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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs & Border Protection

Section 321 Data Pilot

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) is conducting a voluntary test to collect certain advance data related to shipments potentially eligible for release under section 321 of the Tariff Act of 1930, as amended. Section 321 provides for an administrative exemption from duty and taxes for shipments of merchandise (other than bona-fide gifts and certain personal and household goods) imported by one person on one day having an aggregate fair retail value in the country of shipment of not more than \$800. Pursuant to this test, participants will electronically transmit certain data elements pertaining to these shipments to CBP in advance of arrival. CBP is conducting this test to determine the feasibility of requiring advance data from different types of parties and requiring additional data that is generally not required under current regulations in order to effectively identify and target high-risk shipments in the e-commerce environment. Participants may be non-traditional CBP partners, such as online marketplaces. This notice describes the purpose of the test and test procedures, and sets forth the eligibility requirements for participation. This test will be known as the Section 321 Data Pilot.

DATES: The voluntary pilot will begin on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*] and run for approximately one year. CBP will accept applications from prospective pilot participants at any time, including after the pilot commences, until CBP has identified a sufficient number of eligible participants.

ADDRESSES: Prospective pilot participants should submit an email to e-commercesmallbusinessbranch@cbp.dhs.gov. In the subject line of your email please indicate "Application for Section 321 Data Pilot." For information on what information to include in the email, see section II.D (Application Process and Acceptance) of the **SUPPLEMENTARY INFORMATION** heading below.

FOR FURTHER INFORMATION CONTACT: Laurie Dempsey, Director, IPR & E-Commerce Division at laurie.b.dempsey@cbp.dhs.gov or 202-615-0514 and Daniel Randall, Branch Chief, Manifest & Conveyance Security at 202-344-3282.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Pilot

A. Current Requirements

CBP has broad authority to collect advance data and inspect cargo crossing the border for health, safety, and other risks pursuant to various statutory authorities. *See, e.g.,* 6 U.S.C. 211(c) and (g); 19 U.S.C. 482, 1461, 1589a, 1595a; *see also* 19 CFR 162.6. Currently, CBP requires the electronic transmission of certain information relating to commercial cargo prior to its arrival in the United States. Section 343(a) of the Trade Act of 2002, as amended, authorizes CBP to promulgate regulations, in accordance with certain parameters, providing for the mandatory transmission of cargo information before

the cargo is brought into or departs the United States by any mode of commercial transportation. Pub. L. 107-210, 116 Stat. 933 (Aug. 6, 2002) (codified at 19 U.S.C. 1415). The required cargo information is that which is reasonably necessary to enable high-risk cargo to be identified for purposes of ensuring cargo safety and security pursuant to the laws enforced and administered by CBP. Accordingly, CBP promulgated regulations in title 19 of the Code of Federal Regulations (19 CFR) to require carriers or other eligible parties to submit certain data for cargo in advance, regardless of the mode of transportation. *See* 68 FR 68140 (Dec. 5, 2003); 19 CFR 4.7 (vessel), 122.48a (air), 123.91 (rail), and 123.92 (truck). Although the required data elements differ depending on the mode of transportation and the type of shipment, the carrier generally must transmit information such as the shipper name and address, the consignee name and address, a description of the cargo, including the cargo's quantity and weight, and information regarding the cargo's trip, such as trip/flight number, carrier code, point of arrival and point of origin.

The Air Cargo Advance Screening (ACAS) regulations, also issued pursuant to the Trade Act of 2002, impose additional requirements for cargo arriving by air. *See* 19 CFR 122.48b. The ACAS regulations require carriers or other eligible parties to transmit a subset of the data required by the Trade Act of 2002 earlier in the process (i.e., as soon as practicable, but no later than prior to loading the cargo into an aircraft). *See* 19 CFR 122.48b(b)(1). Pursuant to the ACAS regulations, air carriers must transmit the following data elements prior to loading: shipper name and address, consignee name and

address, cargo description, total quantity, total weight, and air waybill number. 19 CFR 122.48b(d)(1).¹

The Security and Accountability for Every Port Act of 2006 (SAFE Port Act) authorizes CBP to promulgate regulations to require the electronic transmission of additional data elements for improved high-risk targeting for cargo arriving by vessel. Pub. L. 109-347, 120 Stat. 1884 (Oct. 13, 2006) (codified at 6 U.S.C. 901 note). CBP promulgated regulations to require importers and carriers to submit additional data, in addition to the data required by the Trade Act regulations, for cargo arriving by vessels before the cargo is brought to the United States. *See* 19 CFR part 149 (the Importer Security Filing or ISF regulations). The data required by the ISF regulations differs depending on the type of shipment, but generally includes the name and address of the seller, buyer, and manufacturer or supplier, the consignee identifying number, the ship to party (the first deliver-to party scheduled to receive the goods after the goods have been released from customs custody), country of origin, Harmonized Tariff Schedule of the United States (HTSUS) number, container stuffing location, and the name and address of the consolidator. 19 CFR 149.3(a).

CBP uses the advance electronic data transmitted pursuant to these authorities to identify and target high-risk shipments of commercial cargo arriving in the United States.

¹ The above-listed data elements are mandatory in all circumstances. Carriers or other ACAS filers may also be required to transmit an additional data element, depending on the circumstances, and are encouraged to transmit additional data elements. 19 CFR 122.48b(d).

B. Section 321 Shipments

Section 321(a)(2)(C) of the Tariff Act of 1930, as amended, authorizes CBP to provide an administrative exemption to admit free from duty and tax shipments of merchandise (other than bona-fide gifts and certain personal and household goods) imported by one person on one day having an aggregate fair retail value in the country of shipment of not more than \$800. 19 U.S.C. 1321(a)(2)(C). CBP regulations provide that, subject to the conditions in 19 CFR 10.153, the port director shall pass free of duty and tax any shipment of merchandise imported by one person on one day having a fair retail value in the country of shipment not exceeding \$800, unless there is a reason to believe the shipment is one of several lots covered by a single order or contract, and was sent separately for the express purpose of securing free entry or of avoiding compliance with any pertinent law or regulation. 19 CFR 10.151.

Prior to the enactment of the Trade Facilitation and Trade Enforcement Act (TFTEA) (Pub. L. 114-125, 130 Stat. 223 (Feb. 24, 2016)), the Section 321 exemption applied only to shipments valued at less than \$200. Section 901(a) of TFTEA amended Section 321(a)(2)(C) of the Tariff Act of 1930 to raise the *de minimis* threshold from \$200 to \$800. *See* Pub. L. 114-125, 130 Stat. 223 (Feb. 24, 2016); 19 U.S.C. 1321(a)(2)(C). This has greatly increased the number of shipments qualifying for the Section 321 exemption. Currently, approximately 1.8 million shipments a day are released pursuant to Section 321. The majority of these Section 321 shipments are arriving by air and truck.

C. Purpose of the Section 321 Data Pilot

CBP faces significant challenges in targeting Section 321 shipments, while still maintaining the clearance speeds the private sector has come to expect. This is because CBP does not receive adequate advance information in order to effectively and efficiently assess the security risk of the approximately 1.8 million Section 321 shipments that arrive each day.

In the e-commerce environment, traditionally regulated parties, such as carriers, are unlikely to possess all of the information relating to a shipment's supply chain. While CBP receives some advance electronic data for Section 321 shipments from air, rail, and truck carriers (and certain other parties in limited circumstances) as mandated by current regulations described above in section I.A (Current Requirements), the transmitted data often does not adequately identify the entity causing the shipment to cross the border, the final recipient, or the contents of the package. Consequently, CBP may not receive any advance information on the entity actually causing the shipment to travel to the United States, such as the seller or manufacturer. Some carriers may not have this information because sellers on e-commerce platforms often contract with other entities to act as the seller. Similarly, for the consignee's name and address, a carrier might transmit information for the domestic deconsolidator, which will not allow CBP to identify in advance of arrival, the final recipient of the merchandise in the United States. With the growth of e-commerce, shipments are increasingly subject to these complex transactions, where information about the shipment is limited. As a result, CBP is less able to effectively target or identify high-risk shipments in the e-commerce environment

and CBP Officers must use additional time and resources to inspect Section 321 shipments upon arrival.

CBP anticipates that Section 321 shipments will continue to grow exponentially. Accordingly, CBP is initiating this voluntary Section 321 Data Pilot to test the feasibility of obtaining advance information from regulated and non-regulated entities, such as online marketplaces, as well as requiring additional advance data elements. Online marketplaces are internet-based entities that facilitate e-commerce by (1) connecting third-party sellers with consumers and (2) receiving and processing payment information from consumers, including receiving and processing payments on behalf of the third-party sellers. Online marketplaces generally have detailed information regarding Section 321 shipments, including information relating to the party causing the product to travel to the United States, the final recipient in the United States, and detailed descriptions and pictures of the contents of the shipment. Online marketplaces may also assign sellers with unique identifiers or develop their own known seller programs. This test will enable CBP to assess the ability of online marketplaces to transmit information to CBP that enables CBP to better utilize resources used in inspecting and processing these shipments and better understand the operation of online marketplaces.

Additionally, CBP is testing whether the transmission of additional advance data, beyond the data elements currently required for shipments arriving by air, truck, or rail under the authorities cited above in section I.A (Current Requirements), will enable CBP to more accurately and efficiently target Section 321 shipments. Pursuant to this test, participants will provide information that identifies the entity causing the shipment to cross the border, the ultimate recipient, and the product in the shipment with greater

specificity, in advance. CBP will test the feasibility of using the additional data elements, transmitted by multiple entities for a single shipment, to segment risk. For example, CBP may compare a picture of the product (transmitted by an online marketplace) to an x-ray image of the package (transmitted by the carrier) to determine if the picture of the product and x-ray image match. In sum, the pilot will enable CBP to determine if requiring additional data and involving non-regulated entities will enable CBP to address the threats and complexities resulting from the vast increase in Section 321 shipments, while facilitating cross-border e-commerce.

II. Description of the Section 321 Data Pilot

The Section 321 Data Pilot is a voluntary test that will enable participants to electronically transmit to CBP certain information regarding Section 321 shipments prior to the shipment's arrival in the United States. CBP will use the advance information to improve CBP's ability to effectively and efficiently identify and target high-risk shipments, including for narcotics, counter-proliferation, and health and safety risks. CBP will select pilot participants from eligible applicants engaged in e-commerce, including carriers, brokers, and freight forwarders, as well as online marketplaces. Further details about the eligibility requirements and application process are provided in section II.C (Eligibility Requirements) and section II.D (Application Process and Acceptance) below.

Participants in the pilot will electronically transmit certain data elements specified below in section II.A (Data Elements) in addition to other data elements as available and at the participant's discretion. CBP must receive the data elements prior to the shipment's arrival in the United States. Participants may electronically transmit the

requested information through an existing point-to-point connection with CBP.

Alternatively, participants may authorize a carrier or broker participating in the pilot and who has an existing point-to-point connection with CBP to transmit the information on their behalf. For additional information on technology requirements, see section II.C (Eligibility Requirements) below. CBP will respond to the data transmissions with a confirmation of receipt and will use the transmitted information to conduct risk assessments. Risk assessment for each shipment will be based on multiple transmissions, as each transmission can be from different parties providing different data elements at various stages in the supply chain. Messages will be maintained in the Automated Targeting System (ATS).

The Section 321 Data Pilot will not affect any current requirements and CBP is not waiving any regulations for purposes of the pilot, including all the regulations pertaining to the provision of advance data cited above, including the ACAS and ISF regulations. All of the existing Trade Act of 2002 requirements and all manifest requirements continue to apply. Additionally, CBP will not use the information transmitted pursuant to the pilot for entry or release purposes, and pilot participants cannot rely on information transmitted through the pilot for entry or release purposes.

A. Data Elements

Participants in the Section 321 Data Pilot must transmit certain information for any Section 321 shipments destined for the United States for which the participant has information. (For additional information on the types of shipments included in the pilot, see section II.B (Duration and Scope of the Pilot)). The required data elements differ slightly depending on what entity is transmitting the data. In general, the required data

relates to the entity initiating the shipment (e.g., the entity causing the shipment to cross the border, such as the seller, manufacturer, or shipper), the product in the package, the listed marketplace price, and the final recipient (e.g., the final entity to possess the shipment in the United States). The data elements are as follows.

1. All participants. All participants, regardless of filer type, must electronically transmit the following elements:

- Originator Code of the Participant (assigned by CBP)
- Participant Filer Type (e.g., carrier or online marketplace)
- One or more of the following:
 - Shipment Tracking Number
 - House Bill Number
 - Master Bill Number
- Mode of Transportation (e.g., air, truck, or rail)

2. Participating carriers. In addition to the data elements listed above in paragraph 1, participating carriers must also electronically transmit the following data elements:

- Shipment Initiator Name and Address (e.g., the entity that causes the movement of a shipment, which may be a seller, shipper, or manufacturer, but not a foreign consolidator)
- Final Deliver to Party Name and Address (e.g., the final entity to receive the shipment once it arrives in the United States, which may be a final purchaser or a warehouse, but not a domestic deconsolidator)

- Enhanced Product Description (e.g., a description of a product shipped to the United States more detailed than the description on the manifest, which should, if applicable, reflect the advertised retail description of the product as listed on an online marketplace)
- Shipment Security Scan (air carriers only) (e.g., verification that a foreign security scan for the shipment has been completed such as an x-ray image or other security screening report)
- Known Carrier Customer Flag (e.g., an indicator that identifies a shipper as a repeat customer that has consistently paid all required fees and does not have any known trade violations)

3. Participating online marketplaces. In addition to the data elements listed above in paragraph 1, participating online marketplaces must electronically submit the following data elements:

- Seller Name and Address (e.g., an international or domestic company that sells products on marketplaces and other websites), and, if applicable, Shipment Initiator Name and Address (as defined in Section II.A.2)
- Final Deliver to Party Name and Address (as defined in Section II.A.2)
- Known Marketplace Seller Flag (e.g., an indicator provided by a marketplace that identifies a seller as an entity vetted by the marketplace and has no known trade violations)
- Marketplace Seller Account Number/Seller ID (e.g., the unique identifier a marketplace assigns to sellers)

- Buyer Name and Address, if applicable (e.g., the purchaser of a good from an online marketplace. This entity is not always the same as the final deliver to party.)
- Product Picture (e.g., picture of the product presented on an online marketplace), Link to Product Listing (e.g., an active and direct link to the listing of a specific product on an online marketplace), or Enhanced Product Description (as defined in Section II.A.2)
- Listed Price on Marketplace (e.g., the retail price of a product that a seller lists while advertising on an online marketplace. For auction marketplaces, this price is the price of final sale.)

Different entities may transmit different data elements for the same shipment.

B. Duration and Scope of the Pilot

The pilot will begin on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*] and operate for approximately one year.

The pilot applies to each Section 321 shipment destined for the United States, arriving by air, truck, or rail, for which the selected participants have information. The pilot will operate in all ports of entry utilized by the participants for Section 321 shipments. The pilot does not apply to any mail shipments covered by 19 CFR part 145, shipments arriving by ocean, or shipments destined for a Foreign Trade Zone.

C. Eligibility Requirements

CBP is seeking participation from stakeholders in the e-commerce environment, including carriers, brokers, freight forwarders, as well as online marketplaces. There are no restrictions with regard to organization size, location, or commodity type.

Additionally, online marketplaces do not need to offer delivery logistic services in order to participate in the pilot. However, participation is limited to those parties with sufficient information technology infrastructure and support, as described below. Prospective pilot participants will need to assess whether they can fulfill the following eligibility requirements:

- Technical capability to electronically submit data to CBP and to receive messaging responses via an existing point-to-point connection with CBP. Alternatively, participants may authorize a carrier or broker participating in the pilot and who has an existing point-to-point connection with CBP to transmit the information on their behalf.
- Participants who establish a new point-to-point connection with CBP will need to sign an Interconnect Security Agreement (ISA) or amend their existing ISA, if necessary, and adhere to security policies defined in the DHS 4300a security guide.

D. Application Process and Acceptance

Those interested in participating in the pilot should submit an email to e-commercesmallbusinessbranch@cbp.dhs.gov, stating their interest and their qualifications based on the above eligibility requirements. Online marketplaces should indicate the extent to which they have information related to the delivery logistics of the products sold on their website. The email should also include a point of contact. The email will serve as an electronic signature of intent. CBP will accept applications from prospective pilot participants at any time, including after the pilot commences, until CBP has identified a sufficient number of eligible participants. Specifically, CBP is looking

for pilot participants to include one or more carriers and one or more online marketplaces. Applications will be processed in the order in which they are received. Once applications are processed, those selected as participants will be notified by email. The pilot will initially be limited to 9 participants but CBP may expand the pilot to additional participants in the future.

E. Costs to Pilot Participants

The costs of pilot participation will vary depending on the pre-existing infrastructures of the participants. Costs may include communication requirements, such as transmission and receipt of data, as well as cost associated with collecting the required information. Participants are encouraged to keep track of the costs incurred by their participation in the pilot.

F. Benefits to Pilot Participants

While the benefits of participation may vary, one benefit is that, where appropriate, CBP may expedite clearances for low-risk Section 321 shipments when sufficient test data has been received prior to the shipment's arrival.

G. Evaluation of the Pilot

After the end of the pilot, CBP will evaluate the results of the pilot and determine whether to extend the duration of the pilot and/or expand the pilot to include additional participants. Additionally, CBP will evaluate the results of the pilot to determine whether additional mandatory advance reporting requirements are necessary in the e-commerce environment.

III. Authority

This pilot is conducted pursuant to 19 CFR 101.9(a), which authorizes the Commissioner to impose requirements different from those specified in the CBP regulations for the purposes of conducting a test program or procedure designed to evaluate the effectiveness of new technology or operational procedures regarding the processing of passengers, vessels, or merchandise.

IV. Privacy

CBP will ensure that all Privacy Act requirements and applicable policies are adhered to during the implementation of this pilot.

V. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)) requires that CBP consider the impact of paperwork and other information collection burdens imposed on the public. The PRA applies to collections of information imposed on “ten or more persons.” This pilot will initially include fewer than ten participants and as such will not require an OMB control number. If CBP expands the pilot to include ten or more persons, CBP will adhere to the requirements of the PRA.

VI. Misconduct Under the Pilot

A pilot participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, or discontinuance from participation in the Section 321 Data Pilot for any of the following:

- (1) Failure to follow the rules, terms, and conditions of this pilot;

(2) Failure to exercise reasonable care in the execution of participant obligations;

or

(3) Failure to abide by applicable laws and regulations that have not been waived.

If the Director, Intellectual Property Rights and E-Commerce Division, Office of Trade, finds that there is a basis for discontinuance of pilot participation privileges, the pilot participant will be provided a written notice proposing the discontinuance with a description of the facts or conduct warranting the action. The pilot participant will be offered the opportunity to appeal the decision in writing within 10 calendar days of receipt of the written notice. The appeal of this determination must be submitted to the Executive Director, Trade Policy and Programs, Office of Trade, by emailing e-commercesmallbusinessbranch@cbp.dhs.gov.

The Executive Director, Trade Policy and Programs, Office of Trade, will issue a decision in writing on the proposed action within 30 working days after receiving a timely filed appeal from the pilot participant. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed discontinuance of a pilot participant's privileges will not take effect unless the appeal process under this paragraph has been concluded with a written decision adverse to the pilot participant.

In cases of willfulness or those in which public health, interest, or safety so requires, the Director, Intellectual Property Rights and E-Commerce Division, Office of Trade, may immediately discontinue the pilot participant's privileges upon written notice to the pilot participant. The notice will contain a description of the facts or conduct warranting the immediate action. The pilot participant will be offered the opportunity to

appeal the decision within 10 calendar days of receipt of the written notice providing for immediate discontinuance. The appeal of this determination must be submitted to the Executive Director, Trade Policy and Programs, Office of Trade, by emailing e-commercesmallbusinessbranch@cbp.dhs.gov.

The immediate discontinuance will remain in effect during the appeal period. The Executive Director, Trade Policy and Programs, Office of Trade, will issue a decision in writing on the discontinuance within 15 working days after receiving a timely filed appeal from the pilot participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

DATE: July 18, 2019

Robert E. Perez
Deputy Commissioner
U.S. Customs and Border Protection

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