipment and the

requirement in proposed § 18.5 that carriers obtain authorization from CBP for diversion of an in-bond shipment.

CBP Response:

Section 18.5 requires the filer of the in-bond application to submit a request to divert merchandise via a CBP-approved EDI system. A diversion occurs when the U.S. port for which the in-bond merchandise is destined is changed and the merchandise is shipped to a different port. Section 18.1(h) requires the carrier to update information included in the original in-bond application, such as the first foreign port, when there are changes. Section 18.23 concerns the requirement to update information in the in-bond application as it applies to TE and IT shipments. CBP is adding language to § 18.23 to make this clearer.

**New Information Requirements for In-Bond Shipments**

10. New information requirements generally

Comment:

Many commenters expressed concern that the new information requirements of the in-bond application are too burdensome.

CBP Response:

The requirements proposed in the NPRM, when considered as a whole, potentially would require more information from carriers. Accordingly, CBP is making several changes to the proposed regulations in response to these comments. First, CBP is removing the requirement in proposed § 18.1(d)(1)(ii) that if the party submitting the in-bond application knows that the merchandise is subject to a rule, regulation, law, standard or ban relating to health, safety or conservation, the filer must provide the rule,

regulation, law, standard or ban to which the merchandise is subject as well as the government agency responsible for enforcing the rule, regulation, law, standard, or ban. In its place, CBP is requiring that merchandise subject to detention or supervision by a U.S. government agency be described with sufficient accuracy to enable the agency concerned to determine the contents of the shipment. This is a requirement in existing § 18.11(e). Second, CBP is removing the requirement in proposed § 18.1(d)(1)(iii) that the in-bond filer identify prohibited or restricted merchandise. Third, CBP is removing the requirement in proposed § 18.1(d)(1)(iv) to provide additional information for all in-bond shipments of textiles and textile products. Fourth, CBP is making optional the requirement in proposed § 18.1(d)(1)(v) that the filer of the in-bond application must provide information regarding merchandise for which the U.S. Government, foreign government or other issuing authority has issued a visa, permit, license, or other similar number or identifying information. In lieu of the above requirements and to ensure that CBP is still able to assess security and health and safety threats, CBP is changing proposed § 18.1(l)(i) to require the six-digit HTSUS number on the in-bond application in all instances. The six-digit HTSUS number is one of the required data elements for all merchandise arriving by vessel on the Importer Security Filing (ISF).

#### 11. Special Classes of Merchandise

##### Comment:

Proposed § 18.20(a) prohibits the use of a transportation and exportation (T&E) entry, with no exceptions noted for several classes of merchandise as detailed at § 18.1(l), namely 1) health, safety, and conservation; 2) plants and plant products; 3) narcotics and other prohibited articles; 4) non-narcotics; 5) explosives; and 6) livestock. This conflicts

with proposed § 18.1(l), which allows a T&E entry to be filed if approved by the appropriate governmental agency, e.g., explosives as regulated by ATF, DOT, and USCG. Additionally, if a T&E entry may not be utilized for these specified commodities, two separate in-bond movements would be required to move the shipment through the United States to its final destination, i.e., an Immediate Transportation (IT) to the port of exportation and a separate Immediate Exportation (IE) at the port of destination. This would create an unnecessary increase in work for both CBP and affected carriers and filers.

CBP Response:

Proposed § 18.20(a) does not prohibit the use of T&E entries for the named classes of merchandise in all cases. It specifically allows for T&E entries, subject to the provision of § 18.1(l). There is no conflict between the two provisions. While proposed § 18.1(l) imposes restrictions on the named classes of merchandise, it does not prohibit the use of T&E entries. It merely requires authorization from the appropriate government agency to ship these classes of merchandise under a T&E entry. Moreover, these are not new restrictions on T&E entries. Existing § 18.21 provides for these same restrictions on T&E entries. This rule makes these restrictions applicable to all in-bond entries by moving them to § 18.1(l).

Comment:

CBP should amend proposed § 12.11 to allow plant or plant product shipments subject to Animal and Plant Health Inspection Service/Plant Protection and Quarantine Programs (APHIS/PPQ) permit conditions to be shipped from the port of first arrival to

another port for proper inspection at an APHIS/PPQ facility, without an in-bond application if all CBP requirements have been met.

CBP Response:

CBP disagrees. Until such time as the plant or plant product has been inspected or treated by APHIS/PPQ, the merchandise must remain under CBP bond, which insures compliance with APHIS/PPQ requirements.

12. Quantity

Comment:

Proposed § 18.1(d)(1)(vi) states that “the quantity of the merchandise to be transported to the smallest piece count” must be provided. This is a confusing standard and clarification should be provided as to whether this means that the quantity will be reported at the smallest external packaging unit or something different, such as the smallest piece count. CBP should use the “smallest exterior packing unit” as the standard for providing the quantity of the merchandise. This is a workable standard and the data is readily available and verifiable to the carrier. “The smallest piece count” standard would be burdensome as manifests and bills of lading normally do not contain this information and verification may be difficult.

CBP Response:

CBP concurs and is changing proposed § 18.1(d)(1)(vi) to require the reporting of the quantity using the “smallest exterior packing unit” standard. This will enable carriers to verify the quantity of the goods they are transporting and ensure that there is no shortage.

Comment:

CBP should modify proposed § 18.1(d)(1)(vi) to require that the quantity of merchandise to be transported be reported in the in-bond application as the quantity used in the bill of lading and or manifest. This will ensure consistency in reporting between the application filer and CBP as well as amongst all trading partners involved in the transportation movement of the in-bond shipment.

CBP Response:

CBP disagrees. The quantity of merchandise used in the bill of lading or the manifest may not reflect the actual quantity, as required in § 18.1(d)(1)(iv). CBP needs to ensure the entire shipment is accounted for at the destination port or port of exportation. Proposed § 18.1(d)(1)(vi) requires the quantity of merchandise to be transported in-bond to be reported and will specify how that quantity is to be reported. As discussed in the prior comment response, the required quantity standard will be the smallest exterior packing unit.

Comment:

CBP should remove proposed § 18.1(d)(4), which requires the initial bonded carrier to assert that there is no discrepancy between the quantity of the goods received from the importing carrier and the quantity of goods delivered to the in-bond carrier for transportation in-bond. Quantity information is already required under proposed § 18.1(d)(1)(vi) and the initial bonded carrier cannot make the assertion in good faith without independently verifying the quantities prior to importation which is impractical and costly. Alternatively, CBP should change proposed § 18.1(d)(4) to provide that by submission of an in-bond application, the initial bonded carrier asserts that there is no “known discrepancy” between the quantity received from the initial carrier and quantity

delivered to the in-bond carrier, unless the arriving carrier and the in-bond carrier are the same, in which case the provision does not apply.

CBP Response:

Proposed § 18.1(d)(4) does not impose new requirements on bonded carriers. Under § 18.8 of the current regulations, if an in-bond shipment arrives at the destination port and the quantity of goods that arrives is less than the quantity manifested, the bonded carrier is liable for the shortage. This rule does not change that requirement. However, CBP has concluded that proposed § 18.1(d)(4) is unnecessary as it is covered in § 18.8. Therefore, CBP is removing this provision.

Comment:

Bonded carriers need to be able to file manifest discrepancy reports after the in-bond shipment arrives at the port of destination. The discrepancy reports would reflect the quantity of good actually received by the in-bond carrier when the container is unloaded at the port of destination.

CBP Response:

CBP disagrees. CBP is not creating a new manifest discrepancy reporting system for in-bond shipments which would insulate carriers from liability for a shortage. Although carriers must use the procedure described in § 18.1(h) to update the in-bond record to report any discrepancy in quantity of in-bond merchandise, the carrier is responsible for the quantity of goods reported in the in-bond application.

13. Location of the Merchandise

Comment:

Proposed § 18.1(j) requires the reporting of the “[p]hysical location of the merchandise within the port.” The term “physical location” should be defined and CBP should provide additional detail as to the level of specificity required; e.g., the Facilities Information and Resources Management System (FIRMS) code if known, or dock location, pier, street, address, city, etc. FIRMS codes need to be established for border crossing locations where carriers do not have a physical presence.

CBP Response:

CBP agrees that the proposed text is not clear and leaves room for error in providing the physical location of the merchandise. Therefore, CBP is changing proposed § 18.1(j) to require the reporting of the FIRMS code rather than a description of the physical location of the goods. FIRMS codes are used to identify a specific physical location. Locations, e.g., warehouses, with FIRMS codes that are used solely for the purposes of providing the location of in-bond merchandise are not required to be bonded facilities, unlike other locations with FIRMS codes. However, FIRMS code locations that are used solely for reporting the location of in-bond merchandise cannot be used for other purposes for which a bond is required, e.g., manipulation of the merchandise. If the merchandise is sitting on the dock, the FIRMS code of the terminal should be provided.

Comment:

Does the new rule allow truck carriers to use their terminal facilities as the arrival destination and use that location to report to CBP?

CBP Response:

Yes. However, if there is not an existing FIRMS code for the terminal facility the truck carrier company will need to obtain one.

Comment:

Will CBP be updating or changing the current FIRMS code process? CBP should centralize the process at headquarters, rather than have the ports responsible.

CBP Response:

CBP is not updating or changing the process for obtaining a FIRMS code. The current process is to obtain a FIRMS code at the local port. A member of the trade requests a FIRMS code via a letter to the port director on company letterhead. An Officer in the POE creates a FIRMS file in ACE for the requesting party and CBP mails the FIRMS code to the requesting party. However, CBP headquarters will continue to oversee the process.

Comment:

CBP should require the reporting of the FIRMS code of the bonded location “at which the in-bond merchandise is arrived” instead of the physical location of the in-bond merchandise within the port. For shipments that will be exported across a land border, CBP should accept an alternate location code if a FIRMS code does not exist for the location where the goods will be exported.

CBP Response:

CBP is requiring in § 18.1(j) that the bonded carrier report the FIRMS code for the arrival of all in-bond merchandise at the destination port and port of exportation.

14. Destination

Comment:

The reporting of the “ultimate destination” is a new requirement and CBP should explain what “ultimate destination” means. The carrier that files the electronic in-bond

application has no way to know the "ultimate destination" of a particular in-bond shipment. The carrier can only provide CBP with information about the final destination of the cargo movement under the carrier's contract of carriage with the shipper. The carrier does not know what the shipper does with the cargo after the carrier has delivered the cargo according to the contract of carriage. The proposed rule should be amended to clarify that for a carrier filing an in-bond application the final destination of the cargo movement under the carrier's contract of carriage with the shipper is acceptable.

CBP Response:

To address the comment above and avoid inconsistency with other export control laws and regulations, CBP is no longer using the term "ultimate destination" in § 18.1(d)(1)(vi). CBP is making changes to § 18.1(d)(1)(vi) to clarify that for IT shipments, the port of destination in the United States must be provided, and for T&E and IE shipments, the port of exportation and the first foreign port must be provided.

Comment:

Any requirements associated with the destination beyond the port code could significantly erode the confidentiality of sensitive customer information.

CBP Response:

CBP routinely considers commercial information on entry documents as confidential business information protected by the Trade Secrets Act, 18 U.S.C. 1905, and therefore subject to exemption 4 of the Freedom of Information Act (FOIA) protecting trade secrets and commercial or financial information. CBP does not require businesses to designate that information as confidential. See 19 CFR 103.35. CBP

would consider the destination of the in-bond merchandise to be confidential and privileged under exemption 4 of the FOIA and would not release this information.

Comment:

There is often a need to move in-bond jet fuel to airports that operate with international flights. Current systems allow for the use of a multi-destination field. CBP should recognize the operational realities of the jet fuel and airline business and specifically address in the final rule that in-bond movements with multiple destinations may continue to be used.

CBP Response:

This rule will not specifically address multi-destination fields currently used in some situations to move jet fuel in-bond. This is an operational issue. However, CBP is not planning to limit or stop the use of this practice at this time.

**C. In-Transit Time**

1. In-Transit Time Generally

Comment:

The proposed 30-day transit time is sufficient to arrive at the destination port. It is more than sufficient time for carriers to enter and exit the United States with Canadian domestic goods.

CBP Response:

CBP agrees with these comments, except with respect to in-bond shipments transported by barge, as addressed below.

2. In-Bond Shipments Transported by Barge

Comment:

The current 60-day in-transit time for in-bond shipments that travel by barge should be preserved. Barge delivery times frequently exceed 30 days. Industry data indicates that average barge transit times between 26 common origination and destination points for inland barge transportation routinely exceed the proposed 30-day in-transit time. In addition to average transit times that may exceed 30 days, barge in-transit times are also frequently impacted by other factors such as fog, icing, high water, low water, lock closure, maintenance, and congestion that further lengthen transit times beyond 30 days.

CBP Response:

Due to the special circumstances noted above pertaining to travel by barge, CBP agrees that the proposed 30-day in-transit time for in-bond shipments transported by barge is not adequate and is changing proposed § 18.1(i)(1) to allow for a 60-day in-transit time for barge shipments.

3. Extension of In-Transit Time

Comment:

Requests for an extension of the 30-day in-transit time should be considered approved unless CBP denies the request. The process should be automated and extensions should be granted in 30-day timeframes. The process for requesting an extension should be explained in more detail.

CBP Response:

CBP disagrees that extensions should be automatically approved. CBP will consider on a case-by-case basis whether to grant an extension of the in-transit time period and if so, the length of the extension. CBP is changing proposed § 18.1(i)(2) to

clarify that the decision to extend the in-transit time period is within the discretion of CBP. CBP is also changing proposed § 18.1(i)(2) to provide factors that may be considered in its decision, which include extraordinary circumstances beyond the control of the parties.

With regard to automation, the functionality does not currently exist to accept and approve extensions electronically via electronic EDI. Accordingly, all requests for an extension must be made to the port director of the port of destination or port of exportation, as appropriate. See § 18.1(i)(2).

Comment:

CBP should issue the denial of an extension request within 24 hours of the request and provide a reason for the denial.

CBP Response:

CBP will consider each extension request on a case-by-case basis and will endeavor to issue any denials within 24 hours of receiving the request. CBP will not provide the reason for denying an extension request since the request may be denied for law enforcement purposes.

Comment:

CBP should continue to take into account and provide extensions for rail cars that have been delayed due to rail cars being unavailable to transport in-bond merchandise or due to other transit issues. CBP should continue to provide reasonable relief from the 30-day limit.

CBP Response:

CBP will consider requests for extensions on a case-by-case basis.

Comment:

Can the request for an extension be made for all cargo covered on the bill of lading, or must the request for an extension be made for each individual in-bond entry?

CBP Response:

A request for an extension must be made for each individual in-bond entry. CBP will not grant a blanket extension for all shipments covered by a bill of lading.

Comment:

The proposed rule states CBP may extend the in-transit time if delays are caused due to the examination or inspection of the merchandise by CBP or another government agency. Because this issue can result in irregular deliveries due to no fault of the carrier, CBP should change "may extend" to "will extend." The in-transit timeframe should be revised to account for the delay and recorded as part of the in-bond application record and communicated to the in-bond filer.

CBP Response:

CBP agrees that proposed § 18.1(i)(1) should be changed to address this issue. The new text will state that when the merchandise is subject to examination or inspection by CBP or another government agency, the time for which the merchandise is held due to the examination or inspection will not be considered part of the in-transit time. Because of this change, it is unnecessary to change "may extend" to "will extend."

Comment:

CBP should provide examples of circumstances in which CBP will grant an extension "for some other reason."

CBP Response:

In order to clarify proposed § 18.1(i)(2), CBP is removing the phrase “for some other reason”. In its place, CBP is changing proposed § 18.1(i)(2) to provide factors that may be considered in its decision to extend the in-transit time period. CBP will consider all requests for an extension on a case-by-case basis.

Comment:

Some in-bond shipments cannot be made within the mandatory in-transit time due to logistical issues that are beyond the control of the shipper. For example, a vessel shipment may contain 50 coils of steel, which would need to be divided into at least 25 truckloads. Due to truck shortages and bad weather it is not uncommon for shipments to take longer than the in-transit time for trucks of 30 days.

CBP Response:

CBP will take into account logistical issues such as the one described above when considering a request for an extension of the in-transit time.

4. Shortening of In-Transit Time

Comment:

Proposed § 18.1(i)(3) provides that CBP may shorten the in-transit time. CBP should clarify and explain why the in-transit time would ever need to be shortened once the application has been authorized and no holds have been placed on the shipment. CBP should provide more information and justification as to when this authority might be exercised so that the trade can more adequately comment.

CBP Response:

The in-transit time will only be shortened when required by another agency’s transit requirements. The primary reason why CBP would shorten the in-transit time

would be to comply with U.S. Department of Agriculture (USDA) statutory requirements related to merchandise moving on a USDA permit. Other government agencies may also require shortened transit periods.

Comment:

Does the proposal that “CBP will provide notice of a CBP-shortened in-transit time with the movement authorization,” include notification by other government agencies of shortened in-transit times? CBP needs to ensure that there are procedural protections for the importer and the carrier to avoid arbitrary and costly restrictions.

CBP Response:

The in-transit time will only be shortened in order to comply with another agency’s transit requirements. CBP will provide notice to the carrier to facilitate compliance. To clarify this, CBP is changing proposed § 18.1(i)(3) to provide that “CBP will provide notice of a government-shortened in-transit time with the movement authorization.”

Comment:

The “shortened in-transit time” information should be transmitted as a distinct data element or disposition code that is sent to filers. This code will ensure that the carrier will be aware of the restriction, and the carrier may then examine the text explanation of the shortened time for the details of the restriction. Instructions from CBP that require the trade to take any action must not be included as a remark to formal status messages because free form messages may be mistyped by the initiator, truncated by the system, or misinterpreted by the recipient.

CBP Response:

CBP will communicate to the carrier via EDI when the in-transit time has been shortened. CBP agrees that the creation of a disposition code is a good idea and will endeavor to create a new disposition code for this purpose.

#### 5. Start of In-Transit Time

##### Comment:

The current regulations begin the running of the 30-day in-transit time at the time the forwarding carrier receives the merchandise. In many seaports, it is not uncommon for containers to be delayed within a port terminal for myriad reasons, two to four days on average, before they are delivered to the forwarding carrier. Beginning the in-transit time from the time of the filing of the in-bond application does not take these routine delays into account. The language of existing § 18.2(c)(2) that allows the forwarding carrier to report the date on which it received the merchandise at the port of arrival from the importing carrier should be retained.

##### CBP Response:

CBP has analyzed in-bond movements including intermodal movements and determined that beginning the in-transit time at the time of filing the application would not seriously impinge on the 30-day (60-day for barges) in-transit time to deliver the cargo, even, taking into account a 2- to 4-day delay at the port. Requiring the forwarding carrier to report when it receives the merchandise makes determining when the in-transit time begins more cumbersome, and makes the system dependent on a party whose bond may not be obligated. Extensions of the transit time can be requested in the event of a delay at the port.

##### Comment:

In the ocean environment, in-bond authorization may be provided up to 30 days prior to vessel arrival at the first U.S. seaport. Taking this into account, the 30-day transit time should not start until the conveyance has arrived at the first U.S. port and all government holds have been removed.

CBP Response:

CBP agrees. CBP is changing proposed § 18.1(i)(1) to provide that the in-transit time will not begin until vessel arrival or CBP movement authorization, whichever is later.

Comment:

In-bond merchandise traveling through the United States and destined for Mexico often requires several days at the port of exportation on the United States-Mexico border for various legitimate reasons before the merchandise can be imported into Mexico. Generally, the merchandise is transported to the port of exportation by the originating bonded carrier. Next, a new in-bond application is filed and the merchandise and bond liability is transferred to a local bonded carrier for exportation to Mexico. Taking commercial realities of importing goods into Mexico into consideration, if the originating bonded carrier arrives at the port of exportation without a sufficient number of days remaining before the expiration of the 30-day maximum time period, it will be difficult to find a succeeding bonded carrier to accept liability for the merchandise knowing that delays are anticipated and there is high risk of not being able to export the merchandise timely. This will likely cause in-bond merchandise to have to enter a foreign trade zone or customs bonded warehouse to avoid liquidated damages for irregular delivery. Alternatively, Mexican importers may divert this business outside of the United States for

direct shipment to a Mexican sea port, which would be devastating for the local bonded carriers in Laredo, Texas.

CBP Response:

CBP recognizes that there are many circumstances in which it may not be practicable to export in-bond merchandise within 15 days of arrival at the port of exportation. However, shippers will be responsible for ensuring that basic logistical issues are resolved. In the scenario presented, the originating bonded carrier will have 30 days in which to deliver the merchandise to the port of exportation, at which point the arrival must be reported within two business days. The reporting of the arrival of the merchandise at the destination port completes the in-bond movement for purposes of meeting the in-transit time requirements. The merchandise must then be exported within 15 days. If the merchandise cannot be exported within 15 days after arrival, the original bonded carrier can file an immediate exportation entry. This will provide an additional 15 days in which to export the merchandise. The carrier can also request permission to retain the goods within the port limits for an additional 90 days pursuant to § 18.24 or admit the merchandise into a FTZ, before the 15-day limit expires.

6. Procedures

Comment:

All parties involved in an in-bond shipment should be able to verify when the in-bond shipment was authorized for movement and whether they are delivering the merchandise within the required timeframe.

CBP Response:

Within ACE, the carrier filing the in-bond application has the ability to provide multiple Secondary Notify Parties (SNPs). SNPs receive the same status messages as the carrier. It is up to the parties involved in the transportation of the merchandise to ensure that the appropriate parties are designated as SNPs.

Comment:

Receipt of messages is a major issue for some non-vessel operating common carriers (NVOCCs). NVOCCs must be nominated by the vessel operating carrier (VOC) as a SNP in order to receive all status messages. Many VOCs have system constraints and can only accommodate one NVOCC per Master Bill of Lading even though AMS and ACE can accommodate more. An NVOCC automatically becomes a SNP when it creates an in-bond. However, it only receives status messages from the time it creates the in-bond.

CBP Response:

SNPs receive the same status messages as the carrier. CBP already provides the ability to provide multiple SNPs within ACE. It is the responsibility of the parties involved in the transportation of the merchandise to ensure that the appropriate parties are designated as SNPs.

7. Intermodal Transportation

Comment:

The reduction in in-transit times between ports from 60 days to 30 days is insufficient for those shippers who are moving goods with a mix of intermodal transportation (rail, barge and truck) and it might be difficult to meet the new 30-day requirement in these situations. This is especially true for those using barge movements.

CBP should consider either keeping the current 60-day requirement for barges or providing an exemption similar to what has been granted for pipelines.

CBP Response:

As indicated in Section I.B.1., In-Transit Time for Shipments Transported by Barge, CBP is changing the proposed in-transit time for in-bond shipments transported by barge to 60 days. In this final rule, CBP is providing in §18.1(i) that if any portion of the movement involves the movement of goods on a barge, the 60-day transit time will apply.

Comment:

Which time period applies when there is a movement of petroleum products that involves the use of truck and pipeline? For instance, jet fuel could be moved in-bond via pipeline then transferred to a truck destined for an international airport. This movement could take significantly longer than 30 days. CBP should clarify whether the 30-day transit time applies to the entire movement when part of the movement involves transportation via pipeline.

CBP Response:

The initial pipeline movement is an in-bond movement, but the duration of that transit time would not be included in the 30-day transit time limitation. To clarify this, CBP is adding a sentence to proposed § 18.1(i)(1) that expressly excludes pipeline shipments from the provisions of that section.

8. Report of Arrival

Comment:

CBP proposes to reduce the arrival notification timeframe for an in-bond from two working days to 24 hours. Due to the mandatory electronic submission of in-bonds

and the ability for any party to generate an in-bond without proper notification to all parties, it will be nearly impossible for a manual data entry process to happen within 24 hours when many in-bond shipments arrive over the weekend and holidays. CBP should retain the current 48-hour arrival timeframe or extend it to 72 hours to accommodate the various business models in the trade and lessen the cost of complying with the proposed rule.

CBP Response:

CBP agrees that the 24-hour notification timeframe is too short. CBP is changing proposed § 8.1(j) to require the report of arrival to be filed within two business days after arrival at the destination port.

Comment:

If CBP approval is required prior to removing the seal, this may impact the carrier's ability to timely report the arrival of the in-bond cargo.

CBP Response:

Except as provided for in § 18.4, a sealed container cannot be opened prior to the reporting of the arrival. Pursuant to § 18.4(c), if it becomes necessary to remove seals for good reason, a responsible agent of the carrier may remove the seals, supervise the transfer or handling of the merchandise and seal the conveyance, compartment, or container. CBP approval is not required. Once the arrival has been reported, the container can be opened and the in-bond merchandise removed.

Comment:

For rail movements there are several check points within the port of destination area and it can take up to three to four days before the shipment finally reaches the point

of unloading for vessel exports. What will be the point at which the arrival must be transmitted?

CBP Response:

The arrival must be reported at the first point of arrival within the destination port.

Comment:

The impact of the arrival on the transit and general order clock is significant to zone operations. It is imperative for CBP to explain the ramifications of arrival on both the transit clock and the transfer of bond liability.

CBP Response:

The reporting of the arrival of the merchandise at the destination port completes the in-bond movement for purposes of meeting the in-transit time requirements. The arrival of the in-bond merchandise, however, does not transfer bond liability. The party whose bond is obligated is liable until the in-bond is closed out by the in-bond merchandise being exported, entered for consumption, admitted into an FTZ, or entered through the filing of some other type of entry.

Comment:

Under the proposed rule, will the in-transit clock stop for an entire in-bond shipment when the first portion of an in-bond shipment arrives at the port of exportation or destination port?

CBP Response:

The arrival of a portion of shipment at the destination port will not stop the transit period for the remainder of the shipment that has not yet arrived at the port. For multiple container movements, the arrival will be performed at the equipment/container level.

This means that each equipment/container must arrive within 30 days and each equipment/container must be reported as arrived within two business days after its arrival.

9. General Order Merchandise

Comment:

Does the reporting of arrival pursuant to proposed § 18.1(j) stop the in-transit clock and begin the general order clock of 15 days as provided in proposed § 18.1(k)?

CBP Response:

No. Subsection 18.1(j) requires the report of arrival of any portion of a shipment after it arrives at the port. Only the arrival of the full shipment of in-bond merchandise at the destination port or the port of exportation, not the reporting of arrival, stops the in-transit time and begins the 15-day general order period.

Comment:

Reporting the arrival of the in-bond shipment at the destination port when the first portion of the shipment arrives and remaining portions have not arrived, creates a significant issue with the management of the general order clock. Allowing the clock to run on goods that may not have physically arrived creates a potential gap in the control of in-bond merchandise because merchandise that has “arrived” may not be physically present.

CBP Response:

CBP agrees that the general order clock should begin when the last portion of the in-bond shipment arrives. Therefore, CBP is changing proposed § 18.1(k) to provide that the 15-day period for general order merchandise begins on the date of arrival “of the

entire in-bond shipment” at the port of destination or port of exportation. When only a portion of a shipment arrives at the port of destination or port of exportation, the general order clock will generally not begin until the last portion of the shipment arrives.

However, if part of a shipment does not arrive within the timeframe for completing the in-bond movement (30 days in most cases), the general order clock for the merchandise that has already arrived will start to run at the end of the applicable timeframe for completing the in-bond movement.

Comment:

CBP should clarify that the total proposed in-bond transit time from the time of in-bond application authorization to the time of entry at the port of destination or export at port of exportation is a total of 45 days unless an extension has been granted.

CBP Response:

The maximum in-transit time from the time of authorization of the in-bond application to arrival at the destination port is 30 days or 60 days for barges. Once the merchandise has arrived, the merchandise must either be entered or exported within 15 days of arrival or it will be subject to General Order and required notifications must be provided. It is incorrect to think that CBP will combine the two periods.

Comment:

Reference to FTZ admission is omitted from the language regarding potential events that prevent goods from being sent to General Order. The language in proposed § 18.1(k) should be revised to include FTZ admission, such as: “Any merchandise covered by an in-bond shipment (including carnets) that has arrived at the port of destination or the port of exportation must be entered, exported or admitted to a foreign-

trade zone pursuant to this part within 15 days from the date of arrival at the port of destination or port of exportation, or in the case of goods authorized for direct delivery destined to a foreign-trade zone, within 15 days of the arrival at the zone or subzone pursuant to § 146.40(c)(3).”

CBP Response:

CBP concurs that admission into an FTZ should be included as a means to prevent merchandise from going into General Order and is changing proposed § 18.1(k) accordingly. It is not necessary to include language regarding direct delivery pursuant to § 146.40 because the general reference to admission into an FTZ encompasses the procedures provided for in part 146.

Comment:

It is unclear how limiting the time to 15 days will help CBP verify that the in-bond merchandise was, in fact, exported or entered.

CBP Response:

The requirement to enter or export merchandise within 15 days of arrival at the destination port is consistent with existing regulations and is generally the current practice. See §§ 4.37, 18.12(d), 122.50, and 123.10. The changes in proposed §§ 18.1(k), 18.7, 18.12, 18.20, 18.25 and 18.26 are to ensure that there is uniformity within the customs regulations on this point.

Comment:

The 15-day requirement to export or enter in-bond merchandise under proposed § 18.1(k) or to export merchandise pursuant to proposed §§ 18.7(a)(2), 18.20(f), 18.25(c) and 18.26(d) is not reasonable in many cases for goods intended to be exported by ocean

carrier and for some petroleum shipments. Shippers sometimes need to hold in-bond merchandise after it has arrived in order to consolidate shipments from various vendors, which can take longer than 15 days. Merchandise to be exported by ocean carrier can only be exported according to the schedule of the vessel bound for the foreign destination of the goods. Ocean carriers do not call at each port of exportation every 15 days for every foreign destination. In many cases goods are required to remain at the port of exportation after arrival for periods longer than the proposed 15-day limit. Similarly, many petroleum products that move in-bond cannot be exported within 15 days of arrival due to infrastructure limitations. CBP should revisit this provision to either extend the 15-day time period to a minimum of 30 days or clarify that standing exceptions to the 15-day requirement to export product will be provided by CBP based on the operational realities that exist for these type of product in-bond movements.

CBP Response:

The 15-day requirement to export or enter the in-bond merchandise is an existing requirement and is not a change to the GO requirements. CBP will not extend the timeframe to 30 days as this would be inconsistent with other regulations governing General Order merchandise. However, § 18.24(a) (Retention of goods within port limits) authorizes the port director to allow in-transit merchandise to remain within the port limits for up to 90 days. Additional 90-day extensions may be granted for up to one year from the date of arrival. Carriers can request an extension when they cannot export within 15 days of arrival due to scheduling or other issues.

**D. Transfers**

Comment:

CBP received several comments regarding the transshipment provision in proposed § 18.3, which provides the procedures to be followed when in-bond merchandise is transferred from one conveyance to another. The main concern was with the requirement to report to CBP each time the merchandise was transferred from one conveyance to another. Because in-bond merchandise may be transferred several times during the course of its journey, this reporting requirement places a substantial burden on the bonded carrier liable under the bond.

CBP Response:

CBP has taken these concerns into consideration and agrees that CBP does not need to be notified when in-bond merchandise is transferred from one conveyance to another. Accordingly, CBP is changing proposed § 18.3 by removing the requirement to notify CBP when merchandise is transferred from one conveyance to another and by clarifying when in-bond merchandise is transferred to a subsequent bonded carrier that assumes liability for the merchandise, a report of arrival must be filed for the in-bond shipment and the subsequent carrier must submit a new in-bond application pursuant to § 18.1.

Comment:

A new in-bond application should be required when another bond is obligated. Since the notification of transshipment must include the name of the bonded carrier receiving the merchandise for shipment to the port of destination or port of exportation, it is implied that there could be a change of carriers. Is liability for the merchandise transferred to the new carrier's bond or is a new in-bond application required to transfer the liability?

CBP Response:

CBP agrees that a new in-bond application is necessary when a different bond is obligated. Therefore, CBP is changing proposed § 18.3 in the final rule to require that when merchandise is transferred to a bonded carrier that assumes the liability of the in-bond shipment, a report of arrival must be filed for the in-bond shipment and the subsequent carrier must submit a new in-bond application pursuant to § 18.1 for the merchandise to be transported in-bond.

Comment:

Proposed § 18.3(a) requires that the notification to CBP via EDI be done before the merchandise can be transshipped, but proposed § 18.3(b) includes no such stipulation. CBP should make the requirements consistent for transshipment to a single conveyance (18.3(a)) and transshipment to multiple conveyances (18.3(b)).

CBP Response:

The change that CBP is making to proposed § 18.3, *i.e.*, removing the requirement to notify CBP when merchandise is transferred from one conveyance to another, addresses the concerns expressed in this comment.

Comment:

The carrier's difficulties in verifying the quantity of the merchandise to the piece count level is exacerbated when multiple carriers are involved. Because the transfer to multiple conveyances adds an additional level of complexity as compared to a transfer to a single conveyance, the potential for irregularities in the reporting and exchange of data in these situations is more prevalent.

CBP Response:

The change that CBP is making to proposed § 18.3, i.e., removing the requirement to notify CBP when merchandise is transshipped from one conveyance to another, reduces the likelihood of irregularities that may result in reporting and exchanging of data.

Comment:

How will the trade identify the bonded carrier? It is assumed the bonded carrier can be identified by their SCAC code and/or EIN number where available. Please clarify in the final rule.

CBP Response:

The bonded carrier will be identified by the carrier's SCAC or tax identification number (EIN), or, for air carriers, the International Air Transport Association (IATA) number.

Comment:

The proposal to require the in-bond carrier to report, via EDI, the transfer of in-bond merchandise from one conveyance to another, presents a number of problems and questions. An ocean carrier that files an in-bond application, and on whose bond the shipment is authorized, often will assume the transportation responsibility for arranging the delivery of the goods to the in-bond destination, and this frequently involves numerous intermodal transshipments. Proposed § 18.3(b) and (c) would require the bonded carrier to provide multiple EDI notifications to CBP. This would make the continued efficient transportation of such cargo impossible.

CBP Response:

The change that CBP is making to proposed § 18.3, i.e., removing the requirement to notify CBP when merchandise is transferred from one conveyance to another, addresses the concerns in this comment.

#### **E. Sealing of Conveyances and Reporting of Seal Numbers**

##### Comment:

CBP should clarify or define the term “container” as used in this rule. Does the requirement to seal containers only apply to “containers” as defined by the Customs Convention on Containers or does it include all road (trucks and truck trailers) and rail (rail cars and truck trailers on rail cars) conveyances?

##### CBP Response:

The §18.4 seal requirements apply to containers that can be sealed. This includes truck and rail conveyances. For further information about what are considered containers for CBP purposes see part 115 of the CBP regulations governing containers. The seal requirements for air cargo are specified in §122.92 and are discussed in section G below.

##### Comment:

The seal and container numbers should not be mandatory data elements. CBP would have the ability to verify the application of seals prior to movement and upon arrival. Seal numbers are not always available at the time of the in-bond transmission, especially if the in-bond request is made by an authorized party other than the carrier that loads the cargo. Providing the seal and container number with the in-bond request will only add minimum assurance that the goods have been properly controlled. Most carrier manifest systems currently do not capture the seal or container number. However, they do have elaborate scanning systems to track the progress of packages as they are sorted

and loaded during transportation and movement, which allows for quick identification and location of a shipment in the event CBP chooses to inspect an in-bond shipment at any point in the supply chain. A provision to add the seal number after the initial in-bond request is made should be included.

CBP Response:

CBP does not agree that the seal and container numbers should be optional information. Requiring carriers to provide the seal number and container number as part of the in-bond application facilitates CBP's ability to ensure the safety and security of in-bond merchandise. To address the issue of carriers not knowing seal numbers at the time the in-bond application is filed, CBP is changing proposed § 18.1(d)(1)(v) to provide that “[i]f, at the time of the filing of the in-bond application, the seal number is not known, the in-bond application must be updated with the seal number within two business days of the date the bonded carrier obtains a seal number. CBP is also changing proposed § 18.4(c) so that in the event that it becomes necessary to remove and replace seals from a conveyance, compartment, or container containing bonded merchandise, updated seal numbers must be transmitted to CBP. The requirements to keep in-bond merchandise sealed, and to re-seal unsealed merchandise, throughout the in-bond movement remains, and the party whose bond is obligated will be liable for liquidated damages for any loss, theft, or irregular delivery.

Comment:

CBP should clarify that the container and seal numbers do not need to be filed as part of the in-bond application because they have already been reported to CBP as part of the advance electronic manifest.

CBP Response:

The container and seal number information on the advance manifest will be automatically associated with the in-bond application. Therefore, if the container and seal number have already been provided on the advance manifest, the filer of the in-bond application will not have to resubmit the container and seal number as part of the in-bond application.

Comment:

Proposed § 18.3(d)(1) specifically permits the breaking of CBP seals in emergency situations. CBP should specify that any responsible agent of the carrier may remove and replace seals at any time for any good reason. The requirement in proposed §§ 18.3(d) and 18.4(c) to obtain CBP permission to break and replace a seal, and to update the in-bond record would place a significant burden on the carrier.

CBP Response:

To address this comment and for clarity, CBP is making the following changes to the proposed sections regarding seals. First, CBP is moving some language about seal removal from proposed § 18.3 and is addressing the circumstances for removing seals in § 18.4. Proposed § 18.3(d)(1), which covers the transfer (transshipment) of in-bond merchandise from one conveyance to another, allows for the breaking of seals in case of an emergency or for some other reason. CBP has concluded that the rules about when seals can be removed would fit better within § 18.4 which applies to the sealing of conveyances.

Second, CBP is changing proposed § 18.4 in the final rule to make it less restrictive. CBP agrees that a responsible agent of the carrier should be able to remove

and replace seals for good reason and not just in emergencies. In response to concerns that the requirement to obtain CBP permission to break and replace a seal and to update the in-bond record with the new seal information would place a significant burden on in-bond carriers and to facilitate processing of in-bond shipments, CBP is removing these requirements and allowing a responsible agent of the carrier to remove the seals and reseal the merchandise. Specifically, CBP is changing proposed § 18.4 in the final rule to provide that seals may be removed for the purpose of transferring in-bond merchandise to another conveyance, compartment or container, or to gain access to the shipment because of casualty or for other good reason, such as when required by law enforcement or another government agency.

Comment:

C-TPAT partners should be exempt from the requirement to provide seal numbers. Encouraging carriers to join programs such as C-TPAT will offer the additional assurance and controls CBP expects.

CBP Response:

CBP disagrees. Compliance with the in-bond regulations, including those pertaining to the sealing requirements, complements supply chain security and efficiency procedures being implemented by C-TPAT partners. However, C-TPAT membership will continue to be a relevant factor for targeting purposes.

Comment:

Proposed § 18.4(b)(1) states that merchandise that is not covered by a bond may only be transported in a sealed conveyance or compartment that contains bonded merchandise if the merchandise is destined for the same or subsequent port as the bonded

merchandise. CBP should recognize that less than carload or container load (LTL) in-bond shipments may move in conveyances, commingled with non-bonded merchandise, that are not sealed. This is a normal operating practice in domestic truck operations where numerous shipments are commingled on trailers and transferred, sometimes multiple times, during the life cycle of the shipment. CBP should allow flexibility for this requirement for LTL carriers, allowing them to commingle freight.

CBP Response:

CBP agrees that the proposed limitations on transporting in-bond merchandise with non-bonded merchandise could hamper the transportation of in-bond merchandise, especially for LTL shipments. Accordingly, CBP is changing the sealing requirements in proposed § 18.4 by adding new paragraph (b)(2) allowing for the transportation of in-bond merchandise with non-bonded merchandise in a container or compartment that is not sealed, if the in-bond merchandise is corded and sealed, or labeled as in-bond merchandise. This will allow in-bond merchandise to be transported with non-bonded merchandise in a container that is not sealed and will facilitate the use of less than container load shipments.

Comment:

How would a filer/carrier apply for the waiver of seal requirements as mentioned in proposed § 18.4(a)(2)?

CBP Response:

A request for a waiver of the sealing requirement can be submitted by indicating that there is “no seal” when filing the in-bond application. If CBP has concerns regarding the lack of a seal, CBP may require additional information or reject the in-bond application.

Comment:

The regulatory text regarding the removal and breaking of seals should be changed so that seals must remain intact at all times except for transfer operations covered under §§ 18.3(b), 18.3(c), 18.3(d) and bonded warehouse operations covered under § 19.6(e), in which case the breaking and affixing of new seals by the responsible party per 18.1(c) is authorized. Failure to keep the seals intact and/or remove the seals without CBP permission should result in the assessment of liquidated damages. This will act as a deterrent to theft and substitution. Furthermore, the unauthorized breaking of seal acts as a notification to the bonded carrier that something may be amiss.

CBP Response:

The proposed suggestions regarding the removal and breaking of seals is too restrictive and is not necessary for security purposes. The requirements in § 18.4 of this rule adequately address these security issues without impeding the movement of the goods. By allowing for the removal of seals and requiring that new seals be affixed by a responsible agent of the carrier, CBP is providing flexibility so that the transport of the in-bond merchandise can be completed while still maintaining the integrity of the shipment.

Comment:

CBP should change the requirements in proposed § 18.3 so that CBP authorization is not required in order to remove seals in order to transfer in-bond merchandise from one conveyance to another.

CBP Response:

With the change that CBP is making to proposed § 18.3, i.e., removing the requirement to notify CBP when merchandise is transferred from one conveyance to another, the concerns in this comment have been addressed.

Comment:

How will CBP handle trucks that are stopped for a potential road violation where the driver is required to open the truck by the highway patrol or other governmental agency resulting in the seal that was used for the movement of in-bond merchandise being broken?

CBP Response:

CBP is changing proposed § 18.4(c) in the final rule to allow for the removal of seals for good reason and, as discussed in a prior response, require new seals to be affixed by a responsible agent of the carrier. Accordingly, if the responsible agent of a carrier, e.g., the driver, is required to open a sealed container by local law enforcement or other governmental agency, the agent can replace the broken seal with a new seal.

Comment:

As unforeseen circumstances not contemplated by proposed § 18.3(d) could arise, we suggest that the language be updated to read “removal of seals without CBP permission may result in the assessment of liquidated damages.”

CBP Response:

As discussed in a prior response, CBP permission will not be needed to remove seals. However, the party whose bond is obligated will be liable for liquidated damages for any loss, theft, or irregular delivery of the in-bond merchandise.

Comment:

Proposed § 18.4(a)(1) states, "The seals to be used and the method for sealing conveyances, compartments, or packages must meet the requirements of §§ 24.13 and 24.13a of this chapter [19 CFR]." Can CBP confirm that containerized ocean cargo shipments being transported in-bond that are secured with a high security seal meeting applicable ISO standards meet the requirements of these sections?

CBP Response:

The proposed regulations do not change any of the existing requirements regarding how containers are sealed and what types of seals are to be used. Containerized ocean cargo shipments being transported in-bond may be secured with a high security seal meeting applicable ISO standards, which meets CBP's requirements to seal containers transporting in-bond merchandise.

Comment:

CBP should require that trailers be sealed with ISO compliant high security seals when goods are being shipped in-transit through the United States or Canada.

CBP Response:

Proposed § 18.4 requires that in-bond merchandise be sealed in accordance with CBP regulations, specifically §§ 24.13 and 24.13a. However, it should be noted that C-TPAT members are required to use International Organization for Standardization (ISO) compliant seals by virtue of their participation in C-TPAT. As a result, many in-bond carriers use ISO compliant seals.

**F. Air Cargo**

Comment:

CBP needs to clarify the scope of this NPRM, which is confusing in respect to existing CBP air commerce regulations. It is not clear if air carriers would be subject to the new process supplemented by any specific provisions in part 122 (air commerce regulations), or if air carriers would not be affected and would be able to simply continue handling in bonds under only the provisions of part 122.

CBP Response:

The existing air commerce regulations in part 122 will continue to govern the movement of in-bond shipments by air, except for the maximum in-transit time. Under the existing regulations, the maximum in-transit time for air cargo transported in-bond is 15 days. Under proposed §§ 122.119 and 122.120 the maximum in-transit time for air cargo transported to another U.S. port is increased to 30 days. Proposed § 18.0 (Scope; definitions), provides that except as provided in parts 122 and 123, part 18 sets forth the requirements and procedures pertaining to the transportation of merchandise in-bond. Parts 122 (Air Commerce) and 123 (Customs Relations with Canada and Mexico) govern the rules and procedures for the transportation of in-bond merchandise, respectively, in the air environment and in-transit merchandise traveling through the United States, Canada or Mexico by truck and train. The provisions of part 18 are applicable to the in-bond procedures not specifically addressed in parts 122 and 123. For example, proposed § 18.8 governing the liability of in-bond carriers is applicable to all in-bond movements, regardless of the mode of transportation. Conversely, the provision of proposed § 18.4(a)(1) requiring the sealing of containers does not apply to in-bond merchandise traveling by air, because § 122.92(f) specifically provides that the sealing of aircraft,

aircraft compartments carrying bonded merchandise, or the cording and sealing of bonded packages carried by the aircraft, is not required.

Comment:

With regard to the in-bond application process, air carriers are aware that ACE provides additional functionality to allow better visibility to and control of who obligates a carrier's bond. With the elimination of the 7512 paper form, air carriers will have no visibility to or ability to control who is obligating their bonds. Until such time as air is fully transitioned into ACE, CBP must provide air carriers with the capability to view electronic in-bonds opened on their behalf and control who has the ability to obligate their bonds. One suggestion is to provide air carriers with the ability to open an ACE account to allow them the same access to in-bond reports and control tools that are available to ocean and rail carriers.

CBP Response:

When the notice of proposed rulemaking was issued, the functionality for filing electronic air in-bond applications for air shipments in ACE did not exist. However, this functionality was delivered through Air ACE (M2.1) on June 7, 2015. Currently, Air ACE permits an air carrier to view in-bond reports to see who is obligating its bonds. Although CBP intends to fully automate the in-bond process, including in-bond movements by air, changes to the regulations pertaining to in-bond movements by air will be handled under a separate rulemaking. Until such time, the 7512 paper form may still be used in the air environment.

Comment:

The proposed changes will force bonded carriers to operate in multiple CBP-approved electronic systems (ACE, Air AMS, and ABI QP/WP) when the mode of transportation changes as shipments are transported. This is a problem for express carriers that currently use Air AMS to process in-bond shipments. For example, it is common to have transit shipments arrive into the United States via truck and the electronic in-bond request submitted at the land border via ACE. The shipment subsequently departs the United States via air. CBP should provide status messages between ACE and Air AMS, allowing for the electronic arrival and exportation of these bonded shipments via AMS for the proper closure in CBP systems. Without this electronic interface, the bonded carrier would have no choice but to provide paper in-bonds to CBP for proper exportation. If CBP does not provide status updates between EDI systems, the bonded entity will have a tremendous administrative burden to track all in-bond shipments opened in ACE, which would require "manual" posting in ACE (arrival/exportation). This issue is further compounded when transportation services are shared between multiple business units within the same entity.

CBP Response:

CBP tracks the in-bond merchandise based on the mode in which the in-bond application was filed, regardless of what other modes of transportation are used to transport the in-bond merchandise. Accordingly, if the in-bond movement starts out in air, it remains an air in-bond entry for tracking purposes until the in-bond merchandise arrives at the destination port, port of exportation, or the in-bond is closed and a new in-bond is initiated in another mode of transportation. The movement will be tracked

according to the new mode of transportation when a new in-bond number is created as the result of a new in-bond application.

CBP has established multi-modal electronic procedures within ABI (QP/WP) that will allow any authorized party to file an in-bond application electronically regardless of the mode of transportation. QP is used to initiate the in-bond application and WP is used to arrive/export the in-bond shipment. As of June 7, 2015, QP/WP can be used for all in-bond transactions, regardless of mode. This provides tracking of in-bond transactions between various modes and tracking history within ACE.

Comment:

Air carriers request that CBP clearly define the requirements and procedures for intermodal in-bond transfers prior to any implementation of this rule. Currently, other transport modes provide a CBP Form 7512 with shipments that are moving to an air carrier, and the air carrier delivers the CBP Form 7512 to CBP at the port of exportation or destination to close the in-bond. The air carrier regulations at §§122.92 and 122.93 specifically state that form 7512 or "other Customs approved document" shall be delivered to the carrier at the in-bond origin, and the carrier shall deliver that to the port director at the in-bond destination port. What will be the process for reconciling "intermodal-to-air" in-bonds in the absence of a 7512 paper form?

CBP Response:

QP/WP now can be used for all in-bond transactions, regardless of mode, and provides tracking of in-bond transactions between various modes and tracking history within ACE. Whether the initial in-bond is filed in ocean, rail, truck or air, the in-bond

movement will be tracked by CBP in the mode in which it was opened. In such case, the in-bond can be closed with an electronic filing upon arrival at the destination port.

Comment:

Air carriers utilize “unit load devices” (ULDs) which are totally dissimilar in structural integrity from an ocean container. Aircraft also have multiple areas used for transport of cargo, whether loaded in ULDs or loose. Does CBP consider ULDs and these areas “compartments” that might be subject to sealing under the proposed rule?

CBP Response:

The sealing and labeling requirements for in-bond merchandise transported by air are specified in §§ 122.92(f) and 122.92(g), respectively. Section 122.92(f) does not require the sealing of aircraft compartments carrying in-bond merchandise, or the cording and sealing of bonded packages. However, § 122.92(g) requires bonded packages to be affixed with the label provided for in proposed § 18.4(b)(3). Therefore, pursuant to §122.92(f), ULDs used in aircraft do not have to be sealed. However, in-bond merchandise inside of ULDs must be labeled pursuant to § 122.92(g), which requires the affixing of labels as provided for in proposed § 18.4(b)(3).

Comment:

Do the timeframes for notifying CBP of arrival contained in proposed §§ 18.1(j) (Report of Arrival), 18.7(a)(1) (Lading for Exportation, Notice), and 18.20(c) (Entry Procedures), apply to air cargo moving in-bond via truck to the port of destination, since there are no arrival timelines provided in § 122.93?

CBP Response:

If the movement is an air in-bond movement initiated under part 122, the notice of arrival procedures contained in § 122.93 are applicable. As of June 7, 2015, air carriers can submit the notice of arrival electronically in ACE.

Comment:

Considering the existence of § 122.94 which places no restrictions on divided shipments, what is the exact application of the proposed § 18.24(b) language to air with regard to the submission of new in-bond applications and time limits for initiation of divided shipment movements?

CBP Response:

Proposed § 18.24(b) does not apply to air shipments of in-bond merchandise. Sections 122.93 and 122.94 specify the procedures for exporting air in-bond merchandise, including the handling of divided shipments at the port of exportation for in-bond merchandise transported by air.

Comment:

CBP should revise existing § 122.92 which allows for three copies of an air waybill for T&E, because CBP has indicated that the core intent is to automate the in-bond process.

CBP Response:

Although CBP intends to fully automate the in-bond process, including in-bond movements by air, changes to the regulations pertaining to in-bond movements by air will be handled under a separate rulemaking. Until that rulemaking process is completed, § 122.92 applies to in-bond movements by air.

**G. Liability of the Parties**

Comment:

The transfer of bond liability is currently based on signed paper documents, but it is unclear in a completely automated environment what “electronic” event triggers the transfer of liability and the obligation of a different bond.

CBP Response:

The transfer of liability to a new bonded party will be accomplished by the filing and acceptance of a new in-bond application for the merchandise to be transported in-bond. CBP is changing proposed § 18.3 in the final rule to make this clear.

Comment:

Throughout the proposed regulations there are references to “the bonded carrier” but it is often unclear which bonded carrier has the liability for the cargo. As there may be more than one bonded entity involved in an in-bond movement (e.g., arriving carrier, delivering carrier, export carrier, FTZ operator), a clear understanding is required of the events and evidence that would shift legal liability from one bonded party to another, particularly in an electronic environment.

CBP Response:

For further clarification, CBP is adding a definition to proposed § 18.0(b) for “bonded carrier.” This term is defined as the carrier whose bond is obligated for the in-bond movement of the merchandise as shown in the in-bond record. This party is liable for failure to meet the requirements of Part 18, Part 122 or Part 123 (as applicable) or any of the other conditions specified in the bond. CBP is also changing proposed § 18.3 in the final rule to clarify that in order to transfer liability from one carrier to another, a

report of arrival must be filed for the in-bond merchandise and the subsequent carrier must submit a new in-bond application pursuant to § 18.1.

Comment:

Holding the bonded carrier liable for liquidated damages for failing to comply with any of the requirements found at Part 18 or any of the conditions specified in the bond is too broad. This affords CBP a general license to impose liquidated damages against bonded carriers for even minor and technical infractions such as unintended data transmission errors. CBP should assess liquidated damages only for egregious violations and other violations specifically listed, such as for irregular delivery.

CBP Response:

Liquidated damages are assessed when the conditions of the bond are violated. One of the conditions is to comply with CBP regulations relating to the handling of bonded merchandise. See §113.63(b)(3). CBP primarily ensures compliance with in-bond requirements, including those that the commenters have categorized as “minor and technical infractions,” through the assessment of liquidated damages. CBP disagrees that it should take action only with respect to egregious violations. The obligations established by regulation regarding the processing of in-bond entries and safekeeping of in-bond merchandise are necessary requirements. A breach of any of the obligations may result in the assessment of liquidated damages. The decision to assess any claim is one of administrative discretion, so CBP may always refrain from issuing a claim if deemed advisable. CBP may also choose to cancel liquidated damages claims upon payment of a lesser amount pursuant to 19 U.S.C. § 1623(c) and has published guidelines when CBP deems that such action is appropriate.

Comment:

The bonded carrier should not be held liable for the submission of data elements for which it has no true knowledge of their accuracy.

CBP Response:

The carrier whose bond is obligated is responsible for the information submitted in conjunction with the in-bond application and subsequent updates to the in-bond record and is subject to the assessment of liquidated damages for not complying with the terms of the bond, which includes adherence to the in-bond regulations. However, when issuing claims and considering their mitigation, CBP will consider whether a party reasonably relied on information submitted to it from a third party.

Comment:

The language in proposed § 18.2 should be revised so that when merchandise is delivered to a bonded common carrier, contract carrier, freight forwarder or private carrier, the merchandise may be transported with the use of facilities of other bonded or non-bonded carriers; however, the responsibility for the merchandise will remain with the common carrier, contract carrier, freight forwarder or private carrier whose bond is obligated.

CBP Response:

Under proposed § 18.2, merchandise may be transported with the use of facilities of other bonded or non-bonded carriers. However, the responsibility for transporting in-bond merchandise will remain with the party whose bond is obligated.

**H. Export of Merchandise**

1. Reporting Arrival at Port of Exportation

Comment:

The proposed changes to the in-bond process mandate that the delivering carrier report, via a CBP-approved EDI system, the arrival of any portion of an in-bond shipment within 24 hours of arrival at the port of exportation. This represents a substantial change from the current regulations. Currently, the carrier has “2 working days after arrival” to report. The reduction to 24 hours places a substantial new reporting burden on the carrier, zone operators, and other parties, that will require additional staff to work weekends and holidays. The proposed 24-hour requirement should be changed to two business days.

CBP Response:

CBP agrees. As discussed in Section I.B.2. above, CBP is changing proposed § 18.20 to require the report of arrival be filed within two business days after arrival. In addition, CBP is moving the provision setting forth this time limit from § 18.20(c) to § 18.20(g), as it fits better in the context of paragraph (g).

Comment:

How will CBP respond to system down time if ACE is not available to report the arrival of the in-bond merchandise within 24 hours?

CBP Response:

CBP is changing proposed §§ 18.1(j), 18.7(a)(1), and 18.20 to provide that the notice of arrival must be submitted within two business days after arrival. This should generally provide adequate time in the event of a system outage. In case there is an outage that prevents compliance with the notice requirements, carriers will need to contact the port at which the in-bond merchandise has arrived for instructions on how to

submit the required information. Each outage presents unique circumstances that will be dealt with on a case-by-case basis according to the port's instructions.

Comment:

Proposed §§ 18.7(a)(3), 18.20(g), 18.25(f) and 18.26(e) require the bonded carrier to update the in-bond record when the in-bond merchandise is exported. The proposed language is unclear as to which bonded carrier must complete this notification. Because there can be multiple bonded carriers involved in the transport of merchandise for a single shipment, CBP should clarify the language regarding the specific bonded carrier that is responsible for this notification.

CBP Response:

After further consideration, CBP is of the view that for consistency, any of the parties who can amend the in-bond record as described in proposed § 18.1(h) should be able to update the in-bond record to reflect that the merchandise has been exported. These parties include the filer of the in-bond application or any other party identified in § 18.1(c). Therefore, CBP is changing proposed §§ 18.7(a)(3), 18.20(g), 18.25(f) and 18.26(e) in the final rule to remove the requirement that the bonded carrier must update the record and to simply provide that the in-bond record must be updated by any of the parties identified in 18.1(c) or their agent. However, the party whose bond is obligated is the party that is responsible for ensuring the in-bond record is up to date.

2. Proof of Exportation

Comment:

For consistency, CBP should provide a detailed list of all acceptable forms of proof of exportation. The current CBP practice on the southern border with Mexico is to

require a supervised export and for CBP to provide the driver with a perforated copy of the CBP Form 7512. This document serves as the proof of exportation. Will CBP create a new form that can serve as proof of export?

CBP Response:

Section 113.55 covers the procedures for cancelling export bonds and lists the documents that may be used as proof of export for such purpose. These documents would also be acceptable proof that in-bond merchandise has been exported. The documents, or their electronic equivalent, included in § 113.55 are the listing of the merchandise on the outward manifest or outward bill of lading, the inspector's certificate of lading, the record of clearance of the vessel or of the departure of the vehicle, and a foreign landing certificate if the certificate is required by the port director. CBP will not create a new form of the perforated CBP Form 7512. These paper documents would be used in an audit scenario to demonstrate exportation of the in-bond merchandise.

Comment:

Proposed §§ 18.7(a)(3), 18.20(g), 18.25(f) and 18.26(e) provide that the principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation. However, the language is unclear as to which bond is obligated especially when there are multiple carriers. Clarification as to which principal is required to complete this notification, especially in the circumstance of multiple carriers for a single in-bond move, should be provided.

CBP Response:

The requirement to provide proof of exportation at the request of the port director resides with the party whose bond was obligated to complete the in-bond transaction.

Comment:

CBP should clarify the meaning and intent of proposed § 18.26(c) (Transfer at selected port of exportation). It specifies that if in-bond merchandise is to be transferred to another conveyance after it has arrived at the port of exportation, the procedures prescribed in proposed § 18.3(d) will be followed. However, proposed § 18.3(d) pertains to the “Transshipment of merchandise in emergency situations.” The transfer to another conveyance under normal course of business is not an “emergency situation.”

CBP Response:

For clarity, CBP is moving the provision covering the removal of seals from proposed § 18.3(d) (transshipment of merchandise in emergency situations) to § 18.4(c) (removal and replacement of seals). The language in proposed § 18.26(c) is being changed accordingly to reference the procedures for the removal of seals in § 18.4(c) in this final rule. Regarding the concerns of the commenter, the placement of the procedures for the removal of seals under its new heading in § 18.4(c) makes clear that the procedures do not merely apply in an “emergency situation.”

Comment:

Proposed § 18.23 provides that T&Es may be entered for consumption, warehouse, FTZ or any other form of entry, and are subject to all the conditions pertaining to merchandise entered at a port of first arrival. The options provided are viable for in-bond shipments, whether or not there is a change of foreign destination or change of entry. Therefore, this language should apply to all types of entries, not just T&Es and should be included in proposed § 18.20 (General Rules), rather than in § 18.23 regarding change of foreign destination.

CBP Response:

Although the commenter's suggestion has some merit, for consistency and clarity CBP has tried to mirror the format of the existing regulations when possible and to include substantive provisions under detailed headings. In this case, the current regulation that addresses the change of entry for T&Es is § 18.23 (Change of destination; change of entry) and the current regulation that addresses the change of entry for ITs is § 18.12 (Entry at port of destination). We are amending § 18.12(a) to specifically state that merchandise received under an immediate transportation entry at the port of destination may be entered for consumption, transportation and exportation, immediate exportation, or for immediate transportation, or under an FTZ admission. Current § 18.23 also specifies what happens when T&E merchandise is subject on importation to quarantine or other restrictions. The proposed regulations maintain this same format and headings. The statement that T&Es are subject to all the conditions pertaining to merchandise entered at a port of first arrival is intended to incorporate and expand on the concept in the current regulation about merchandise that is subject on importation to quarantine or other restrictions.

**I. Diversion of Merchandise**

Comment:

Proposed § 18.5(a) requires the party that submitted the in-bond application to submit a request to divert merchandise via a CBP-approved EDI system. It further provides that authorization for the diversion and movement of merchandise will be transmitted via a CBP-approved EDI system. Approval should be automatic. When the

diversion request is denied, CBP should provide a detailed reason for the denial within 24 hours of the denial notification.

CBP Response:

CBP will notify the filer of the approval immediately by the updating of the port code in the in-bond record. If the update of the port code is rejected, that will constitute the denial of the diversion request. The in-bond record will be updated quickly upon the denial of the diversion request. Although the filer will not be notified of the reason for the denial, the filer may contact the port for such information.

Comment:

If a diversion is prohibited, for example, by law or for a specific control of a commodity or shipment, this could be noted systemically by CBP at the time of original processing and approval of the in-bond application. A statement such as “Diversion Not Authorized” could be added to the in-bond record for simple reference by CBP and the in-bond carrier.

CBP Response:

CBP will take this comment under advisement for future updates to the CBP-approved EDI.

Comment:

Express carriers use multiple ports from which to export in-bond shipments from the United States. Packages shipped in-bond may be re-routed and diverted to different ports of exportation several times prior to the actual exportation of the merchandise. As a result, CBP may receive several diversion requests for one in-bond shipment prior to exportation. This could place a substantial burden on the carrier and on CBP’s systems.

Moreover, due to the large volume and short timeframes involved, it may not be possible to verify the accuracy of the requests until the in-bond shipment is physically exported. Therefore, CBP should accept diversion updates post departure when the data is most accurate. This would minimize the number of diversion messages reported to CBP and increase data accuracy.

CBP Response:

CBP is requiring authorization to divert in-bond merchandise because the existing diversion procedures make it challenging for CBP to identify the destination port of a diverted shipment and to determine whether the merchandise reaches that destination. This situation presents a security risk, a risk of circumvention of other agencies' admissibility requirements, and a risk that proper duties will not be collected. Acceptance of post-departure diversion requests would undermine the objectives of the proposed rule. Diversion requests and updates can be submitted at any time and are not limited in number. If the port of exportation for in-transit shipments changes multiple times, the requests should be submitted for each change as the change occurs.

Comment:

The requirement in proposed § 18.5(a) to obtain authorization prior to the diversion of in-bond merchandise will reduce the ability of carriers to arrive merchandise at the destination port or port of exportation within 30 days. This is especially true if the diversion request is denied and the carrier has to re-route the in-bond merchandise.

CBP Response:

Approval and denial of diversion requests will be communicated immediately and should not result in delays long enough to impede the completion of the in-bond

movement within the required in-transit time. However, an extension of the in-transit time may be requested when necessary.

Comment:

In order to provide guidance to the trade community and to help CBP review diversion requests, CBP should establish criteria for granting or denying a diversion request. Some factors CBP should consider are the carrier's associated costs if the diversion request is denied, the time constraints associated with denying diversion requests, and any other constraints associated with the original port of destination or port of exportation.

CBP Response:

Although CBP has the discretion to deny a request for diversion, CBP will generally grant a reasonable diversion requests. For example, CBP will deny a request for a diversion when another government agency mandates delivery of the merchandise to the destination identified in the original filing. CBP is revising § 18.5 to incorporate this example.

**J. Immediate Transportation**

Comment:

With respect to the filing of an IT in-bond application, proposed § 18.11(a)(2) requires the importer to stipulate in the in-bond application that within 24 hours after the arrival of any part of the merchandise or baggage to a place outside the port of entry, the importer will file an entry for the shipment and will comply with the provisions of § 151.9 of this chapter, before permission will be granted by CBP to transport the merchandise in-bond. There is concern about having the bonded carrier stipulate that the

importer will timely file an entry and comply with other regulations since this is outside of the bonded carrier's control. It is also unclear how a stipulation to file entry is to be included on the in-bond application upon submission to CBP. In an effort to continue to transition to an electronic environment, if an actual stipulation is required, provisions for including this declaration in the electronic in-bond application should be available.

CBP Response:

To address these concerns, CBP is removing § 18.11(a)(2) from the final rule and adding the requirement that the in-bond merchandise be transported to a place outside the port of entry in accordance with the provisions of §§ 151.7 and 151.9 of this Chapter.

**K. Divided Shipments and Retention of Goods within Port Limits**

1. Divided Shipments

Comment:

Is CBP requiring the bonded carrier to request authorization for a split shipment in advance of the shipment movement? If so, when must the request be submitted? In most cases, the bonded carrier will not be aware of a split movement until the initial conveyance has departed. The split movement will not be known until a portion of the shipment has in fact been exported, departed the port of unloading or has arrived at the destination port.

CBP Response:

Proposed § 18.5(c) only covers situations where a carrier diverts an in-bond shipment to more than one port, or where a portion of an in-bond shipment is approved for a consumption or warehouse entry. In such cases, a diversion request is necessary. If granted, a new in-bond application must be submitted for each portion of the original

shipment to be transported in-bond. CBP is changing proposed § 18.3 in the final rule regarding transfer to eliminate the requirement to obtain CBP authorization when in-bond merchandise is transported on more than one conveyance, but arrives at the same destination port or port of exportation. Also, for clarity, CBP will use the term “divided shipment” in this final rule instead of “split shipment” to refer to the situation where a carrier diverts an in-bond shipment to more than one port or to a consumption or warehouse entry. CBP used the term “split shipment” in the proposed rule to refer to the division of an in-bond shipment. However, the term “split shipments” refers specifically to the treatment of multiple entries of merchandise as a single transaction pursuant to 19 U.S.C. 1484(j) and 19 CFR §§ 141.57 and 141.58.

Comment:

The requirement in proposed § 18.5(c) to initiate a new in-bond for each [divided] shipment will be difficult for express carriers to comply with because of the large number of in-bond shipments that they move through the United States. CBP should consider allowing the carrier or agent to submit the [divided] shipment information after departure, when the information is most accurate. This process will provide CBP the most accurate up to date export or arrival information which will assist CBP with the electronic reconciliation of the in-bond record.

CBP Response:

CBP is requiring the filing of a new in-bond application for in-bond shipments that will be diverted to more than one port to enable CBP to identify in advance the destination of a diverted shipment and to determine whether the merchandise reaches that destination. This procedure will also ensure that other agencies’ admissibility

requirements are not circumvented and that proper duties are collected. CBP appreciates that this process may impose a burden on express carriers and CBP will seek ways to mitigate this burden.

Comment:

CBP should automate the ASN3 (in-bond arrival message set for Air AMS) and ASN7 (in-bond export message set for Air AMS) messages to allow for piece count and export port identifier to properly track the [divided] shipment. This will provide CBP updated movement information, including ports of departure.

CBP Response:

CBP has incorporated these automation features in Air ACE, which has replaced Air AMS and is now operational.

Comment:

CBP's requirement in proposed § 18.24(b) that all movements of a [divided] shipment be initiated within two days after the [division] has been authorized is not feasible for various reasons. First, the conveyance must be secured and loaded and normal delivery hours and schedules at the port can limit the amount of loading that can be accomplished in a two-day period. Second, in many cases, a bonded carrier may have limited conveyances for specific export destinations or ports. Third, it may be impossible to close a [divided] shipment within two days when multiple modes are utilized (combination of truck and air). Finally, some shipments are more time consuming and require special handling.

CBP Response:

CBP agrees that it may not be feasible to initiate movement of divided shipments within two days of the day CBP authorized the divided shipment. CBP is removing this requirement in the final rule.

2. Retention of Goods within Port Limits

Comment:

Proposed § 18.24(a), which allows for the retention of goods within the port limits for up to 90 days with CBP approval, should be clarified as follows: 1) to indicate that retention as described is at the port of exportation and 2) to specify how the application to retain the goods at the port of exportation for up to 90 days should be made. Is the purpose of requiring the filing of an Immediate Exportation (IE) entry to close the original Transportation and Exportation (T&E) entry to shift liability for the in-bond cargo?

CBP Response:

CBP is changing proposed § 18.24(a) in the final rule to clarify that the retention of goods applies to the port of exportation. The application to retain the merchandise at the port of exportation must be made, and approval will be given, via a CBP approved EDI. The purpose of filing an IE is to close out the original T&E. The party whose bond is obligated on the IE will be the party who is responsible for the export of the merchandise. However, the party obligated on the original T&E remains obligated for the shipment unless and until an IE is filed.

**M. Potential Impact**

Comment:

One commenter estimated that the new data, reporting, and monitoring requirements of the proposed rule will increase costs for in-bond carriers in a number of ways. The commenter claims that requiring carriers to report the HTSUS number and changing the requirement from having to file the final foreign destination to having to file the ultimate destination will increase costs by an estimated 5 percent and 1 percent, respectively, and requiring carriers to notify CBP of a change in the final foreign destination will increase costs by an additional 5 percent. The commenter further states that carriers will see significant cost increases due to the shortened transit time, the requirement to request extensions when in-bond cargo cannot reach the ultimate destination within the required time, and the ability of government agencies to shorten, with notice, the required transit time. Lastly, the commenter notes that the requirement to receive authorization to transport and/or divert restricted merchandise from the government agencies responsible for regulating the restricted merchandise will also increase costs significantly.

CBP Response:

CBP has taken these cost estimates submitted by the commenter under advisement when finalizing this rule. However, because CBP received comments on the cost impacts of this rule from only one party and this commenter does not provide specific data concerning the nature of the cost impacts, we are unable to extrapolate the estimates to the entire universe of carriers. CBP believes that the above changes to the in-bond requirements are necessary for the security of the United States, for protection of the revenue and to ensure that merchandise admissibility is not compromised. However, whenever possible, CBP has made changes to lessen the burden and costs to the public in

response to various comments. For example, in response to concerns that in-bond shipments transported by barge may not be able to arrive at the destination port or port of exportation within 30 days, CBP changed proposed § 18.1(i)(1) to allow 60 days for the arrival of in-bond merchandise transported by barge. For a full discussion of the costs and benefits of this regulation, see Section IV., Regulatory Analysis.

## **N. Miscellaneous Items**

### **1. Impact on Inland Ports**

#### Comment:

Has CBP taken into consideration the impact the changes this rule will have on inland ports of entry and the clearance process? As shippers examine the impact of the proposed changes on their business and determine that the in-bond process has become too onerous and burdensome, they may look to change their business practices and stop transporting merchandise in-bond. This could impact staffing levels at inland ports that were once needed to process consumption entries for in-bond merchandise.

#### CBP Response:

The new electronic in-bond processing should facilitate the use of in-bond procedures. Although concerns have been raised about some of the requirements contained within the proposal (many of which CBP is addressing by not adopting various proposed provisions in this final rule), CBP has received no other comments indicating that shippers will stop using the in-bond program.

### **2. Supervision of Rail Shipments**

#### Comment:

To maximize space and weight used on a rail car, importers may preload a railcar and provide the carrier the load sheet details. The carrier then transmits the exact load per rail car to CBP. Once the in-bond submission is accepted by CBP the rail car dispatches. Will CBP advise the carrier prior to loading and in-bond transmission if supervision is required?

CBP Response:

If supervision is required, CBP will notify the carrier prior to acceptance of the in-bond application.

3. Textiles

Comment:

The textile provision in proposed § 18.1(d)(1)(iv) goes far beyond the requirements of a carrier moving commodities from origin to destination, regardless of crossing borders. This provision, which is specific to legislation dating back over 60 years, pertains to admissibility and not transport. More fundamentally, reference to the Agricultural Act of 1954 is in essence reference to quantitative restrictions, *i.e.* quotas, which are now eliminated for textile and apparel items from most origin countries. Consequently, this requirement is applicable for only a small minority of imported textile and apparel items, and therefore unduly burdensome. Moreover, this provision requires information that is not readily available to carriers and in such detail that carriers cannot comply with the provision without the assistance of a customs broker.

CBP Response:

The proposed requirements mandating the in-bond filer to provide sufficient detail for certain textile items so that the port director can determine the duties and taxes are in

the existing regulations at § 18.11(e), pertaining to IT shipments. These requirements have not posed problems for carriers in the past. The proposed regulations did expand the application of these requirements by making them also applicable to IE and T&E shipments. In order to minimize the burden on the trade and to make it consistent with the existing regulations, CBP is removing this requirement from proposed § 18.1(d)(1)(iv) and moving it to § 18.11(d) so that it is only applicable to IT in-bond shipments as is currently the case.

#### 4. Cartmen

##### Comment:

Proposed § 18.1(d)(3) provides that the in-bond application can be filed at any time prior to the merchandise departing the in-bond origination port. In the past, CBP required authorization for the movement of the cargo from the importing carrier/terminal to the bonded carrier by bonded cartmen within the port limits and, indeed, the CBP Form 7512 document was integral to this process. CBP should clarify (1) whether bonded cartmen will be subject to this new requirement, and (2) CBP's plans and programming changes for bonded cartmen reporting requirements relating to such delivery from the importing to bonded carrier within the origination port limits.

##### CBP Response:

A permit to transfer is still required in order to move the merchandise from the importing carrier or terminal to the bonded carrier moving the merchandise in-bond. This rule does not change that requirement or the timing of such requirement. CBP is making programming changes to facilitate the reporting requirements for bonded cartmen. Appropriate regulatory changes will be made in the future.

#### 5. Carnets

Comment:

CBP should clarify the numerous references to carnets throughout CBP's proposed changes to the in-bond process. This NPRM is not intended to include the ATA (Admission Temporaire - Temporary Admission) and Tecro/AIT<sup>2</sup> carnet as they are not considered "in-bond" entries. Accordingly, CBP should remove any reference to ATA and Tecro/AIT carnets, as well as any generic references to carnets. At present, the ATA and Tecro/AIT entries are handled by entering the data manually and CBP should work with the trade to ensure that ACE and/or ACS can accommodate the tens of thousands of ATA and Tecro/AIT entries per year.

CBP Response:

This rule does not change the regulations as they relate to ATA and Tecro/AIT carnets either substantively or where they are codified.

6. Sharing of Information and Confidentiality

Comment:

The proposed rule does not promote or maintain the confidentiality of the shipper's or importer's commercial information. While it is true that entry information transmitted to CBP by a customs broker is exempt from disclosure, it is equally true that manifest information filed by carriers is routinely accessed under the Freedom of Information Act by various commercial enterprises. Unless CBP recognizes in-bond entries as "customs business" and restricts the transmission of this information to licensed customs brokers, it must be anticipated that carriers and transportation intermediaries will

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<sup>2</sup> "TECRO/AIT carnet" means the document issued pursuant to the Bilateral Agreement between the Taipei Economic and Cultural Representative Office (TECRO) and the American Institute in Taiwan (AIT) to cover the temporary admission of goods. 19 CFR 114.1(g).

seek to streamline their processes and require that this information be included on the existing shipping documentation which their staffs are accustomed to handling. This will further expose shipper's or importer's confidential business information to dissemination within the supply chain without a concurrent trade benefit. CBP needs to develop a mechanism to keep this sensitive commercial information private or restrict its transmission to those parties who are required by statute to safeguard their client's commercial information, i.e., customs brokers.

CBP Response:

The filing of an in-bond application does not constitute customs business requiring a licensed broker and CBP does not believe that CBP needs to mandate the use of customs brokers in order to safeguard sensitive commercial information. CBP has modified the proposed regulations to require less detailed information in the in-bond application (e.g., removing proposed § 18.1(d)(1)(v) requiring other identifying information and removing the requirement to provide the rule, regulation, law, standard or ban relating to health, safety or conservation in proposed § 18.1(d)(1)(ii)). As a result, carriers will not have to include entry information on shipping documentation. Existing protections of confidential business information under § 103.35 would apply to any covered confidential information on the in-bond application. The release of manifest information is covered by § 103.31. It provides the procedures for protecting manifest information from release and allows importers, consignees and shippers to claim confidential treatment for this information.

Comment:

Clarification should be provided regarding the utilization of the information required in the in-bond application, as well as CBPs proposed methodology to validate, store, maintain, and disseminate, this information.

CBP Response:

The information provided on the in-bond application will be used for targeting and enforcement purposes, to prevent smuggling and fraud, and for security purposes. The information will also be used to track and close the in-bond shipment. For information on the maintenance and dissemination of this information see the following Systems of Records Notices (SORNs). The SORN for ACE is available at: <http://www.gpo.gov/fdsys/pkg/FR-2006-01-19/html/E6-511.htm> and was published in the **Federal Register** on January 19, 2006 (71 FR 3109). ABI is covered by the ACS SORN, which is available at: <http://www.gpo.gov/fdsys/pkg/FR-2008-12-19/html/E8-29801.htm> and was published in the **Federal Register** on December 19, 2008 (73 FR 77759).

Comment:

Electronic in-bond filing and tracking of shipments, combined with the additional data CBP will collect on these shipments, will provide an effective and business-friendly means to combat the problem of fraudulent paperwork to claim NAFTA benefits so long as the in-bond information can be shared with Mexico when the goods are shipped from the United States.

CBP Response:

This rule does not affect information sharing with Mexico. CBP will continue its current procedures and policies for sharing information with Mexico pursuant to existing agreements.

## 7. Definitions

### Comment:

Terms commonly used in the proposed regulations, such as conveyance, containerized shipments, compartments, carloads, cartman, delivering carrier, lighterman, port cluster, import carrier, export carrier, transshipment and ultimate destination, should be defined to establish uniformity in application and meaning within the regulations.

### CBP Response:

CBP does not believe it is necessary to define all the terms used in the proposed regulations. CBP has defined the terms which are essential to the proper and uniform application of the in-bond regulations. These include Common carrier, Origination port, Port of destination, Port of diversion, and Port of exportation as set forth in proposed § 18.0, and Bonded carrier, which CBP is adding.

### Comment:

The proposed regulations define port of destination as the U.S. port at which merchandise is entered after being shipped in-bond from the origination port where it was entered as an immediate transportation entry. We believe the text should be revised to include other possibilities, such as admission to a foreign-trade zone and more than one movement under more than one bond.

### CBP Response:

CBP agrees that various provisions of the proposed in-bond regulations should apply to goods admitted to a foreign-trade zone and is changing various sections in Part 18 in the final rule (§§ 18.20(e), 18.23(b), and 18.25(b)) to add a reference to admission into a foreign trade zone. In view of these changes, there is no need to revise the

definition of “port of destination.” This approach provides CBP with flexibility and allows CBP to accurately describe the requirements and procedures under specific provisions.

#### 8. Restriction of IE by Truck

##### Comment:

Does proposed § 18.25(b) provide the port director with the discretion to allow the filing of the IE entry? If the port director does not have this discretion, this proposal would pose a hardship for some Canadian business located on the Canadian border and on importers who participate in maquiladora operations in Mexico.

##### CBP Response:

CBP recognizes that there may be legitimate purposes for the filing of an IE entry and is changing proposed § 18.25(b) to state that trucks “may” be denied a permit to proceed. This will provide the port director with discretion regarding whether to allow this process. The port director will make his or her determination on a case-by-case basis.

#### 9. Express Shipments

##### Comment:

Proposed § 18.22 is confusing. Although the heading refers to “Transfer and express shipment procedures at port of exportation,” paragraph (a) does not appear to cover express shipment procedures. Also, paragraph (a) states that if in-bond merchandise must be transferred to another conveyance, the procedure will be as prescribed in proposed § 18.3(d); however, proposed § 18.3(d) covers the transshipment

of merchandise in emergency situations. CBP must define “express shipment” and clarify the meaning and intent of § 18.3.

CBP Response:

CBP agrees that these provisions are confusing and is making various changes to address this issue. First, CBP is incorporating the title of § 18.22 in the existing regulations, “[p]rocedures at port of exportation,” and using the term “exportation” instead of “exit.” Second, CBP is changing proposed § 18.3(d) in the final rule by removing the provision for the removal of seals in emergency situations and changing proposed § 18.4(c) to cover the removal of seals in all situations. Concurrent with these changes, CBP is changing proposed § 18.22(a) in the final rule to refer to §§ 18.3 and 18.4(c) for the procedures to be followed when bonded merchandise is transferred to another conveyance. Finally, in order to clarify what is meant by “express carrier,” CBP is changing proposed § 18.22(b) by removing the term “express company” and replacing it with the term “express consignment carrier,” which is defined in § 128.1(a) of the current regulations.

10. Automated Broker Interface (ABI)

Comment:

Proposed § 143.1 specifies that upon approval by CBP, any party may participate in ABI for other purposes, including transmission of protests, and applications for FTZ admission (CBP Form 214). We note that the application for a transfer of an in-bond movement, which is currently included, has been omitted from this section. However, our interpretation is that this is the language authorizing the utilization of ABI by any party outside of the designation of customs broker, importer, or service bureau. CBP

should preserve the current language so that it includes the filing of the in-bond application via ABI.

CBP Response:

CBP agrees and is changing proposed § 143.1 to include the “filing of an in-bond application” as one of the purposes for which parties may use ABI.

11. Foreign-Trade Zones (FTZs)

Comment:

CBP received many comments regarding the processing and handling of FTZ merchandise pursuant to part 146. These comments addressed many substantive issues pertaining to FTZs and the procedures for the admission into and processing of merchandise in FTZs.

CBP Response:

CBP only proposed amending part 146 to make conforming changes to the proposed in-bond regulations and not to substantively alter the general procedures that apply for the admission into FTZs and the processing of FTZ merchandise. Specifically, CBP removed the references to the “CBP Form 7512” and replaced it with “in-bond application.” Therefore, comments recommending substantive changes to the CBP regulations on FTZ processing are outside the scope of this rulemaking and will not be addressed.

Comment:

It is unclear in the proposed regulations what event triggers the relief or transfer of liability from the bond of the carrier. In a FTZ direct delivery authorized environment, filing of an admission is not required prior to delivery of the goods.

CBP Response:

The actual admission of the merchandise into the FTZ satisfies the carrier's in-bond obligation.

Comment:

CBP should preserve the use of the CBP Form 7512 for FTZ admissions until an automated solution can be developed.

CBP Response:

The processes for admitting and withdrawing merchandise from FTZs for purposes of filing in-bond movements is fully automated using QP/WP.

Comment:

Proposed § 146.67 provides for the transfer of merchandise from a FTZ for exportation. Paragraph (b) states that "each transfer of merchandise to the customs territory for exportation at the port where the zone is located will be made under an entry for immediate exportation filed in an in-bond application pursuant to part 18 ..." This section should state that only the owner/operator acting for their own account or a licensed customs broker is eligible to file such an entry with CBP.

CBP Response:

CBP disagrees. The parties authorized to file the in-bond application should be the same, regardless of whether the merchandise is in a FTZ.

12. Importer Security Filing (ISF)

Comment:

The six-digit HTSUS code is required to be provided, if available, pursuant to proposed § 18.1(d)(1)(i), and is also required to be transmitted to CBP 24 hours prior to

loading in order to satisfy importer security filing (ISF) requirements. CBP should eliminate the requirement to re-transmit this data element as part of the in-bond application since it is already resident within CBP's system.

CBP Response:

One of the purposes of the in-bond regulations is to ensure that in-bond merchandise is properly transported in-bond before being entered or exported. The information CBP receives on the ISF is not sufficient for proper tracking and enforcement of in-bond requirements. First, ISF data is required only for merchandise arriving in the United States by vessel and not for merchandise arriving in the United States by rail or truck, which are also covered by this rule. Second, pursuant to § 343(a)(3)(F) of the Trade Act of 2002, as amended (19 U.S.C. 2071 note), CBP can only use ISF data for limited purposes, *i.e.*, for ensuring cargo safety and security, preventing smuggling, and commercial risk assessment targeting. Accordingly, CBP requires the six-digit HTSUS number as part of the in-bond application.

Comment:

CBP should restrict the in-bond information requirements to those additional data elements that are not already required to be submitted as part of the advance manifest. Duplicative transmission of data elements will only add to the cost of importing without yielding any security or commercial benefits.

CBP Response:

If the carrier electronically files both the advance manifest information and the in-bond application, the carrier would not need to provide duplicative information. Only

those few additional data elements that were not provided with the advance manifest information would need to be submitted to satisfy the in-bond application requirements. Only in the instance where the manifest is filed by the carrier and the broker (or other party) files a QP movement on behalf of the carrier would there be duplicative information. Carriers will not have to file duplicative data elements, if they have already filed advance manifest information.

Comment:

CBP should clarify procedures in case of over-carried merchandise (i.e., merchandise that was shipped, but not included on the manifest or bill of lading) for which no advance manifest and ISF were filed. If over-carried cargo is to be re-exported, will CBP authorize an in-bond without an advance manifest and ISF?

CBP Response:

CBP will authorize an in-bond transaction to re-export overcarried merchandise for which no advance manifest and ISF were filed. Before filing the in-bond application, a bill of lading would have to be created in ACE to create the in-bond record. However, any applicable penalties for the overcarried merchandise would apply.

13. Redelivery

Comment:

The requirement in proposed § 18.6(c) that CBP must demand return of the merchandise to CBP custody (no later than 30 days after the shortage, delivery, or nondelivery is discovered by CBP) is not realistic. Lean manufacturing and distribution principles incorporated in the mainstream activities for companies in today's just-in-time environment can drive the necessity for immediate response and action for merchandise

being received at facilities daily. Often merchandise received at facilities before noon is introduced into manufacturing processes or distribution activities before close of business on the same day. This rapid movement and processing of cargo results in the inability to redeliver cargo, intact or otherwise, within 30 days from date of mailing, date of delivery, or demand for redelivery by CBP.

CBP Response:

The proposed rule is consistent with existing requirements regarding the redelivery of merchandise in § 113.63(d) and current § 18.6(b). The 30-day timeframe for CBP to demand redelivery is necessary in order to allow CBP to verify the violation leading to the demand for redelivery and to allow sufficient time to process the demand for redelivery. CBP is aware that merchandise may enter the stream of commerce and will strive to process demands for redelivery as quickly as possible.

Comment:

CBP should accept proof of the final disposition of the in-bond entry as full satisfaction of a demand for redelivery when a redelivery is requested after the in-bond transaction has completed. For example, if merchandise was exported prior to a demand for redelivery, then proof of export should satisfy the demand for redelivery without any penalty or liquidated damages for failure to redeliver. Similarly, if merchandise is entered for consumption prior to the request for redelivery then the consumption entry should satisfy the demand for redelivery without any penalty or liquidated damages for failure to redeliver. The bonded carrier is still responsible for the initial violation of the irregular delivery and liquidated damages is the appropriate way to penalize the bonded carrier instead of requiring redelivery of merchandise that has already been exported. In

addition, language should be included allowing the acceptance of a foreign-trade zone admission for the full manifested quantity, unless a lesser amount is reported. Admission and validation by a FTZ Operator should satisfy the demand for redelivery of merchandise for shipments in which a shortage has been noted.

CBP Response:

The fact that merchandise was exported or entered for consumption prior to receipt of a demand for redelivery does not necessarily mean that liquidated damages are inappropriate. CBP considers whether the information provided satisfies a demand for redelivery and whether the assessment of liquidated damages is appropriate taking into account the facts and circumstance of each individual case.

Comment:

Will the redelivery be limited to the quantity of a shortage, i.e., the quantity not delivered, or will CBP have the authority to demand redelivery of all merchandise covered under that in-bond entry? The demand for redelivery should be limited to the merchandise involved in the violation. Once the merchandise is exported, the bonded carrier will have little, if any, ability to ensure that the merchandise is redelivered.

CBP Response:

CBP has authority to demand redelivery of all the merchandise covered by an in-bond entry. However, CBP will determine which merchandise to include in a demand for redelivery on a case-by-case basis, taking into account the factors warranting the demand.

Comment:

In case of a shortage, will the importer or broker be able to add the in-bond number covering the short shipped pieces to the same CBP Form 3461 or will a new entry have to be filed?

CBP Response:

The importer/broker can note the change on the CBP Form 3461 (Entry/Immediate Delivery) or the CBP Form 7501 (Entry Summary), or via a post summary correction if the entry summary has already been filed.

Comment:

It is not clear what CBP means by a "short shipment" in proposed § 18.6(a). Does it mean that a portion of the shipment covered by the original in-bond application did not arrive with the rest of the shipment? If so, short shipments would occur for routine multiple container in-bond shipments that cannot be shipped on a single truck or rail car.

CBP Response:

A short shipment means that a portion of the shipment covered by the in-bond application did not arrive at the port of destination or port of exportation. If the merchandise is transported in multiple conveyances, then the shipment can arrive at separate times without resulting in a short shipment. Typically, a short shipment would occur when a portion of an in-bond movement fails to arrive at the in-bond destination within the in-transit period.

14. Pipelines

Comment:

Currently many in-bond pipeline movements are filed via the QP/WP electronic filing system. Will electronic reporting for pipelines still be allowed? Will the weekly

in-bond processes that are currently utilized for pipeline in-bond still be allowed under the new rules? Do the various compliance requirements contained in the NPRM as part of the move to electronic processing of in-bond movements apply to pipeline movements even though in-bond applications for pipeline shipments are not required to be submitted electronically?

CBP Response:

The amendments to the in-bond regulations will not affect the current procedures for in-bond shipments moving via pipeline. Nothing in this rule changes the current procedures and systems that are utilized for in-bond pipeline movements. For example, the in-transit time limits in this rule do not apply to in-bond pipeline movements; CBP is adding a sentence to proposed § 18.1(i)(1) to clarify this. Although the requirements that are related to the electronic filing of an in-bond application do not apply to pipeline movement, carriers can choose to submit electronic in-bond applications and subsequent updates for pipeline in-bond movements using QP.

### **III. Adoption of Proposal**

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, CBP has concluded that the proposed regulations with the modifications discussed above should be adopted as a final rule.

### **IV. Regulatory Analyses**

#### **A. Executive Order 12866—Regulatory Planning and Review**

Executive Order 12866 (Regulatory Planning and Review; September 30, 1993) requires Federal agencies to conduct economic analyses of significant regulatory actions as a means to improve regulatory decision-making. Significant regulatory actions include

those that may “(1) [h]ave an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) [c]reate a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) [m]aterially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) [r]aise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.” It has been determined that this rule is not a significant regulatory action.

**B. Regulatory Flexibility Act**

Under the requirements of the Regulatory Flexibility Act of 1980 as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (RFA/SBREFA) and EO 13272, titled “Proper Consideration of Small Entities in Agency Rulemaking,” agencies must consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. CBP is required to prepare a regulatory flexibility analysis and take other steps to assist small entities, unless the Agency certifies that a rule will not have a “significant economic impact on a substantial number of small entities.”<sup>3</sup> The U.S. Small Business Administration (SBA) provides guidelines on the analytical process to assess the impact

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<sup>3</sup> Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 601 et seq.

of a particular rulemaking.<sup>4</sup> The following summary presents the impact of this rule on small entities.<sup>5</sup>

The types of entities subject to the rule's requirements include originating or bonded carriers, brokers, and other supply chain entities (e.g., exporters, manufacturers and suppliers, cargo consolidators, freight forwarders, third-party logistics providers, (3PLs), and container freight stations (CFSs)) involved in the transaction filing, conveyance, and arrivals reporting of in-bond goods. When finalizing a rule, if CBP is still unable to certify that a rule will not have a significant impact on a substantial number of small entities, after conducting an initial screening analysis and an Initial Regulatory Flexibility Analysis (IRFA), CBP is required to conduct a Final Regulatory Flexibility Analysis (FRFA).

Based on FY2007 in-bond shipment data, we estimate at least 6,230 trade entities could be affected by the rule, including 5,081 non-air carriers (sea vessel, rail, and truck carriers), between 212 and 221 air carriers, and possibly at least 870 other entities (e.g., freight forwarders, cargo consolidators, 3PLs, brokers, and CFS). The specific requirements of the rule (file in-bond transactions electronically, report in-bond arrivals electronically, provide additional data elements, request diversions, and meet allowable in-bond transit times) will affect all of these entities in some way. CBP lacks the data necessary to quantify the incremental cost of the rule or differentiate these costs by entity type, including size and nationality (many of the entities affected are likely foreign).

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<sup>4</sup> U.S. SBA, Office of Advocacy, "A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, Implementing the President's Small Business Agenda and Executive Order 13272," May 2003.

<sup>5</sup> The complete "Regulatory Flexibility Analysis and RFA" can be found in the docket for this rulemaking: <http://www.regulations.gov>.

Instead, we discuss these costs qualitatively. The following exhibit lists various alternatives CBP considered in developing this rule and characterizes their costs.

Exhibit 1. Relative Costs of Regulatory Alternatives

| Regulatory Alternative | Requirements  | Relative Cost   |
|------------------------|---|---|
| 1 (Chosen alternative) | <p><b>All of these five requirements are implemented</b></p> <ol style="list-style-type: none"> <li>1. File all in-bond application forms electronically</li> <li>2. Additional in-bond shipment data and information required</li> <li>3. Maximum in-bond transit time of 30 days</li> <li>4. Request and receive permission electronically prior to diverting in-bond cargo</li> <li>5. Report in-bond arrivals and arrival locations electronically</li> </ol> | <p><b>Highest</b></p> <p>Reason for high cost: Entities filing in-bond forms and/or reporting in-bond arrivals by paper only (582 non-air carriers plus an unknown number of other filers) would have to obtain electronic access to CBP or retain a third party agent or service provider. All entities (5,081 non-air carriers plus an unknown number of other filers) would have to obtain and provide additional in-bond shipment data to CBP by reprogramming their existing business and information systems and processes, using a third-party service provider, or relying on their trade partners. Those entities reporting arrivals (4,388 non-air carriers plus an unknown number of other filers) would have to reprogram their existing business and information systems and processes or use a third party service provider to electronically report arrival locations.</p> |
| 2                      | <p><b>Only the following four requirements are implemented</b></p> <ol style="list-style-type: none"> <li>1. File all in-bond application forms electronically</li> <li>2. Maximum in-bond transit time of 30 days</li> <li>3. Request and receive permission electronically prior to diverting in-bond cargo</li> <li>4. Report in-bond arrivals and arrival locations electronically</li> </ol>   | <p><b>Lower</b></p> <p>Costs are lower than Alternative #1 because the costs associated with obtaining and providing the additional in-bond shipment data and information would not be incurred, which could be significant for the most frequent filers. However, overall costs could still be significant to comply with the requirement of reporting arrival locations.</p>  |
| 3                      | <p><b>Only the following three requirements are implemented</b></p> <ol style="list-style-type: none"> <li>1. File all in-bond application forms electronically</li> <li>2. Maximum in-bond transit time of 30 days</li> <li>3. Request and receive permission electronically prior to diverting in-bond cargo</li> </ol>   | <p><b>Lowest</b></p> <p>Costs are lowest of the three regulatory alternatives because only a relatively small number of entities that currently file in-bond forms by paper only (537 non-air carriers plus an unknown number of other filers) would be affected. These entities must obtain electronic access to CBP or retain a third party agent or service provider.</p>  |

To determine whether a substantial number of small entities would be affected by the rule, we ideally would have employment and revenue information and data for all affected entities. The SBA defines entities as “small” if they fall below certain size standards in their industry (as defined by a North American Industry Classification

System (NAICS) Code), such as the number of employees or average annual receipts.<sup>6</sup> However, we do not have this information, as well as information identifying all of the entities that may be affected.<sup>7</sup> Other available descriptive data, such as in-bond shipment or transaction volume, transaction type, and whether an entity files in-bond transactions or report in-bond arrivals, are unreliable since they may not necessarily be related to entity size. As a result, we use national data on entities in the affected industries from the SBA to determine whether a substantial number of small entities are likely to be affected by the rule. Use of these data is imperfect because not all entities included in the SBA data set participate in the processing and movement of in-bond goods. Based on these data, nearly all of the entities in all industry groups likely to be affected by the final rule are small. CBP concludes, therefore, that a substantial number of small entities are likely to be affected by the final rule. CBP has characterized but cannot estimate the potential costs to entities of complying with the final rule. As a result, we cannot quantify the impact on small entities. We, therefore, conclude that the rule may significantly affect a substantial number of small entities.

Following the initial screening analysis, CBP published an IRFA, in accordance to Section 603 of the RFA/SBREFEA, for the proposed rule on July 11, 2012.<sup>8</sup> For the final rule, in accordance to Section 604 of the RFA/SBREFEA, CBP has conducted a FRFA that is being published concurrently with the final rule and is available in the

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<sup>6</sup> U.S. SBA, Summary of Size Standards by Industry, as viewed at <http://www.sba.gov/contractingopportunities/officials/size/summaryofssi/index.html> on January 14, 2013. <http://www.sba.gov/contractingopportunities/officials/size/summaryofssi/index.html> on July 28, 2010.

<sup>7</sup> We only have limited data on 5,081 unique non-air carriers, which comprise at most about 82 percent of all affected entities.

<sup>8</sup> The complete IRFA can be found by searching [www.regulations.gov](http://www.regulations.gov) for the docket number USCBP-2012-0002-0052.

docket of this rulemaking.<sup>9</sup> The following summary of the FRFA presents the impact of this rule on small entities.

The objective of the rule is to improve CBP's ability to regulate, track, and control in-bond cargo and to ensure that proper duties are paid or that the in-bond merchandise is exported.

Although CBP did not receive any public comments specifically addressing the IRFA or the impacts to small entities, one commenter estimated that the new data, reporting, and monitoring requirements of the proposed rule will increase costs for in-bond carriers in a number of ways. In finalizing the proposed rule, CBP took these cost estimates under advisement and has made changes to the rule to lessen the burden and costs to the public in response to various comments. See Section II.M., Potential Impact, of this document and in the complete FRFA for more information about this comment and CBP's response.

The Chief Counsel for the Advocacy of the Small Business Administration did not provide any comments on the IRFA for the proposed rule.

The types of entities subject to the rule's requirements include originating or bonded carriers, brokers, and other supply chain entities (e.g., exporters, manufacturers and suppliers, cargo consolidators, freight forwarders, 3PLs, and CFS) involved in the transaction filing, conveyance, and arrivals reporting of in-bond goods. Based on FY2007 in-bond shipment data, we estimate at least 6,230 trade entities could be affected by the rule, including 5,081 non-air carriers (sea vessel, rail, and truck carriers), between 212 and 221 air carriers, and possibly at least 940 other entities (e.g., freight forwarders,

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<sup>9</sup> The complete FRFA Final Regulatory Flexibility Act analysis can be found in the docket for this rulemaking: <http://www.regulations.gov>.

cargo consolidators, 3PLs, brokers, and CFS). The reporting and recordkeeping skills needed are professional skills necessary for preparation of electronic in-bond transactions, arrivals notifications, and diversion requests. These include basic administrative, recordkeeping, and information technology skills used to manage data transaction, shipment, manifest, security, and other data used in the commercial supply chain environment, along with a working knowledge of import shipment arrangements, brokerage, conveyance/shipping, consolidation, and customs procedures and regulation.

Exhibit 1 above lists the regulatory alternatives CBP analyzed in the IRFA; including those that minimized the incremental cost burden to carriers, brokers, and agents, including small entities. CBP was not, however, able to identify any significant regulatory alternatives to the rule that specifically address small entities while also meeting the rule's objective, which is to improve CBP's ability to regulate, track, and control in-bond cargo and to ensure that proper duties are paid or that the in-bond merchandise is exported. However, in finalizing this rule, as detailed above and in the complete FRFA contained in the docket, CBP has made changes to the proposed rule, based on public comments that lower costs for entities affected by this rule, including small entities.<sup>10</sup>

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<sup>10</sup> As discussed in the complete FRFA, not all costs could be quantified. As such, CBP is unable to quantify the cost savings due to the changes made from the proposed rule.

**C. Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) requires agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule is necessary for national security and is exempt from these requirements under 2 U.S.C. 1503 (Exclusions), which states that UMRA “shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress and any provision in a proposed or final Federal regulation that is necessary for the national security or the ratification or implementation of international treaty obligations.”<sup>11</sup>

**D. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, 44 U.S.C. 3507) the collections of information for this final rule are included in an existing collection for CBP Form 7512 (Office of Management and Budget (OMB) control number 1651-0003). 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.

The estimated burden hours related to CBP Form 7512 and 7512A for OMB

Control number 1651-0003 are as follows:

Estimated Number of Respondents: 6,200.

Estimated Number of Responses: 5,400,000

Estimated Time per Response: 10 minutes (0.166 hours).

Estimated Total Annual Burden Hours: 896,400.

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<sup>11</sup> “Unfunded Mandates Reform Act of 1995 (UMRA),” 2 U.S.C. 1503.

The burden hours in this collection have been updated to reflect revised and updated estimates of filers of CBP Form 7512. These most recent data available are also used in the regulatory flexibility analysis above.

**V. Signing Authority**

This 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.

## **VI. Regulatory Amendments**

### **List of Subjects**

#### 19 CFR Part 4

Customs duties and inspection, Exports, Freight, Harbors, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements, Vessels.

#### 19 CFR Part 10

Caribbean Basin initiative, Customs duties and inspection, Exports, Reporting and recordkeeping requirements.

#### 19 CFR Part 12

Customs duties and inspection, Reporting and recordkeeping requirements.

#### 19 CFR Part 18

Common carriers, Customs duties and inspection, Exports, Freight, Penalties, Reporting and recordkeeping requirements, and Surety bonds.

#### 19 CFR Part 19

Customs duties and inspection, Exports, Freight, Reporting and recordkeeping requirements, Surety bonds, Warehouses, Wheat.

#### 19 CFR Part 113

Common carriers, Customs duties and inspection, Exports, Freight, Laboratories, Reporting and recordkeeping requirements, Surety bonds.

#### 19 CFR Part 122

Common carriers, Customs duties and inspection, Exports, Freight, Penalties, Reporting and recordkeeping requirements, and Security measures.

#### 19 CFR Part 123

Canada, Customs duties and inspection, Freight, International boundaries, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 141

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 142

Canada, Customs duties and inspection, Mexico, Reporting and recordkeeping requirements.

19 CFR Part 143

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 144

Customs duties and inspection, Reporting and recordkeeping requirements, Warehouses.

19 CFR Part 146

Administrative practice and procedure, Customs duties and inspection, Exports  
Foreign trade zones, Penalties, Petroleum, Reporting and recordkeeping requirements.

19 CFR Part 151

Cigars and cigarettes, Cotton, Customs duties and inspection, Fruit juices, Laboratories,  
Metals, Oil imports, Reporting and recordkeeping requirements, Sugar.

19 CFR Part 181

Administrative practice and procedure, Canada, Customs duties and inspection, Exports,  
Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements.

**AMENDMENTS TO THE REGULATION**

For the reasons set forth in the preamble, this document amends parts 4, 10, 18, 19, 113, 122, 123, 141, 142, 143, 144, 146, 151, and 181 of title 19 of the Code of Federal Regulations as set forth below.

**PART 4 – VESSELS IN FOREIGN AND DOMESTIC TRADES**

1. The general authority citation for part 4 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

\* \* \* \* \*

2. In § 4.82, revise paragraph (b) to read as follows:

**§ 4.82 Touching at foreign port while in coastwise trade.**

\* \* \* \* \*

(b) The master must also present to the port director a coastwise Cargo Declaration in triplicate of the merchandise to be transported via the foreign port or ports to the subsequent ports in the United States. It must describe the merchandise and show the marks and numbers of the packages, the names of the shippers and consignees, and the destinations. The port director will certify the two copies and return them to the master. Merchandise carried by the vessel in bond under a transportation entry pursuant to part 18 of this chapter is not to be shown on the coastwise Cargo Declaration.

\* \* \* \* \*

**PART 10 – ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.**

3. The general authority citation for part 10 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

4. In § 10.60, revise paragraphs (a), (d), and (f) to read as follows:

**§ 10.60 Forms of withdrawals; bond.**

(a) Withdrawals from warehouse shall be made on CBP Form 7501. Each withdrawal must contain the statement prescribed for withdrawals in § 144.32 of this chapter and all of the statistical information as provided in § 141.61(e) of this chapter. Withdrawals from continuous CBP custody elsewhere than in a bonded warehouse must be made by filing an in-bond application pursuant to part 18 of this chapter, except as provided for by paragraph (h) of this section. When a withdrawal of supplies or other articles is made which may be used on a vessel while it is proceeding in ballast to another port as provided for by § 10.59(a)(3), a notation of this fact shall be made on the withdrawal and the name of the other port given if known.

\* \* \* \* \*

(d) Except as otherwise provided in § 10.62b, relating to withdrawals from warehouse of aircraft turbine fuel to be used within 30 days of such withdrawal as supplies on aircraft under section 309, Tariff Act of 1930, as amended, when the supplies are to be laden at a port other than the port of withdrawal from warehouse, they shall be withdrawn for transportation in bond to the port of lading by filing an in-bond application pursuant to part 18 of this chapter. The procedure shall be the same as that prescribed in 144.37 of this chapter.

\* \* \* \* \*

(f) Unless transfer is permitted under the provisions of paragraph (h) of this section, when articles are withdrawn from continuous Customs custody elsewhere than in a bonded warehouse for lading at the port of withdrawal, the procedure provided for in § 18.25 of this chapter shall be followed. Unless transfer is permitted under the provisions of paragraph (h) of this section, when articles are withdrawn from continuous Customs custody elsewhere than in a bonded warehouse for lading at another port, the procedure set forth in §18.26 of this chapter shall be followed. There shall be such examination of the articles as may be necessary to satisfy the port director that they are subject to the privileges of section 309, Tariff Act of 1930, as amended, and that the value and quantity declared for them are correct.

\* \* \* \* \*

5. Revise § 10.61 to read as follows:

**§ 10.61 Withdrawal permit.**

Upon the filing of the withdrawal and the execution of the bond, when required, the port director shall issue a permit on CBP Form 7501 or in-bond application.

**PART 12 – SPECIAL CLASSES OF MERCHANDISE**

6. The general authority citation for part 12 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

7. Revise § 12.5 to read as follows:

**§ 12.5 Shipment to other ports.**

When imported merchandise, the subject of § 12.1, is shipped to another port for reconditioning or exportation, such shipment must be made in the same manner as shipments in bond in accordance with the requirements of part 18 of this chapter.

8. In § 12.11, revise paragraph (b) to read as follows:

**§ 12.11 Requirements for entry and release.**

\* \* \* \* \*

(b) Where plant or plant products are shipped from the port of first arrival to another port or place for inspection or other treatment by a representative of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs and all CBP requirements for the release of the merchandise have been met, the merchandise must be forwarded as an in-bond shipment pursuant to part 18 of this chapter to the representative of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs at the place at which the inspection or other treatment is to take place. No further release by the port director will be required.

9. Revise part 18 to read as follows:

**PART 18 – TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT**

**Subpart A – General Provisions**

Sec.

18.0 Scope; definitions.

18.1 In-bond application and entry; general rules.

18.2 Carriers, cartmen, and lightermen.

18.3 Transfers.

18.4 Sealing conveyances, compartments, and containers.

18.5 Diversion.

18.6 Short shipments; shortages; entry and allowance.

18.7 Lading for exportation; notice and proof of exportation; verification.

18.8 Liability for not meeting in-bond requirements; liquidated damages; payment of taxes, duties, fees, and charges.

18.9 New in-bond movement for forwarded or returned merchandise.

18.10 Special manifest.

**Subpart B – Immediate Transportation Without Appraisalment**

18.11 General rules.

18.12 Entry at port of destination.

**Subpart C – Shipment of Baggage In-Bond**

18.13 Procedure; manifest.

18.14 Shipment of baggage in transit to foreign countries.

**Subpart D – Transportation and Exportation**

18.20 General rules.

18.21 [Reserved].

18.22 Procedure at port of exportation.

18.23 Change of port of exportation or first foreign port; change of entry.

18.24 Retention of goods within port limits; dividing of shipments.

**Subpart E – Immediate Exportation**

18.25 Direct exportation.

18.26 Indirect exportation.

18.27 Port marks.

**Subpart F – Merchandise Transported by Pipeline**

18.31 Pipeline transportation of bonded merchandise.

**Subpart G – Merchandise Not Otherwise Subject to CBP Control Exported Under Cover of a TIR Carnet**

18.41 Applicability.

18.42 Direct exportation.

18.43 Indirect exportation.

18.44 Abandonment of exportation.

18.45 Supervision of exportation.

**Subpart H – Importer Security Filings**

18.46 Changes to Importer Security Filing information.

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624;

Section 18.1 also issued under 19 U.S.C. 1484, 1557, 1490;

Section 18.2 also issued under 19 U.S.C. 1551a;

Section 18.3 also issued under 19 U.S.C. 1565;

Section 18.4 also issued under 19 U.S.C. 1322, 1323;

Section 18.7 also issued under 19 U.S.C. 1490, 1557; 1646a;

Section 18.11 also issued under 19 U.S.C. 1484;

Section 18.12 also issued under 19 U.S.C. 1448, 1484, 1490;

Section 18.13 also issued under 19 U.S.C. 1498(a);

Section 18.14 also issued under 19 U.S.C. 1498.

Section 18.25 also issued under 19 U.S.C. 1490.  
Section 18.26 also issued under 19 U.S.C. 1490.  
Section 18.31 also issued under 19 U.S.C. 1553a.

## **Subpart A – General Provisions**

### **§ 18.0 Scope; definitions.**

(a) Scope. Except as provided in parts 122 (Air commerce) and 123 (CBP relations with Canada and Mexico) of this chapter, this part sets forth the requirements and procedures pertaining to the transportation of merchandise in-bond, as authorized by §§ 551, 552, and 553 of the Tariff Act of 1930, as amended (19 U.S.C 1551, 1552, and 1553).

(b) Definitions. As used in this part, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular part or portion thereof:

Bonded carrier. “Bonded carrier” means a carrier of merchandise whose bond under § 113.63 of this chapter is obligated for the transportation and delivery of merchandise.

Common carrier. “Common carrier” means a common carrier of merchandise owning or operating a railroad, steamship, pipeline, truck line, or other transportation line or route.

Origination port. “Origination port” is the U.S. port at which the transportation of merchandise in-bond commences.

Port of destination. “Port of destination” is the U.S. port at which merchandise is delivered after being shipped in-bond from the origination port where it was entered as an immediate transportation entry.

Port of diversion. “Port of diversion” is the U.S. port to which merchandise is diverted while in transit from the origination port to the port of destination or the port of exportation.

Port of exportation. “Port of exportation” is the U.S. port at which in-bond merchandise entered for transportation and exportation or for immediate exportation is delivered for exportation from the United States.

**§ 18.1 In-bond application and entry; general rules.**

(a) General requirement. In order to transport merchandise in-bond (transport imported merchandise, secured by a bond, from one port to another prior to the appraisalment of the merchandise and without the payment of duties), an in-bond application as described in paragraph (d) of this section is required. An in-bond application consists of a transportation entry and a manifest. A transportation entry as described in paragraph (b) of this section may be made for any imported merchandise upon its arrival at a port of entry, subject to the prohibitions and restrictions provided in this part.

(b) Types of transportation entries and withdrawals. The following types of transportation entries and withdrawals may be made for merchandise to be transported in-bond:

- (1) Entry for immediate transportation (IT).
- (2) Warehouse withdrawal for immediate transportation.
- (3) Warehouse withdrawal for immediate exportation or for transportation and exportation.
- (4) Entry for transportation and exportation (T&E).

(5) Entry for immediate exportation (IE).

(6) Entry of vessel and aircraft supplies for immediate exportation (IE).

(7) Entry of vessel and aircraft supplies for transportation and exportation (T&E).

(c) Who may file. A transportation entry may be filed by:

(1) The carrier, or authorized agent of the carrier, that brings the merchandise to the origination port;

(2) The carrier, or authorized agent of the carrier, that is to accept the merchandise under its bond or a carnet for transportation to the port of destination or the port of exportation; or

(3) Any person or the authorized agent of any person, who has a sufficient interest in the merchandise as shown by the bill of lading or manifest, a certificate of the importing carrier (such as a power of attorney or letter of authorization), or by any other document. CBP may request evidence to demonstrate sufficient interest.

(d) In-bond application. An in-bond application consisting of a transportation entry and manifest must be transmitted to CBP via a CBP-approved EDI system as specified in paragraph (d)(2) of this section in order to transport merchandise in-bond.

(1) Contents. Except for the other identifying information described in paragraph (d)(1)(iii) of this section which is optional, the in-bond application must contain the following information:

(i) Commodity HTSUS number. The six-digit Harmonized Tariff Schedule of the United States (HTSUS) number of the merchandise must be provided.

(ii) Description of merchandise subject to regulation by another government agency. Merchandise subject to regulation by a U.S. government agency other than CBP must contain a sufficient description of the merchandise to enable the agency concerned to determine the contents of the shipment.

(iii) Other identifying information. If a visa, permit, license, entry number, or other similar number or identifying information has been issued by the U.S. Government, foreign government or other issuing authority, relating to the merchandise, the visa, permit, license, entry number, or other similar number or identifying information may be provided.

(iv) Quantity. The quantity of the cargo laden aboard the conveyance must be provided. This means the quantity of the smallest external packing unit. Containers and pallets do not constitute acceptable information. For example, a container holding 10 pallets with 200 cartons should be described as 200 cartons. If the reported quantity is not correct or if it changes, the in-bond record must be updated or amended in accordance with paragraph (h) of this section. The updating of the quantity of the merchandise does not relieve the carrier whose bond is obligated from liquidated damages for any shortage.

(v) Container number and seals. The container number of the container in which the merchandise is being transported and the seal number of the seal that seals the container (see § 18.4) must be provided. If the seal number is not known when the in-bond application is filed, the in-bond application must be updated with the seal number within two business days from the date the initial carrier takes possession of the sealed merchandise.

(vi) Destination. For IT shipments, the port of destination in the United States must be provided. For T&E and IE shipments, the port of exportation and the first foreign port must be provided. If any of this information changes, the in-bond record must be updated or amended in accordance with paragraph (h) of this section.

(2) Method of submission. The in-bond application must be electronically transmitted to CBP via a CBP-approved EDI system, except as described in § 18.31 relating to the in-bond transportation of merchandise by pipeline, or air (see 19 CFR part 122) or under a TIR carnet (see 19 CFR part 115). In the event that EDI functionality is unavailable for filing an in-bond application, or any related in-bond filing, the Commissioner or his designee may authorize an alternative method.

(3) Timing. The in-bond application may be submitted at any time prior to the merchandise departing the origination port.

(e) Bond required. A custodial bond on CBP Form 301, containing the bond conditions set forth in § 113.63 of this chapter, is required in order to transport merchandise in-bond under the provisions of this part.

(f) Movement authorization required. Authorization from CBP is required before merchandise can be transported in-bond. Authorization for the movement of merchandise will be transmitted by CBP via a CBP-approved EDI system.

(g) Supervision—(1) Generally. When merchandise is delivered to a bonded carrier for transportation in-bond, CBP may, in its discretion, require that the merchandise be laden on the conveyance only under CBP supervision.

(2) Merchandise delivered from warehouse. When merchandise is delivered from a warehouse to a bonded carrier for transportation in-bond, supervision of

lading will be accomplished in accordance with the procedure set forth in § 19.6(b) of this chapter.

(3) Merchandise delivered from foreign trade zone. When merchandise is delivered from a foreign trade zone to a bonded carrier for transportation in-bond, supervision of lading will be accomplished in accordance with the procedure set forth in § 146.71(a) of this chapter.

(h) Updating and amending the in-bond record. The filer of the in-bond application or any other party named in paragraph (c) of this section, with authorization of the party whose bond is obligated, must update and/or amend the in-bond record as required under the provisions of this part via a CBP-approved EDI system. The in-bond record must be updated or amended within two business days of the event that requires updating and/or amending of the in-bond record.

(i) In-transit time—(1) Maximum in-transit time. Except for merchandise to be transported via barge, merchandise to be transported in-bond must be delivered to CBP at the port of destination or port of exportation within 30 days from the date of conveyance arrival at the origination port (if the in-bond application has been received and approved prior to conveyance arrival), or the date CBP provides movement authorization to the in-bond applicant, whichever is later. Merchandise to be transported via barge for all or part of the in-bond movement, must be delivered to CBP at the port of destination or port of exportation within 60 days from the date of conveyance arrival at the origination port (if the in-bond application has been received and approved prior to conveyance arrival), or the date CBP provides movement authorization to the in-bond applicant, whichever is later. If the merchandise is subject to examination or inspection by CBP or another

government agency, the time that the merchandise is held due to the examination or inspection will not be considered part of the 30-day or 60-day in-transit time. Neither the diversion to another port nor the filing of a new in-bond application extends the maximum in-transit time. Failure to deliver the merchandise within the prescribed period constitutes an irregular delivery. In-bond merchandise transported by pipeline is not subject to the time limits in this section.

(2) Extension of in-transit time. The in-transit requirement may be extended by CBP upon a written request to the port director of the port of destination or port of exportation. The decision to extend the in-transit time period is within the discretion of CBP. Factors that may be considered, among any others deemed applicable by CBP, include extraordinary circumstances such as major transportation network disruptions, natural disasters, and other emergencies beyond the control of the party requesting the extension.

(3) Restriction of in-transit time. CBP or any other government agency with jurisdiction over the merchandise may shorten the in-transit time to less than 30 or 60 days. CBP will provide notice of a government-shortened in-transit time with the movement authorization.

(j) Report of arrival. Within two business days after the arrival of any portion of an in-bond shipment at the port of destination or the port of exportation, CBP must be notified via a CBP-approved EDI system that the merchandise has arrived. The notification must include the Facilities Information and Resources Management System (FIRMS) code of the location of the merchandise within the port. Failure to report the

arrival or the FIRMS code for the physical location of the merchandise transported in-bond within the prescribed period constitutes an irregular delivery.

(k) General order merchandise; exportation. Any merchandise covered by an in-bond shipment that has arrived at the port of destination or the port of exportation must be entered, exported, or admitted to a foreign-trade zone pursuant to this part within 15 calendar days from the date of arrival of the entire in-bond shipment at the port of destination or port of exportation. Sixteen days after in-bond merchandise arrives in the port of destination or port of exportation, the merchandise will become subject to general order requirements pursuant to § 4.37, § 122.50, or § 123.10 of this chapter, as applicable.

(l) Special classes of merchandise—(1) Health, safety and conservation. CBP may determine that merchandise not in compliance with an applicable rule, regulation, law, standard or ban, relating to health, safety or conservation, will not be released for transportation in-bond without the authorization of the governmental agency administering such rule, regulation, law, standard or ban.

(2) Plants and plant products. Merchandise subject upon importation to examination, disinfection, or further treatment under the USDA Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine program, will only be released for transportation in-bond with the authorization of APHIS under regulations issued by that program. (See §§ 12.10 to 12.15 of this chapter).

(3) Prohibited articles. Articles prohibited admission into the commerce of the United States may not be entered for transportation in-bond. Any such merchandise offered for entry for that purpose may either be denied entry or be seized.

However, CBP may permit exportation or transportation and exportation either with authorization from the governmental agency having regulatory authority over the prohibited articles or in compliance with the regulations of such agency.

(4) Narcotics and other drugs, medicines, or chemicals—(i) Narcotics.

Narcotics prohibited admission into the commerce of the United States may not be entered for transportation in-bond and any such merchandise offered for entry for that purpose will be seized, except that exportation or transportation and exportation may be permitted with authorization from the Drug Enforcement Agency (DEA) and/or compliance with the regulations of the DEA.

(ii) Other drugs, medicines, or chemicals. Articles entered for transportation in-bond that are manifested merely as drugs, medicines, or chemicals, without evidence to satisfy the port director that they are non-narcotic, will be detained and subjected, at the carrier's risk and expense, to such examination as may be necessary to satisfy the port director that they are not of a narcotic character. A properly verified certificate of the shipper, specifying the items in the shipment and stating that they are not narcotic, may be accepted by the port director to establish the character of such a shipment.

(5) Explosives. Explosives may not be transported in-bond unless the importer has first obtained a license or permit from the proper governmental agency. In such case the explosives may be entered for immediate transportation, for transportation and exportation, or for immediate exportation as specified by the approving government agency. Governmental agencies with regulatory authority over explosives include the

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Department of Transportation (DOT), and the U.S. Coast Guard (USCG).

(6) Livestock. Carload shipments of livestock will not be entered for in-bond transportation unless they will arrive at the port of destination named in the in-bond application before it becomes necessary to remove the seals for the purpose of watering and feeding the animals, or unless the route is such that the removal of the seals and the watering, feeding, and reloading of the stock may be done under CBP supervision.

(m) Divided shipments. After reaching the destination port, the port to which the merchandise has been diverted under § 18.5(a), in-bond merchandise may be divided into multiple shipments with a portion of the initial in-bond shipment being entered for consumption or warehouse, and the remainder shipped under a new in-bond application. The carrier or any of the parties named in paragraph (c) of this section must, in accordance with the filing requirements of this section, submit a new in-bond application for each portion of the original shipment to be transported in-bond. Divided shipments for merchandise being transported under cover of a carnet are prohibited.

## **§ 18.2 Carriers, cartmen, and lightermen.**

(a) Transportation of merchandise in-bond by bonded carriers—(1) Generally. Except as provided for in paragraph (b) of this section, merchandise to be transported from one port to another in the United States in-bond must be delivered to a common carrier, contract carrier, freight forwarder, or private carrier, each of which must be bonded for that purpose. Such merchandise delivered to a bonded common carrier, contract carrier, or freight forwarder may be transported with the use of facilities of other bonded or non-bonded carriers; however, the responsibility for the merchandise will

remain with the common carrier, contract carrier, or freight forwarder that obligated its bond for that purpose. Only vessels entitled to engage in the coastwise trade (see § 4.80 of this chapter) will be entitled to transport merchandise under this section.

(2) Merchandise transported under a TIR carnet. Merchandise to be transported from one port to another in the United States under cover of a TIR carnet (see part 114 of this chapter), except merchandise not otherwise subject to CBP control, as provided in §§ 18.41 through 18.45, must be delivered to a common carrier or contract carrier bonded for that purpose, but the merchandise thereafter may be transported with the use of other bonded or non-bonded common or contract carriers. The TIR carnet will be responsible for liability incurred in the carriage of merchandise under the carnet, and the carrier's bond will be responsible as provided in § 114.22(c) of this chapter.

(3) Merchandise transported under an A.T.A. or a TECRO/AIT carnet. Merchandise to be transported from one port to another in the United States under cover of an A.T.A. or TECRO/AIT carnet (see part 114 of this chapter) must be delivered to a common carrier or contract carrier bonded for that purpose, but the merchandise thereafter may be transported with the use of other bonded or non-bonded common or contract carriers. The A.T.A. or TECRO/AIT carnet will be responsible for liability incurred in the carriage of merchandise under the carnet, and the carrier's bond will be responsible as provided in § 114.22(d) of this chapter.

(b) Transportation of merchandise in-bond between certain ports by bonded cartmen or lighterman. Pursuant to Public Resolution 108, of June 19, 1936, (19 U.S.C. 1551, 1551a) and subject to compliance with all other applicable provisions of this part, CBP, upon the request of a party named in § 18.1(c), may permit merchandise that has

been entered and subject to CBP examination to be transported in-bond between the ports of New York, Newark, and Perth Amboy, by bonded cartmen or lightermen duly qualified in accordance with the provisions of part 112 of this chapter, if CBP is satisfied that the transportation of such merchandise in this manner will not endanger the revenue and does not pose a risk to health, safety or security.

### **§ 18.3 Transfers.**

(a) Transfer to another conveyance. Merchandise being transported in-bond may be transferred to another conveyance at any time. CBP notification is not required. The transfer to one or more conveyances will not extend the maximum in-transit time set forth in § 18.1(i).

(b) Transfer to another bonded carrier. Except as provided in § 18.31(d)(3), when merchandise is transferred to a bonded carrier that assumes the liability for the in-bond shipment, a report of arrival for the merchandise must be filed by the original bonded carrier and a new in-bond application must be filed by the subsequent bonded carrier pursuant to § 18.1.

(c) Transfer of merchandise covered by a TIR Carnet generally prohibited. Merchandise covered by a TIR carnet may not be transferred except in cases in which the unloading of the merchandise from a container or road vehicle is necessitated by casualty en route. In the event of transfer, a TIR approved container or road vehicle must be used if available. If the transfer takes place under CBP supervision, the CBP officer must execute a certificate of transfer on the appropriate TIR carnet voucher.

(d) Transfer by bonded cartmen. All transfers to or from the conveyance or warehouse of merchandise being transported in-bond must be made under the provisions

of part 125 of this chapter and at the expense of the parties in interest, unless the bond of the carrier on CBP Form 301, containing the bond conditions set forth in § 113.63 of this chapter or a TIR carnet, is liable for the safekeeping and delivery of the merchandise while it is being transferred.

**§ 18.4 Sealing conveyances, compartments, and containers.**

(a) Requirements, waiver, and TIR carnets—(1) Seals required. Conveyance, compartments, or containers transporting in-bond merchandise must be sealed and the seals must remain intact until the merchandise arrives at the port of destination or the port of exportation. The seals to be used and the method for sealing conveyances, compartments, or containers must meet the requirements of §§ 24.13 and 24.13a of this chapter.

(2) Waiver. (i) CBP may waive the sealing of a conveyance, compartment, or container in which bonded merchandise is transported if CBP determines that the sealing of the conveyance, compartment, or container is unnecessary to protect the revenue or to prevent violations of the customs laws and regulations.

(ii) Examples of situations where CBP may waive the waiver of the sealing requirement are when the conveyance, compartment, or container cannot be effectively sealed, as in the case of merchandise shipped in open cars or barges or on the decks of vessels, when it is known that any seals would necessarily be removed outside the jurisdiction of the United States for the purpose of discharging or taking on cargo, or when it is known that the breaking of the seals will be necessary to ventilate the hatches.

(3) TIR carnets. The port director will cause a CBP seal to be affixed to a container or road vehicle that is being used to transport merchandise under cover of a TIR

carnet unless the container or road vehicle bears a customs seal (domestic or foreign).

The port director will likewise cause a CBP seal or label to be affixed to heavy or bulky goods being so transported. If, however, the port director has reason to believe that there is a discrepancy between the merchandise listed on the Goods Manifest of the carnet and the merchandise that is to be transported, the port director may cause a CBP seal or label to be affixed only when the listing of the merchandise in the carnet and a physical inventory agree.

(b) Commingled merchandise—(1) Transported in a sealed conveyance, compartment, or container. Merchandise that is not covered by a bond may be transported in a sealed conveyance, compartment, or container that contains bonded merchandise if the merchandise is destined for the same or subsequent port as the bonded merchandise.

(2) Transported in a conveyance, compartment, or container that is not sealed. Merchandise that is not covered by a bond may be transported with bonded merchandise in a conveyance, compartment, or container that is not sealed, if the in-bond merchandise is corded and sealed, or affixed with a warning label or tag as described in paragraph (b)(3) of this section.

(3) Warning label or tag—(i) Warning label. The required warning label for in-bond merchandise described in paragraph (b)(2) of this section, must be on bright red paper, not less than 5 by 8 inches in size, unless the size of the package renders the use of a 5 by 8 inch warning label impracticable because of lack of space; then a 3 by 5 inch label may be used. Alternatively, a high visibility, permanently affixed warning label, whether as a continuous series in tape form or otherwise, but not less than 1½ by 3

inches, and not to be removed until the in-bond movement is completed, may be used on any size package. The warning label must contain the following words in black or white lettering of a conspicuous size:

#### U.S. Customs and Border Protection

This package is under bond and must be delivered intact to the CBP officer in charge at the port of destination or to such other place as authorized by CBP.

Warning. Two years' imprisonment, a fine, or both, is the penalty for unlawful removal of this package or any of its contents.

(ii) Tag. When it is impossible to attach the warning label by pasting, a bright red shipping tag of convenient size, large enough to be conspicuous and containing the same legend as the label, shall be used in lieu of a label. Such tag shall be wired or otherwise securely fastened to the packages in such manner as not to damage the merchandise.

(4) Merchandise transported under carnet. Merchandise moving under cover of a carnet may not be consolidated with other merchandise.

(c) Removal and replacement of seals. If it becomes necessary at any point in transit to remove seals from a conveyance, compartment, or container containing bonded merchandise for the purpose of transferring its contents to another conveyance, compartment, or container, or to gain access to the shipment because of casualty or for other good reason, such as when required by law enforcement or another government agency, a responsible agent of the carrier may remove the seals, supervise the transfer or

handling of the merchandise, and seal the conveyance, compartment, or container in which the shipment goes forward. Updated seal numbers must be transmitted to CBP pursuant to § 18.1(h) and general recordkeeping requirements under 19 CFR part 163 apply.

(d) Containers or road vehicles accepted for transport under customs seal; requirements. (1)(i) Containers covered by the Customs Convention on Containers.

Containers covered by the Customs Convention on Containers will be accepted for transport under customs seal if:

(A) Durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers, and

(B) Constructed and equipped as outlined in Annex 1 to the Customs Convention on Containers, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 2 to that Convention or by a metal plate showing design type approval by a competent authority.

(ii) Containers carrying merchandise covered by a TIR carnet. Containers carrying merchandise covered by a TIR carnet will be accepted for transport under customs seal if:

(A) Durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers,

(B) Constructed and equipped as outlined in Annex 6 to the TIR Convention, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 8 to that Convention, or by a metal plate showing design type approval by a competent authority, and

(C) If the container or road vehicle hauling the container has affixed to it a rectangular plate bearing the letters “TIR” in accordance with Article 31 of the TIR Convention.

(2) Road vehicles carrying merchandise covered by a TIR carnet. Road vehicles carrying merchandise covered by a TIR carnet will be accepted for transport under customs seal if:

(i) Durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers,

(ii) Constructed and equipped as outlined in Annex 3 to the TIR Convention, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 5 to that Convention, or by a metal plate showing design type approval by a competent authority, and

(iii) If the road vehicle has affixed to it a rectangular plate bearing the letters “TIR” in accordance with Article 31 of the TIR Convention.

(3) CBP refusal. The port director may refuse to accept for transport under customs seal a container or road vehicle bearing evidence of approval if, in the port director’s opinion, the container or road vehicle no longer meets the requirements of the applicable Convention.

(4) CBP acceptance for transport. Containers or road vehicles that are not approved under the provisions of a Customs Convention may be accepted for transport under customs seal only if the port director at the origination port is satisfied that the container or road vehicle can be effectively sealed and no goods can be removed from or introduced into the container or road vehicle without obvious damage to it or without

breaking the seal. A container or road vehicle so accepted shall not carry merchandise covered by a TIR carnet.

**§ 18.5 Diversion.**

(a) Procedure. In order to change the port of destination or the port of exportation of an in-bond movement, the filer of the in-bond application must submit a request to divert merchandise via a CBP-approved EDI system. Permission for the diversion and movement of merchandise will be transmitted via a CBP-approved EDI system. If the request to divert merchandise is denied, such merchandise must be delivered to the original port of destination or port of exportation that was named in the in-bond application. The decision to grant or deny permission to divert merchandise is within the discretion of CBP. Denials may result from, for example, restrictions placed upon the movement of goods by government agencies.

(b) In-transit time. The approval of a request to divert merchandise for transportation in-bond does not extend the in-transit time specified in § 18.1(i)(1) of this part. The diverted merchandise must be delivered to the port of diversion within the in-transit time specified in § 18.1(i)(1) from the date CBP first authorized the in-bond movement, unless an extension is granted pursuant to § 18.1(i)(2).

(c) Diversion of cargo subject to restriction, prohibition or regulation by other federal agency or authority. Merchandise subject to a law, regulation, rule, standard or ban that requires permission or authorization by another federal agency or authority before importation may be restricted from being diverted on behalf of the authorizing agency.

**§ 18.6 Short shipments; shortages; entry and allowance.**

(a) Notification of short shipment. When an in-bond shipment arrives at the port of destination or the port of exportation and the cargo covered by the original in-bond application is short, the arriving carrier must notify CBP of the shortage when submitting the notice of arrival via a CBP-approved EDI system.

(b) New in-bond application required. The carrier or any of the parties named in § 18.1(c) must, in accordance with the filing requirements of § 18.1, submit a new in-bond application to transport short shipped packages that have been located or recovered to the port of destination or port of exportation provided in the in-bond application. Reference must be made in the new in-bond application to the original transportation entry.

(c) Demand for redelivery; entry. When a shipment or a portion of a shipment is not delivered, or when delivery is to an unauthorized location or is delivered to the consignee without the permission of CBP, CBP may demand return (redelivery) of the merchandise to CBP custody. The demand must be made no later than 30 days after the shortage, delivery, or failure to deliver is discovered by CBP. The demand for the redelivery of the merchandise to CBP custody must be made to the bonded carrier, cartman, or lighterman identified in the in-bond application. The demand for the redelivery of the merchandise will be made on CBP Form 4647, Notice of Redelivery, other appropriate form or letter, or by an electronic equivalent thereof. A copy of the demand or electronic equivalent thereof, with the date of mailing or delivery noted thereon, must be retained by the port director and made part of the in-bond entry record. Entry of the merchandise may be accepted if the merchandise can be recovered intact without any of the packages having been opened. In such cases, any shortage from the

invoice quantity will be presumed to have occurred while the merchandise was in the possession of the bonded carrier.

(d) Failure to redeliver; entry. If the merchandise cannot be recovered intact, entry will be accepted in accordance with § 141.4 of this chapter for the full manifested quantity, unless a lesser amount is otherwise permitted in accordance with subpart A of part 158. Except as provided in paragraph (e) of this section, if the merchandise is not returned to CBP custody within 30 days of the date of mailing of the demand for redelivery, if mailed, or within 30 days of the date of transmission, if transmitted by a method other than by mail, there shall be sent to the party whose bond is obligated on the transportation entry a demand for liquidated damages on CBP Form 5955–A. CBP will also seek the payment of duties, taxes, and fees, where appropriate, pursuant to § 18.8(c).

(e) Failure to redeliver merchandise covered by a carnet. If merchandise covered by a carnet cannot be recovered intact as specified in paragraph (c) of this section, entry will not be accepted; there will be sent to the appropriate guaranteeing association a demand for liquidated damages, duties, and taxes as prescribed in § 18.8(d); and, if appropriate, there will also be sent to the initial bonded carrier a demand for any excess, as provided in § 114.22(e) of this chapter. Demands must be made on the forms specified in paragraph (d) of this section.

(f) Allowance. An allowance in duty on merchandise reported short at destination, including merchandise found by the appraising officer to be damaged and worthless, and animals and birds found by the discharging officer to be dead on arrival at destination, must be made in accordance with law.

(g) Rail and searain. In the case of shipments arriving in the United States by rail or searain, which are forwarded under CBP in-bond seals under the provisions of subpart D of part 123 of this chapter, and § 18.11, or § 18.20, a notation must be made by the carrier or shipper in the in-bond application, to show whether the shipment was transferred to the car designated in the manifest and whether it was laden in the car in the foreign country. If laden on the car in a foreign country, the country must be identified in the notation.

**§ 18.7 Lading for exportation; notice and proof of exportation; verification.**

(a) Exportation—(1) Notice. Within two business days after the arrival at the port of exportation of any portion of an in-bond shipment, CBP must be notified via a CBP approved EDI of the arrival of the merchandise pursuant to § 18.1(j). Failure to report the arrival of bonded merchandise within the prescribed period will constitute an irregular delivery.

(2) Time to export. Within 15 calendar days after arrival of the last portion of a shipment arriving at the port of exportation under a transportation and exportation entry, the entire shipment of merchandise must be exported. On the 16<sup>th</sup> day the merchandise will become subject to general order requirements under § 4.37, § 122.50, or § 123.10 of this chapter, as applicable.

(3) Notice and proof of exportation. Within two business days after exportation, the in-bond record must be updated via a CBP approved EDI system to reflect that the merchandise has been exported. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with § 113.55 of this chapter.

(b) Supervision. The port director will require such supervision of the lading for exportation of merchandise covered by an entry or withdrawal for exportation or for transportation and exportation only as is reasonably necessary to satisfy the port director that the merchandise has been laden on the exporting conveyance.

(c) Verification. CBP may verify export entries and withdrawals against the records of the exporting carriers. Such verification may include an examination of the carrier's records of claims and settlement of export freight charges and any other records that may relate to the transaction. The exporting carrier must maintain these records for five years from the date of exportation of the merchandise.

**§ 18.8 Liability for not meeting in-bond requirements; liquidated damages; payment of taxes, duties, fees, and charges.**

(a) Liability. The party whose bond is obligated on the transportation entry will be liable for breach of any of the requirements found in this part, any other regulations governing the movement of merchandise in bond, and any of the other conditions specified in the bond. This includes, but is not limited to shortages, irregular delivery, or non-delivery, at the port of destination or port of exportation of the merchandise transported in-bond; the failure to export merchandise transported in bond pursuant to a transportation and exportation or immediate exportation entry; and, the failure to maintain intact seals or the unauthorized removal of seals. Appropriate commercial or government documentation may be provided to CBP as proof of delivery and/or exportation. Any loss found to exist at the port of destination or port of exportation will be presumed to have occurred while the merchandise was in the possession of the party

whose bond was obligated under the transportation entry, unless conclusive evidence to the contrary is produced.

(b) Liquidated damages. (1) The party whose bond is obligated on the transportation entry is liable for payment of liquidated damages if there is a failure to comply with any of the requirements found in this part, any other regulations governing the movement of merchandise in bond, and any of the other conditions specified in the bond.

(2) Petition for relief. In any case in which liquidated damages are imposed in accordance with this section and CBP is satisfied by the evidence submitted with a petition for relief filed in accordance with the provisions of part 172 of this chapter that any violation of the terms and conditions of the bond occurred without any intent to evade any law or regulation, CBP may cancel such claim upon the payment of any lesser amount or without the payment of any amount as may be deemed appropriate under the law and in view of the circumstances.

(c) Taxes, duties, fees, and charges. In addition to the liquidated damages described in paragraph (b) of this section, the party whose bond is obligated on the transportation entry will be liable for any duties, taxes, and fees accruing to the United States on the missing merchandise, together with all costs, charges, and expenses, caused by the failure to make the required transportation, report, delivery, entry and/or exportation. The amount of duties, taxes, fees, and charges owed to the United States under this paragraph is not limited to the amount of the bond obligated on the transportation entry.

(d) Carnets—(1) TIR carnets. (i) The domestic guaranteeing association will be jointly and severally liable with the initial bonded carrier for duties, taxes, and fees accruing to the U.S., and any other charges imposed, in lieu thereof, as the result of any shortage, irregular delivery, or nondelivery at the port of destination or port of exportation of merchandise covered by a TIR carnet. The liability of the domestic guaranteeing association is limited to \$50,000 per TIR carnet for duties, taxes, and sums collected in lieu thereof. Penalties imposed as liquidated damages against the initial bonded carrier, and sums assessed against the guaranteeing association in lieu of duties and taxes for any shortage, irregular delivery, or nondelivery will be in accordance with this section. If a TIR carnet has not been discharged or has been discharged subject to a reservation, the guaranteeing association will be notified within one year of the date upon which the carnet is taken on charge, including time for receipt of the notification, except that if the discharge was obtained improperly or fraudulently the period will be two years. However, in cases that become the subject of legal proceedings during the above-mentioned period, no claim for payment will be made more than one year after the date when the decision of the court becomes enforceable.

(ii) Within three months from the date demand for payment is made by the port director as provided by § 18.6(e), the guaranteeing association must pay the amount claimed, except that if the amount claimed exceeds the liability of the guaranteeing association under the carnet (see § 114.22(d) of this chapter), the carrier must pay the excess. The amount paid will be refunded if, within a period of one year from the date on which the claim for payment was made, it is established to the satisfaction of the Commissioner of CBP that no irregularity occurred. CBP may cancel liquidated damages

assessed against the guaranteeing association to the extent authorized by paragraph (b) of this section.

(2) A.T.A. or TECRO/AIT carnets. The domestic guaranteeing association is jointly and severally liable with the initial bonded carrier for pecuniary penalties, liquidated damages, duties, fees, and taxes accruing to the United States and any other charges imposed as the result of any shortage, irregular delivery, failure to comply with sealing requirements in this part, and any non-delivery at the port of destination or port of exportation of merchandise covered by an A.T.A. or TECRO/AIT carnet. However, the liability of the guaranteeing association must not exceed the amount of the import duties by more than 10 percent. If an A.T.A. or TECRO/AIT carnet is unconditionally discharged with respect to certain goods, the guaranteeing association will no longer be liable on the carnet with respect to those goods unless it is subsequently discovered that the discharge of the carnet was obtained fraudulently or improperly or that there has been a breach of the conditions of temporary admission or of transit. No claim for payment will be made more than one year following the date of expiration of the validity of the carnet. The guaranteeing association will be allowed a period of six months from the date of any claim by the port director in which to furnish proof of the reexportation of the goods or of any other proper discharge of the A.T.A. or TECRO/AIT carnet. If such proof is not furnished within the time specified, the guaranteeing association must either deposit or provisionally pay the sums. The deposit or payment will become final three months after the date of the deposit or payment, during which time the guaranteeing association may still furnish proof of the reexportation of the goods to recover the sums deposited or paid.

### **§ 18.9 New in-bond movement for forwarded or returned merchandise.**

The carrier or any of the parties named in § 18.1(c) must, in accordance with the filing requirements of § 18.1, submit a new in-bond application in order to forward or return merchandise from the port of destination or port of exportation named in the original in-bond application, or from the port of diversion, to any another port. If the merchandise is moving under cover of a carnet, the carnet may be accepted as a transportation entry.

### **§ 18.10 Special manifest.**

(a) General. Merchandise for which no other type of bonded movement is appropriate (e.g., prematurely discharged or overcarried merchandise and other such types of movements whereby the normal transportation-in-bond procedures are not applicable) may be shipped in-bond from the port of unloading to the port of destination, port of exportation or port of diversion where applicable, upon approval by CBP.

(b) Filing requirements. The carrier or any of the parties named in § 18.1(c) may, in accordance with the filing requirements of § 18.1, submit an in-bond application, requesting permission to transport merchandise described in paragraph (a) of this section in-bond as a special manifest. Authorization for the movement of merchandise will be transmitted via a CBP-approved EDI system. The party submitting the in-bond application must identify the relevant merchandise and also identify the date and entry number of any entry made at the port of destination covering the merchandise to be returned, if known. For diversion of cargo, see §§ 4.33, 4.34, and 18.5 of this chapter. When no entry is identified, the port director may approve the shipment pursuant to this section.

## **Subpart B – Immediate Transportation Without Appraisalment**

### **§ 18.11 General rules.**

(a) Delivery outside port limits. Merchandise covered by an entry for immediate transportation, including a TIR carnet, or a manifest of baggage shipped in-bond (other than baggage to be forwarded in-bond to a CBP station – see § 18.13(a)), may be delivered to a place outside a port of entry for examination and release as contemplated by 19 U.S.C. 1484(c), and in accordance with the provisions of § 151.9 of this chapter.

(b) Divided shipments. One or more entire packages of merchandise covered by an invoice from one consignor to one consignee may be entered for consumption or warehouse at the port of first arrival, and the remainder entered for immediate transportation, provided that all of the merchandise covered by the invoice is entered and a TIR carnet which may cover such merchandise is discharged as to that merchandise.

(c) Consolidated loads and combined shipments. Several importations may be consolidated into one immediate transportation entry when bills of lading or carrier's certificates name only one consignee at the port of first arrival. However, merchandise moving under cover of a TIR carnet may not be consolidated with other merchandise.

(d) Textiles. Textiles and textile products subject to § 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854) must be described in such detail as to enable the port director to estimate the duties and taxes, if any, due. The port director may require evidence to satisfy him or her of the approximate correctness of the value and quantity stated in the entry (e.g., detailed quantity description: 14 cartons, 2 dozen per carton); detailed description of the textiles or textile products including type of commodity and chief fiber content (e.g., men's cotton jeans or women's wool sweaters); net weight of the

textiles or textile products (including immediate packing but excluding pallet); total value of the textiles or textile products; manufacturer or supplier; country of origin; and name(s) and address(es) of the person(s) to whom the textiles and textile products are consigned.

**§ 18.12 Entry at port of destination.**

(a) Arrival procedures. Merchandise received under an immediate transportation entry at the port of destination may be admitted to a FTZ, entered into a bonded warehouse, entered for consumption, transportation and exportation, immediate exportation, immediate transportation, or any other form of entry, within 15 calendar days from the date of arrival at the port of destination and is subject to all the conditions pertaining to merchandise entered at a port of first arrival.

(b) Entry. The right to make entry at the port of destination will be determined in accordance with the provisions of 19 U.S.C. 1484 and the regulations promulgated thereunder.

(c) Entry at subsequent ports. When a portion of a shipment is entered at the port of first arrival and the remainder of the shipment is entered for consumption or warehouse at one or more subsequent ports, the entry at each subsequent port may be made on an extract of the invoice as provided for in § 141.84 of this chapter.

(d) General order merchandise. All merchandise included in an immediate transportation entry not entered pursuant to § 18.12(a) within 15 calendar days from the date of arrival at the port of destination will become subject on the 16<sup>th</sup> day to general order requirements pursuant to § 4.37, § 122.50, or § 123.10 of this chapter, as applicable.

## **Subpart C--Shipment of Baggage In-Bond**

### **§ 18.13 Procedure; manifest.**

(a) In-bond application required. Baggage may be forwarded in-bond to another port of entry, or to a Customs station listed in § 101.4 of this chapter without examination or assessment of duty at the port or station of first arrival at the request of the passenger, the transportation company, or the agent of either, by filing an in-bond application in accordance with the provisions of § 18.1.

(b) Coast to coast transportation. Baggage arriving in-bond or otherwise at a port on the Atlantic or Pacific coast, destined to a port on the opposite coast, may be laden under CBP supervision, without examination and without being placed in-bond, on a vessel proceeding to the opposite coast, provided the vessel will proceed to the opposite coast without stopping at any other port on the first coast.

### **§ 18.14 Shipment of baggage in transit to foreign countries.**

The baggage of any person in transit through the United States from one foreign country to another may be shipped over a bonded route for exportation. Such baggage must be shipped under the regulations prescribed in § 18.13. See § 123.64 of this chapter for the regulations applicable to baggage shipped in transit through the United States between points in Canada or Mexico.

## **Subpart D—Transportation and Exportation**

### **§ 18.20 General rules.**

(a) Classes of goods for which a transportation and exportation entry is authorized. Entry for transportation and exportation may be made under § 553, Tariff

Act of 1930, as amended (19 U.S.C. 1553), for any merchandise, except as provided under § 18.1(l).

(b) Filing requirement. Transportation and exportation entries must be filed via a CBP-approved EDI system and in accordance with § 18.1.

(c) Entry procedures. Except as provided for in subparts D, E, F and G of part 123 of this chapter (relating to merchandise in transit through the United States between two points in contiguous foreign territory), when merchandise is entered for transportation and exportation, a (TIR) carnet, three copies of an air waybill (see § 122.92 of this chapter), or the in-bond application must be submitted to CBP (see § 18.1). The port director may require the carrier to provide to CBP additional information and documentation related to the delivery of the merchandise to the bonded carrier.

(d) No bonded common carrier facilities available. Except for merchandise covered by a carnet (see § 18.2(a)(2) and (3)), in places where no bonded common carrier facilities are reasonably available and merchandise is permitted to be transported otherwise than by a bonded common carrier, the port director may permit entry in accordance with the procedures outlined in this section if he or she is satisfied that the revenue will not be endangered. A bond on CBP Form 301, containing the bond conditions set forth in § 113.62 of this chapter in an amount equal to double the estimated duties that would be owed will be required when the port director deems such action necessary. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with § 113.55 of this chapter within 30 days of exportation.

(e) Electronic Export Information. Filing of Electronic Export Information (EEI) is not required for merchandise entered for transportation and exportation, provided the merchandise has not been entered for consumption or warehousing, or admitted into an FTZ. If the merchandise requires an export license, the merchandise is subject to the filing requirements of the licensing Federal agency. See 15 CFR part 30, subpart A.

(f) Time to export. Any portion of an in-bond shipment entered for transportation and exportation must be exported within 15 calendar days from the date of arrival of the last portion of the shipment at the port of exportation, unless an extension has been granted by CBP pursuant to § 18.24. On the 16th day, the merchandise will become subject to general order requirements under § 4.37, § 122.50, or § 123.10 of this chapter, as applicable.

(g) Notice of arrival and proof of exportation. Arrival must be reported within two business days after the arrival at the port of exportation, in accordance with § 18.1. Within two business days after exportation, the in-bond record must be updated via a CBP approved EDI system to reflect that the merchandise has been exported. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with § 113.55 of this chapter.

**§ 18.21 [Reserved].**

**§ 18.22 Procedure at port of exportation.**

(a) Transfer of bonded merchandise to another conveyance. If in-bond merchandise must be transferred to another conveyance at the port of exportation, the procedure will be as prescribed in §§ 18.3 and 18.4(c).

(b) Transfer of baggage by express shipment. An express consignment carrier that is bonded as a common carrier and is responsible under its bond for delivery to the CBP officer in charge of the exporting conveyance of articles shown to be baggage in the in-bond record may transfer the baggage by express shipment without a permit from the port director and without the use of a transfer ticket or other CBP formality from its terminal to the exporting conveyance for lading under CBP supervision. The in-bond record must be updated to reflect the name of the owner of the baggage or article and the name of the conveyance transporting the owner of the baggage. See § 18.1.

**§ 18.23 Change of port of exportation or first foreign port; change of entry.**

(a) Change of port of exportation or first foreign port. The carrier or any of the parties provided for in § 18.1(c) must notify CBP of a change of the port of exportation or first foreign port that was provided in the original in-bond application by updating the in-bond record via a CBP-approved EDI system within two business days of learning of the change in accordance with § 18.1(h).

(b) Change of entry. Merchandise received at the anticipated port of exportation may, in lieu of export, be admitted into an FTZ, entered for consumption, warehouse, or any other form of entry, and is subject to all the conditions pertaining to merchandise entered at a port of first arrival.

**§ 18.24 Retention of goods within port limits; dividing of shipments.**

(a) Retention of goods within port limits. Upon receipt of a written request by the carrier or any of the parties provided for in § 18.1(c), the port director, in his or her discretion, may allow in-transit merchandise, including merchandise covered by a (TIR) carnet, to remain within the port limits of the port of exportation under CBP supervision

without extra expense to the Government for a period not exceeding 90 days. Upon obtaining CBP approval, the carrier or any of the parties provided for in § 18.1(c) must submit an immediate exportation in-bond application pursuant to §§ 18.1 and 18.25 of this chapter. Upon further requests, additional extensions of 90 days or less may be granted by the port director, but the merchandise may not remain in the port limits for more than one year from the date of arrival of the importing conveyance at the port of first arrival. Any merchandise that remains in the port limits without authorization is subject to general order requirements under § 4.37, § 122.50, or § 123.10 of this chapter, as applicable.

(b) Divided shipments at the port of exportation. The dividing of an in-bond shipment after it has arrived at the port of exportation will be permitted when exportation in its entirety is not possible by reason of the different destinations to which portions of the shipment are destined, when the exporting vessel cannot properly accommodate the entire quantity, or in similar circumstances. The carrier or any of the parties named in § 18.1(c) must update the in-bond record with the new information regarding the divided shipment within two business days of the dividing of the shipment. In the case, however, of merchandise being transported under cover of a carnet, the dividing of a shipment is not permitted.

## **Subpart E – Immediate Exportation**

### **§ 18.25 Direct exportation.**

(a) Merchandise—(1) General. Except for exportations by mail as provided for in subpart F of part 145 of this chapter (see also § 158.45 of this chapter), an in-bond

application must be transmitted as provided under § 18.1, for the following merchandise when it is to be directly exported without transportation to another port:

- (i) Merchandise in CBP custody for which no entry has been made or completed;
- (ii) Merchandise covered by an unliquidated consumption entry; or
- (iii) Merchandise that has been entered in good faith but is found to be prohibited under any law of the United States.

(2) Carnets. If a TIR carnet covers the merchandise that is to be exported directly without transportation, the carnet will be discharged or canceled, as appropriate (see part 114 of this chapter), and an in-bond application must be transmitted, as provided by this part. If an A.T.A. carnet covers the merchandise that is to be exported directly without transportation, the carnet must be discharged by the certification of the appropriate transportation and reexportation vouchers by CBP officers as necessary.

(b) Restriction on immediate exportation by truck. Trucks arriving at a U.S. port of entry, carrying shipments for which an immediate exportation entry is presented as the sole means of entry, may be denied authorization to proceed. The port director may require the truck to return to the country from which it came or may allow the filing of a new entry.

(c) Time to export. Any portion of an in-bond shipment entered for immediate exportation pursuant to an in-bond entry must be exported within 15 calendar days from the date of arrival at the port of exportation, unless an extension has been granted by CBP pursuant to § 18.24(a). On the 16<sup>th</sup> day, the merchandise will become subject to general order requirements under §§ 4.37, 122.50, or 123.10 of this chapter, as applicable.

(d) Electronic Export Information. Filing of Electronic Export Information (EEI) is not required for merchandise entered under an Immediate Exportation entry provided that the merchandise has not been entered for consumption, for warehousing, or admitted to a FTZ. If the merchandise requires an export license, the merchandise is subject to the filing requirements of the licensing Federal agency. See 15 CFR part 30, Subpart A

(e) Exportation without landing, vessels. If the merchandise is exported on the arriving vessel without landing, a representative of the vessel who has knowledge of the facts must certify that the merchandise entered for exportation was not discharged during the vessel's stay in port. A charge will be made against the continuous bond on CBP Form 301, containing the bond conditions set forth in § 113.64 of this chapter, if on file. If a continuous bond is not on file, a single entry bond containing the bond conditions set forth in § 113.64 will be required. If the merchandise is covered by a TIR carnet, the carnet must not be taken on charge (see § 114.22(c)(2) of this chapter).

(f) Notice and proof of exportation. Within two business days after exportation of merchandise described in paragraph (a) of this section, the in-bond record must be updated via a CBP-approved EDI system to reflect that the merchandise has been exported. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with § 113.55 of this chapter within 30 days of exportation.

(g) Explosives. Gunpowder and other explosive substances, the deposit of which in any public store or bonded warehouse is prohibited by law, may be entered on arrival from a foreign port for immediate exportation in-bond by sea, but must be transferred directly from the importing to the exporting vessel.

(h) Transfer by express shipment. The transfer of articles by express shipment must be in accordance with the procedures set forth in § 18.22.

**§ 18.26 Indirect exportation.**

(a) Indirect exportation, vessels. Merchandise that had been intended to be exported without landing from an importing vessel in accordance with § 18.25(e) may instead be transported in-bond to another port for exportation and entered for transportation and exportation in accordance with the procedure in § 18.20, upon the transmission of an in-bond application to CBP pursuant to § 18.1, via a CBP-approved EDI system. Upon acceptance of the entry by CBP and acceptance of the merchandise by the bonded carrier, the bonded carrier assumes liability for the transportation and exportation of the merchandise. If the merchandise was prohibited entry by any Government agency, that fact must be noted in the in-bond application.

(b) Carnets. If merchandise to be transported in-bond to another port for exportation was imported under cover of a TIR carnet, the carnet must be discharged or canceled at the port of importation and the merchandise transported under an electronic in-bond application (see § 18.20). If merchandise to be transported in-bond to another port for exportation was imported under cover of an A.T.A. carnet, the appropriate transit voucher will be accepted in lieu of an electronic in-bond application. One transit voucher will be certified by CBP officers at the port of importation and a second transit voucher, together with the reexportation voucher, will be certified at the port of exportation.

(c) Transfer at selected port of exportation. If the merchandise is to be transferred to another conveyance after arrival at the port selected for exportation pursuant to

paragraph (a) of this section, the procedure prescribed in § 18.4(c) will be followed. The provisions of §§ 18.23 and 18.24 will also be followed in applicable cases.

(d) Time to export. Any portion of an in-bond shipment entered for indirect exportation following an in-bond entry must be exported within 15 calendar days from the date of arrival at the port of exportation, unless an extension has been granted by CBP pursuant to § 18.24(a). On the 16<sup>th</sup> day, the merchandise will become subject to general order requirements under § 4.37, § 122.50, or § 123.10 of this chapter, as applicable.

(e) Notice and proof of exportation. Within two business days after exportation, the in-bond record must be updated via a CBP-approved EDI system to reflect that the merchandise has been exported. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with § 113.55 of this chapter within 30 days of exportation.

#### **§ 18.27 Port marks.**

Port marks may be added by authority of the port director and under the supervision of a CBP officer. The original marks and the port marks must appear in all documentation or the electronic equivalent must appear in electronic records pertaining to the exportation.

### **Subpart F – Merchandise Transported by Pipeline**

#### **§ 18.31 Pipeline transportation of bonded merchandise.**

(a) General procedures—(1) Applicability. Merchandise may be transported by pipeline under the procedures in this part, as appropriate, and unless otherwise specifically provided for in this section.

(2) In-bond application. For purposes of this section, the in-bond application will be made by submitting a CBP Form 7512 or by electronic submission via a CBP-approved EDI system.

(b) Bill of lading to account for merchandise. Unless CBP has reasonable cause to suspect fraud, CBP will accept a bill of lading or equivalent document of receipt issued by the pipeline operator to the shipper and accepted by the consignee to account for the quantity of merchandise transported by pipeline and to maintain the identity of the merchandise.

(c) Procedures when pipeline is only carrier. When a pipeline is the only carrier of the in-bond merchandise and there is no transfer to another carrier, the bill of lading or equivalent document of receipt issued by the pipeline operator to the shipper must be submitted with the in-bond application. If there are no discrepancies between the bill of lading or equivalent document of receipt and the in-bond application for the merchandise, and provided that CBP has no reasonable cause to suspect fraud, the bill of lading or equivalent document of receipt will be accepted by CBP as establishing the quantity and identity of the merchandise transported. The pipeline operator is responsible for any discrepancies, including shortages, irregular deliveries, or nondeliveries at the port of destination or exportation (see § 18.8).

(d) Procedures when there is more than one carrier (i.e., transfer of the merchandise)—(1) Pipeline as initial carrier. When a pipeline is the initial carrier of merchandise to be transported in-bond and the merchandise is transferred to another conveyance (either a different mode of transportation or a pipeline operated by another

operator), the procedures for transfers in § 18.3 and paragraph (c) of this section must be followed, except that—

(i) When the merchandise is to be transferred to one conveyance, a copy of the bill of lading or equivalent document issued by the pipeline operator to the shipper must be delivered to the person in charge of the conveyance for transmission to CBP; or

(ii) When the merchandise is to be transferred to more than one conveyance, a copy of the bill of lading or equivalent document issued by the pipeline operator to the shipper must be delivered to the person in charge of each additional conveyance, for transmission to CBP.

(2) Transfer to pipeline from initial carrier other than a pipeline. When merchandise initially transported in-bond by a carrier other than a pipeline is transferred to a pipeline, the procedures in § 18.3 and paragraph (c) of this section must be followed, except that the bill of lading or other equivalent document of receipt issued by the pipeline operator to the shipper must be transmitted to CBP.

(3) Initial carrier liable for discrepancies. In the case of either paragraph (d)(1) or (2) of this section, the initial carrier will be responsible for any discrepancies, including shortages, irregular deliveries, or nondeliveries, at the port of destination or failure to export at the port of exportation (see generally § 18.8).

(e) Recordkeeping. The shipper, pipeline operator, and consignee are subject to the recordkeeping requirements in 19 U.S.C. 1508 and 1509, as provided for in part 163 of this chapter.

**Subpart G – Merchandise Not Otherwise Subject to CBP Control Exported Under Cover of a TIR Carnet**

#### **§ 18.41 Applicability.**

The provisions of §§ 18.41 through 18.45 apply only to merchandise to be exported under cover of a TIR carnet for the convenience of the U.S. exporter or other party in interest and do not apply to merchandise otherwise required to be transported in bond under the provisions of this chapter. Merchandise to be exported under cover of a TIR carnet for the convenience of the U.S. exporter or other party in interest may be transported with the use of the facilities of either bonded or non-bonded carriers.

#### **§ 18.42 Direct exportation.**

At the port of exportation, the container or road vehicle, the merchandise, and the TIR carnet shall be made available to the port director. Any required Electronic Export Information (EEI) shall be filed in accordance with the applicable regulations of the Bureau of the Census (15 CFR part 30). The port director shall examine the merchandise to the extent he believes necessary to determine that the carnet has been properly completed and shall verify that the container or road vehicle has the necessary certificate of approval or approval plate intact and is in satisfactory condition. After completion of any required examination and supervision of loading, the port director will seal the container or road vehicle with customs seals and ascertain that the TIR plates are properly affixed and sealed. See § 18.4(d). In the case of heavy or bulky goods moving under cover of a TIR carnet, the port director shall cause a customs seal or label, as appropriate, to be affixed. He shall also remove two vouchers from the carnet, execute the appropriate counterfoils, and return the carnet to the carrier or agent to accompany the merchandise.

#### **§ 18.43 Indirect exportation.**

(a) Filing of Electronic Export Information. When merchandise is to move from one U.S. port to another for actual exportation at the second port, any Electronic Export Information (EEI) required to be validated shall be filed in accordance with the procedures described in the applicable regulations of the Bureau of the Census (15 CFR part 30).

(b) Origination port procedure. The port director shall follow the procedure provided in § 18.42 in respect to examination of the merchandise, supervision of loading, sealing or labeling, and affixing of TIR plates. The port director will remove one voucher from the carnet, execute the appropriate counterfoil, and return the carnet to the carrier or agent to accompany the container or road vehicle to the port of actual exportation.

(c) Port of exportation procedure. At the port of actual exportation, the carnet and the container (or heavy or bulky goods) or road vehicle shall be presented to the port director who shall verify that seals or labels are intact and that there is no evidence of tampering. After verification, the port director shall remove the appropriate voucher from the carnet, execute the counterfoil, and return the carnet to the carrier or agent.

**§ 18.44 Abandonment of exportation.**

In the event that exportation is abandoned at any time after merchandise has been placed under cover of a TIR carnet, the carrier or agent shall deliver the carnet to the nearest CBP office or to the CBP office at the origination port for cancellation (see § 114.26(c) of this chapter). When the carnet has been canceled, the carrier or agent may remove customs seals or labels and unload the container (or heavy or bulky goods) or road vehicle without customs supervision.

**§ 18.45 Supervision of exportation.**

The provisions of §§ 18.41 through 18.44 do not require the director of the port of actual exportation to verify that merchandise moving under cover of a TIR carnet is loaded on board the exporting carrier.

**Subpart H – Importer Security Filings**

**§ 18.46 Changes to Importer Security Filing information.**

For merchandise transported in bond, which at the time of transmission of the Importer Security Filing as required by § 149.2 of this chapter is intended to be entered as an immediate exportation (IE) or transportation and exportation (T&E) shipment, permission from the port director of the origination port is needed to change the in-bond entry into a consumption entry. Such permission will only be granted upon receipt by CBP of a complete Importer Security Filing as required by part 149 of this chapter.

**PART 19 – CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN**

10. The general authority for part 19 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624;

\* \* \* \* \*

11. In § 19.15, revise paragraphs (f) and (g)(1) to read as follows:

**§ 19.15 Withdrawal for exportation of articles manufactured in bond; waste or byproducts for consumption.**

\* \* \* \* \*

(f) The general procedure covering warehouse withdrawals for exportation must be followed in the case of articles withdrawn for exportation from a bonded manufacturing warehouse.

(g)(1) Articles may be withdrawn for transportation and delivery to a bonded storage warehouse at an exterior port under the provisions of section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311), for the sole purpose of immediate exportation, except for distilled spirits which may be withdrawn under the provisions of § 311 for transportation and delivery to any bonded storage warehouse for the sole purpose of immediate exportation or may be withdrawn pursuant to section 309(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1309(a)). To make a withdrawal an in-bond application must be filed (see part 18 of this chapter), as provided for in § 144.36 of this chapter. A rewarehouse entry shall be made in accordance with § 144.34(b) of this chapter, supported by a bond on CBP Form 301, containing the bond conditions set forth in § 113.63 of this chapter.

\* \* \* \* \*

**PART 113 – CBP BONDS**

12. The general authority for part 113 continues to read as follows:

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

\* \* \* \* \*

13. In § 113.63, revise paragraph (c)(1) to read as follows:

**§ 113.63 Basic custodial bond conditions.**

\* \* \* \* \*

(c) \* \* \*

(1) If a bonded carrier, to report in-bond arrivals and exportations in the manner and in the time prescribed by regulation and to export in-bond merchandise in the time periods prescribed by regulation.

\* \* \* \* \*

**PART 122—AIR COMMERCE REGULATIONS**

14. The general authority for part 122 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

15. In § 122.92, revise paragraph (g) to read as follows:

**§ 122.92 Procedure at port of origin.**

\* \* \* \* \*

(g) Warning labels. The carrier shall supply and attach the warning label, as described in § 18.4(b)(3) of this chapter, to each bonded package.

16. In § 122.118, revise paragraph (b) to read as follows:

**§ 122.118 Exportation from port of arrival.**

\* \* \* \* \*

(b) Time. Transit air cargo must be exported from the port of arrival within 15 days from the date the exporting airline receives the cargo. After the 15-day period, the individual cargo shipments must be made the subject of individual entries, as appropriate.

\* \* \* \* \*

17. In § 122.119, revise paragraph (b) to read as follows:

**§ 122.119 Transportation to another U.S. port.**

\* \* \* \* \*

(b) Time. Transit air cargo traveling to a final port of destination in the U.S. shall be delivered to Customs at its destination within 30 days from the date the receiving airline gives the receipt for the cargo at the port of arrival.

\* \* \* \* \*

18. In § 122.120, revise paragraphs (c) and (k) to read as follows:

**§ 122.120 Transportation to another port for exportation.**

\* \* \* \* \*

(c) Time. Transit air cargo covered by this section shall be delivered to CBP at the port of exportation within 30 days from the date of receipt by the forwarding airline.

\* \* \* \* \*

(k) Failure to deliver. If all or part of the cargo listed on the transit air cargo manifest is not accounted for with an exportation copy within 45 days, the director of the port of arrival shall take action as provided in § 122.119(d).

**PART 123 – CBP RELATIONS WITH CANADA AND MEXICO**

19. The general authority for part 123 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624, 2071 note.

\* \* \* \* \*

20. In § 123.31, revise paragraph (b) to read as follows:

**§ 123.31 Merchandise in transit.**

\* \* \* \* \*

(b) From one point in a contiguous country to another through the United States. Merchandise may be transported from point to point in Canada or in Mexico through the

United States in bond in accordance with the procedures set forth in §§ 18.1 and 18.20 through 18.24 of this chapter except where those procedures are modified by this subpart or subparts E for trucks transiting the United States, F for commercial traveler's samples, or G for baggage.

21. Revise § 123.32 to read as follows:

**§ 123.32 In-bond application.**

An in-bond application must be submitted pursuant to part 18 of this chapter upon arrival of merchandise which is to proceed under the provisions of this subpart.

**§ 123.34 [Removed and Reserved].**

22. Remove and reserve § 123.34.

23. In § 123.42, revise the paragraph (c) heading and paragraphs (c)(1) and (d) introductory text, to read as follows:

**§ 123.42 Truck shipments transiting the United States.**

\* \* \* \* \*

(c) Procedure at U.S. port of arrival—(1) Filing of in-bond application. An in-bond application must be filed pursuant to § 18.1 of this chapter prior to or upon arrival at a U.S. port. At CBP's discretion the driver may be required to present four validated copies of the United States-Canada Transit Manifest, CBP Form 7512-B Canada 8½, to the CBP officer, who will review the manifest for accuracy and verify its validation by Canadian Customs. If the manifest is found not to be validated properly, the truck will be required to be returned to the Canadian port of departure so that the manifest may be validated in accordance with Canadian Customs regulations. If the manifest is validated properly and no irregularity is found, the truck will be sealed unless sealing is waived by

CBP. The CBP officer will note in the in-bond record and, if paper, on the manifest, the seal numbers or the waiver of sealing, retain the original, and return three copies of the manifest to the driver for presentation to CBP at the U.S. port of exportation.

\* \* \* \* \*

(d) Procedure at U.S. port of exportation. The arrival of the in-bond shipment at the port of exportation must be reported to CBP in accordance with § 18.1 of this chapter.

\* \* \* \* \*

24. In § 123.52, revise paragraph (a) to read as follows:

**§ 123.52 Commercial samples transported by automobile through the United States between ports in Canada.**

(a) General provisions. A commercial traveler arriving from Canada may be permitted to transport effectively corded and sealed samples in his automobile without further sealing in the United States, upon compliance with this section and subject to the conditions of § 18.20(d) of this chapter, since customs bonded carriers as described in § 18.2 of this chapter are not considered to be reasonably available. Samples having a total value of not more than \$200 may be carried by a nonresident commercial traveler through the United States without cording and sealing and without an in-transit manifest in accordance with § 148.41 of this chapter.

\* \* \* \* \*

25. In § 123.64, revise paragraph (a) to read as follows:

**§ 123.64 Baggage in transit through the United States between ports in Canada or in Mexico.**

(a) Procedure. Baggage in transit from point to point in Canada or Mexico through the United States may be transported in-bond through the United States in accordance with the procedures set forth in §§ 18.1, 18.13, 18.14, and 18.20 through 18.24 of this chapter except where those procedures are modified by this section.

\* \* \* \* \*

#### **PART 141 – ENTRY OF MERCHANDISE**

26. The general authority for part 141 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1414, 1448, 1484, 1624.

27. In § 141.61, revise paragraph (e)(1)(i)(A) to read as follows:

#### **§ 141.61 Completion of entry and entry summary documentation.**

\* \* \* \* \*

(e) Statistical information—(1) Information required on entry summary or withdrawal form—(i) Where form provides space—(A) Single invoice. For each class or kind of merchandise subject to a separate statistical reporting number, the applicable information required by the General Statistical Notes, Harmonized Tariff Schedule of the United States (HTSUS), must be shown on the entry summary, CBP Form 7501. The applicable information must also be shown on the in-bond application filed pursuant to part 18 of this chapter when it is used to document an incoming vessel shipment proceeding to a third country pursuant to an entry for transportation and exportation, or immediate exportation.

\* \* \* \* \*

#### **PART 142 – ENTRY PROCESS**

28. The general authority for part 142 continues to read as follows:

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

29. In § 142.18, revise paragraphs (a)(1) and (2) to read as follows:

**§ 142.18 Entry summary not required for prohibited merchandise.**

(a) \* \* \*

(1) An entry for exportation filed using an in-bond application pursuant to part 18 of this chapter, or an application to destroy the merchandise under CBP supervision is made within 10 days after the time of entry, and the exportation or destruction is accomplished promptly, or

(2) An entry for transportation and exportation, filed using an in-bond application pursuant to part 18 of this chapter, is made within 10 days after the time of entry and domestic carriage of the merchandise does not conflict with the requirements of another Federal agency.

\* \* \* \* \*

30. In § 142.28, revise paragraph (a)(2) to read as follows:

**§ 142.28 Withdrawal or entry summary not required for prohibited merchandise.**

(a) \* \* \*

(2) An entry for exportation or for transportation and exportation filed using an in-bond application pursuant to part 18 of this chapter, or an application to destroy the merchandise, is made within the specified time limit, and the exportation or destruction is accomplished promptly.

\* \* \* \* \*

**PART 143 – SPECIAL ENTRY PROCEDURES**

31. The general authority for part 143 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1414, 1481, 1484, 1498, 1624, 1641.

32. In § 143.1, revise paragraph (c) to read as follows:

**§ 143.1 Eligibility.**

\* \* \* \* \*

(c) Participants for other purposes. Upon approval by CBP, any party may participate in ABI for other purposes, including transmission of protests, filing of in-bond applications, and applications for FTZ admission (CBP Form 214).

**PART 144 – WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS**

33. The general authority for part 144 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1484, 1557, 1559, 1624.

\* \* \* \* \*

34. In § 144.22, revise paragraph (b) to read as follows:

**§ 144.22 Endorsement of transfer on withdrawal form.**

\* \* \* \* \*

(b) In-bond application filed pursuant to part 18 of this chapter, for merchandise to be withdrawn for transportation, exportation, or transportation and exportation.

35. In § 144.36, revise paragraphs (c), (d) introductory text, (f), and (g)(4) to read as follows:

**§ 144.36 Withdrawal for transportation.**

\* \* \* \* \*

(c) Form. (1) A withdrawal for transportation shall be filed by submitting an in-bond application pursuant to part 18 of this chapter.

(2) Separate withdrawals for transportation from a single warehouse, via a single conveyance, consigned to the same consignee, and deposited into a single warehouse, can be filed using one in-bond application, under one control number, provided that the information for each withdrawal, as required in paragraph (d) of this section is provided in the in-bond application for certification by CBP. With the exception of alcohol and tobacco products, this procedure will not be allowed for merchandise that is in any way restricted (for example, quota/visa).

(3) The requirement that an in-bond application be filed and the information required in paragraph (d) of this section be shown will not be required if the merchandise qualifies under the exemption in § 144.34(c).

(d) Information required. In addition to the statement of quantity required by § 144.32, the following information for the merchandise being withdrawn must be provided in the in-bond application:

\* \* \* \* \*

(f) Forwarding procedure. The merchandise must be forwarded in accordance with the general provisions for transportation in bond (§§ 18.1 through 18.9 of this chapter). However, when the alternate procedures for transfers between integrated bonded warehouses under § 144.34(c) are employed, the merchandise need not be delivered to a bonded carrier for transportation, and an entry for transportation and a rewarehouse entry will not be required.

(g) \* \* \*

(4) Forwarded to another port or returned to the origination port in accordance with §§ 18.5(c) or 18.9 of this chapter;

\* \* \* \* \*

36. In § 144.37, revise paragraphs (a) and (b) to read as follows:

**§ 144.37 Withdrawal for exportation.**

(a) Form. A withdrawal for either direct or indirect exportation must be filed by submitting an in-bond application pursuant to part 18 of this chapter or on CBP Form 7501 in 3 copies for merchandise being exported under cover of a TIR carnet. The in-bond application or CBP Form 7501 must contain all of the statistical information as provided in § 141.61(e) of this chapter. The port director may require an extra copy or copies of CBP Form 7501 for use in connection with the delivery of merchandise to the carrier.

(b) Procedure for indirect exportation—(1) Forwarding. Merchandise withdrawn for indirect exportation (transportation and exportation) must be forwarded to the port of exportation in accordance with the general provisions for transportation in bond (part 18 of this chapter).

(2) Dividing of shipments. The dividing up for exportation of shipments arriving under warehouse withdrawals for indirect exportation will be permitted only when various portions of a shipment are destined to different destinations, when the export vessel cannot properly accommodate the entire quantity, or in other similar circumstances. In the case of merchandise moving under cover of a TIR carnet, if the merchandise is not to be exported or if the shipment is to be divided, appropriate entry will be required and the carnet discharged. The provisions of §§ 18.23 and 18.24 of this chapter concerning change of destination or retention of merchandise on the dock must also be followed in applicable cases.

\* \* \* \* \*

## **PART 146 – FOREIGN TRADE ZONES**

37. The general authority for part 146 continues to read as follows:

**Authority:** 19 U.S.C. 66, 81a–81u, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624.

38. In § 146.62, revise paragraphs (a) and (b)(2) to read as follows:

### **§ 146.62 Entry.**

(a) General. Entry for foreign merchandise that is to be transferred from a zone, or removed from a zone for exportation or transportation to another port, for consumption or warehouse, will be made by filing an in-bond application pursuant to part 18 of this chapter, CBP Form 3461, CBP Form 7501, or other applicable CBP forms. If entry is made on CBP Form 3461, the person making entry shall file an entry summary for all the merchandise covered by the CBP Form 3461 within 10 business days after the time of entry.

(b) \* \* \*

(2) An in-bond application for merchandise to be transferred to another port or zone or for exportation must provide that the merchandise covered is foreign trade zone merchandise; give the number of the zone from which the merchandise was transferred; state the status of the merchandise; and, if applicable, bear the notation or endorsement provided for in § 146.64(c), § 146.66(b), or § 146.70(c).

\* \* \* \* \*

39. In § 146.66, revise paragraphs (a) and (b) and remove the words “Customs Form” and add in their place the words “CBP Form” wherever they appear in paragraphs (c)(1) and (2) and (d).

The revisions read as follows:

**§ 146.66 Transfer of merchandise from one zone to another.**

(a) At the same port. A transfer of merchandise to another zone with a different operator at the same port (including a consolidated port) must be made by a licensed cartman or a bonded carrier as provided for in § 112.2(b) of this chapter or by the operator of the zone for which the merchandise is destined under an entry for immediate transportation filed via an in-bond application pursuant to part 18 of this chapter or other appropriate form with a CBP Form 214 filed at the destination zone. A transfer of merchandise between zone sites at the same port having the same operator may be made under a permit on CBP Form 6043 or under a local control system approved by the port director wherein any loss of merchandise between sites will be treated as if the loss occurred in the zone.

(b) At a different port. A transfer of merchandise from a zone at one port of entry to a zone at another port must be made by bonded carrier under an entry for immediate transportation filed via an in-bond application pursuant to part 18 of this chapter. All copies of the entry must bear a notation that the merchandise is being transferred to another zone designated by its number.

\* \* \* \* \*

40. In § 146.67, revise paragraphs (b) and (c) to read as follows:

**§ 146.67 Transfer of merchandise for exportation.**

\* \* \* \* \*

(b) Immediate exportation. Each transfer of merchandise to the customs territory for exportation at the port where the zone is located will be made under an entry for immediate exportation filed in an in-bond application pursuant to part 18 of this chapter. The person making entry must furnish an export bond on CBP Form 301 containing the bond conditions provided for in § 113.63 of this chapter.

(c) Transportation and exportation. Each transfer of merchandise to the customs territory for transportation to and exportation from a different port will be made under an entry for transportation and exportation in an in-bond application pursuant to part 18 of this chapter. The bonded carrier will be responsible for exportation of the merchandise in accordance with § 18.26 of this chapter.

\* \* \* \* \*

41. Revise § 146.68 to read as follows:

**§ 146.68 Transfer for transportation or exportation; estimated production.**

(a) Weekly permit. The port director may allow the person making entry for merchandise provided for in § 146.63(c) to file an application for a weekly permit to enter and release merchandise during a calendar week for exportation, transportation, or transportation and exportation. The application will be made by filing an in-bond application pursuant to part 18 of this chapter. The in-bond application must provide invoice or schedule information like that required in § 146.63(c)(1). If actual transfers will exceed the estimate for the week, the person with the right to make entry must file a supplemental in-bond application to cover the additional merchandise to be transferred

from the subzone or zone site. No merchandise covered by the weekly permit may be transferred from the zone before approval of the application by the port director.

(b) Individual entries. After approval of the application for a weekly permit by the port director, the person making entry will be authorized to file individual in-bond applications for exportation, transportation, or transportation and exportation of the merchandise covered by permit. Upon transfer of the merchandise, the carrier must update the in-bond record via a CBP-approved EDI system to ensure its assumption of liability under the carrier's or cartman's bond. CBP will consider the time of entry to be when the removing carrier updates the in-bond record.

(c) Statement of merchandise entered. The person making entry for merchandise under an approved weekly permit must file with the port director, by the close of business on the second business day of the week following the week designated on the permit, a statement of the merchandise entered under that permit. The statement must list each in-bond application by its unique IT number, and must provide a reconciliation of the quantities on the weekly permit with the manifested quantities on the individual in-bond applications submitted to CBP, as well as an explanation of any discrepancy.

## **PART 151 – EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE**

42. The general authority for part 151 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i) and (j), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

\* \* \* \* \*

43. Revise § 151.9 to read as follows:

**§ 151.9 Immediate transportation entry delivered outside port limits.**

When merchandise covered by an immediate transportation entry has been authorized by the port director to be delivered to a place outside a port of entry as provided for in § 18.11(a) of this chapter, the provisions of § 151.7 must be complied with to the same extent as if the merchandise had been delivered to the port of entry, and then authorized to be examined elsewhere than at the public stores, wharf, or other place under the control of CBP.

**PART 181 – NORTH AMERICAN FREE TRADE AGREEMENT**

44. The general authority for part 181 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314;

\* \* \* \* \*

**§ 181.47 [Amended].**

45. In § 181.47, amend paragraph (b)(2)(ii)(E) by removing the words “CBP 7512” and adding in their place the words “In-bond application submitted pursuant to part 18 of this chapter”.

Kevin K. McAleenan  
Acting Commissioner

Approved: September 20, 2017

Timothy E. Skud

Deputy Assistant Secretary of the Treasury  
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