



DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Parts 4 and 122

Docket No. USCBP-2012-0003

RIN 1651-AA89

Exemptions from Entry Requirements and Report of Arrival Requirements for Certain Department of Defense Vessels and Aircraft

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

ACTION: Notice of proposed rulemaking.

SUMMARY: Certain vessels and aircraft owned or chartered by the Department of Defense (DoD) are exempt from entry requirements and, in some cases, reporting requirements upon their arrival in the United States from a foreign place. This rule proposes to expand those exemptions to include additional DoD-owned or chartered vessels and aircraft when transporting certain cargo or passengers.

DATES: Comments must be received on or before [insert date 60 days from date of publication in **Federal Register**].

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

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2012-0003.

- Mail: U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Border Security Regulations Branch, 799 9th St. N.W., 5th floor, Washington, DC 20229-1179.

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

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Border Security Regulations Branch, 799 9th St. N.W., 5th floor, Washington, DC 20229-1179. To inspect submitted comments, make arrangements in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Michel Chausse, CBP Office of Field Operations, telephone (202) 344-3656.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects on the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might

result from this proposed rule. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

Vessels and aircraft arriving in the United States from a foreign place are generally required to report their arrival to CBP and make entry. Under current regulations, certain vessels and aircraft owned or chartered by the Department of Defense (DoD) are exempt from entry requirements and, in some cases, reporting requirements upon their arrival in the United States from a foreign place. The exemptions generally apply when the vessel or aircraft is transporting cargo that is solely the property of DoD or when it is transporting passengers traveling on official business of the United States. This rule proposes to expand the exemptions to entry requirements and, to a lesser extent, arrival reporting requirements to improve the flow of cargo and passengers that support DoD missions.

Reporting Requirements

Section 433 of the Tariff Act of 1930, as amended, requires vessels and aircraft arriving in the United States from a foreign place to report their arrival. 19 U.S.C. 1433. The statute authorizes the Secretary of Homeland Security (Secretary) to promulgate regulations concerning the manner and timing of reporting arrival for vessels and aircraft.

Two regulatory provisions govern the method of reporting arrival to CBP for vessels and aircraft. First, concerning vessels, CBP regulations require that the master of a vessel arriving in the United States from a foreign port or place immediately report the

arrival to the nearest CBP facility or other location designated by the port director. See 19 CFR 4.2. Second, regarding aircraft, CBP regulations require all aircraft entering the United States to provide advance notice of arrival, subject to certain exceptions. See 19 CFR 122.31.

Entry Requirements

In contrast to reporting arrival, making entry is a more formal process and typically involves filing certain necessary information with CBP. Separate statutes provide for vessel and aircraft entry requirements and separate regulatory provisions implement them.

First, sections 434 and 441 of the Tariff Act of 1930, as amended, govern vessel entry requirements. 19 U.S.C. 1434 and 1441. Section 434 describes the vessels that are subject to formal entry requirements and authorizes the Secretary to promulgate regulations relating to the manner, format, and timeframe regarding the filing of the entry. Section 441 describes the types of vessels that are not required to make entry under section 434. CBP regulations require certain vessels, including vessels arriving in the United States from a foreign place, to make formal entry within 48 hours after the arrival at any port or place in the United States, unless specifically excepted by law. See 19 CFR 4.3.

Second, concerning aircraft, 19 U.S.C. 1644a grants the Secretary discretion to apply the laws and regulations of vessel entry and clearance to civil air navigation. Accordingly, CBP regulations provide that all aircraft coming into the United States from a foreign place are required to make entry, subject to specified exemptions. See 19 CFR 122.41.

Current DoD Exemptions from Entry Requirements and Arrival Reporting

Under existing regulations, certain vessels and aircraft owned or chartered by the DoD are exempt from entry requirements and, in some cases, reporting requirements upon their arrival in the United States from a foreign place. These exemptions generally apply when the vessel or aircraft is transporting cargo that is solely the property of DoD or when it is transporting passengers traveling on official business of the United States.

Vessels

Pursuant to 19 U.S.C. 1441, certain public vessels and vessels of war are not subject to formal entry requirements. CBP regulations provide that neither a report of arrival nor entry is required of any vessel that is:

- owned by, or under the complete control and management of the United States or any of its agencies;
- manned by members of the uniformed armed services of the United States, by personnel in the civil service of the United States, or by both; and
- transporting only property of the United States, or passengers traveling on official business of the United States, or is in ballast.

19 CFR 4.5(a). DoD vessels that satisfy these criteria are exempt from report of arrival and entry requirements. CBP regulations further provide that a DoD-chartered vessel will be exempt from entry, when it is manned entirely by the civilian crew of the vessel carrier under contract to DoD and transporting only cargo that is DoD property.

Aircraft

CBP regulations provide exemptions for certain public and private aircraft and DoD-chartered aircraft from making entry. These regulations, however, do not provide exemptions from arrival reporting requirements. “Public aircraft” is defined as a government-owned aircraft that is carrying only property of the government or passengers traveling on official business of the government. See 19 CFR 122.1. CBP regulations provide an exemption from entry for DoD-chartered aircraft, but only if it is carrying cargo that is solely DoD property. 19 CFR 122.41(b). Thus, under both the public aircraft exemption and the DoD-chartered aircraft exemption, the cargo being transported must be the exclusive property of the government. In the case of passengers traveling on official business of the government, the entry exemption applies only if the aircraft is owned by the government.

Advance Cargo Information

CBP regulations require vessels (19 CFR 4.7) and aircraft (19 CFR 122.48a) arriving in the United States, to provide advance cargo information when the vessel or aircraft is required to make entry. Therefore, vessels and aircraft that are exempt from entry requirements are also exempt from the requirement to present advance cargo information.

Currently, DoD-owned or DOD-chartered vessels and aircraft that are exempt from entry requirements are also exempt from advance cargo information requirements. Under this proposed rule, those additional vessels and aircraft that would be exempt from entry requirements would also be exempt from the advance cargo information requirements in 19 CFR 4.7 and 122.48a.

Effect of Current Entry and Reporting Exemptions on DoD Missions

Many vessels and aircraft that are under DoD's control and used to support DoD's missions do not fit within the current exemptions, either because the cargo is not the property of DoD or because the vessel or aircraft is a chartered vessel or aircraft. Therefore, formal entry, advance reporting, and, in some cases, reports of arrival are required. These requirements can impede the flow of cargo and passengers moved in support of the U.S. government's and DoD's missions.

DoD transports all goods and passengers supporting its missions under DoD's control through its own transportation system, the Defense Transportation System (DTS). The DTS, administered pursuant to the DoD directive on Transportation and Traffic Management (DoD Directive 4500.09E), is the system by which DoD manages the secure shipment of cargo and personnel in peace and in war. Although the cargo that is transported in the DTS is under the strict control of DoD, much of this cargo is not owned by DoD. The controlling DoD directive requires that any non-DoD traffic transported in the DTS be in support of the mission of DoD or the United States or be of an emergency, lifesaving nature (DoD Directive 4500.09E E4.3.1). Vessels and aircraft often carry, for example, defense contractor owned cargo used to support DoD missions, personal property (household goods) of military members, humanitarian cargo, or security assistance cargo. These conveyances are not covered by the current entry exemptions, even though this cargo is normally transported under DoD's control through the DTS. In fact, much of the cargo that moves in the DTS renders the conveyance on which it is transported ineligible for an entry exemption. These conveyances are currently subject to entry requirements and thus also subject to advanced electronic presentation of cargo information requirements.

Under current regulations, although DoD-owned vessels and aircraft that transport passengers traveling on official U.S. business are exempt from entry, DoD-chartered vessels and aircraft are not exempt and must make entry if transporting any passengers. DoD often utilizes chartered vessels and aircraft to transport, for example, DoD personnel, personnel of the Red Cross or the United Service Organizations (USO), or DoD contractor employees, in addition to cargo. Even though all passengers transported on DoD conveyances must be approved to travel in the DTS, regardless of whether the conveyance is owned or chartered by DoD, the chartered vessel or aircraft would be subject to entry and advance cargo information requirements if transporting passengers, while DoD-owned vessels would not.

Proposed Changes to Entry and Reporting Requirements

Based on the above considerations, CBP is proposing to revise the exemptions to better address the manner in which cargo and passengers are moved in support of DoD missions. CBP is proposing to relate the DoD exemptions from entry and reporting to the DTS. Specifically, CBP is proposing to add a general definition of the DTS in the relevant parts of the CBP regulations (part 4 for vessels and part 122 for aircraft). CBP also proposes to revise the current DoD exemptions to cover vessels and aircraft owned by, or under the complete control and management of DoD, or chartered by DoD, which transport only cargo and/or passengers that have been approved for carriage in the DTS. The proposed exemptions would only apply to those chartered vessels or aircraft that are chartered in their entirety by DoD. Those vessels and aircraft that would be exempt under this proposal would also be exempt from the advance cargo information requirements in 19 CFR 4.7 and 122.48a. The proposed changes would help ensure the

unimpeded flow of cargo and passengers moved in support of the U.S. government's missions and ensure that cargo and passengers supporting the defense of our nation are not unnecessarily delayed.

The proposed rule would not pose any new security risks for several reasons. First, DoD has strict security protocols for the conveyances it owns, controls, or charters and for the cargo and passengers those conveyances carry. Second, DoD has indicated that non-DoD owned cargo approved for carriage in the DTS undergoes the same stringent security protocols for transportation as DoD-owned cargo and that DoD has absolute control over non-DoD cargo carried in the DTS. Therefore, non-DoD-owned cargo approved for carriage in the DTS poses no greater security threat than DoD-owned cargo that currently qualifies for the entry exemption. Likewise, DTS-approved passengers traveling on DoD-chartered vessels and aircraft must undergo the same security protocols as those passengers traveling on conveyances owned by DoD. When CBP provided the initial exemption for DoD vessels and aircraft carrying only DoD property, neither DoD nor CBP fully appreciated the negative impact this restriction would have for DoD conveyances. The proposed expanded exemptions for cargo and passengers are intended to make CBP's exemptions more suitable to actual DoD transportation needs without posing security risks.

The proposed exemptions concern only the formal entry, clearance, and, in some cases, reporting requirements of the conveyance under the CBP regulations in title 19 of the CFR. All other requirements would still be applicable unless exempt under the relevant authorities. For example, persons on board the conveyance would still be subject to all applicable inspection and immigration controls pursuant to title 8 of the

CFR, even if the conveyance is exempt from the title 19 entry requirements. Similarly, the title 7 agricultural regulations and relevant reporting requirements would still apply. This proposed rulemaking would not affect the scope or definition of the term “public vessel” in 19 U.S.C. 1441.

Additional, Non-substantive Amendments

In addition to the substantive amendments described above, CBP also proposes several non-substantive amendments to 19 CFR parts 4 and 122.

To provide clearer organization, in sections 4.5 (“Government vessels”), CBP proposes to give headings to paragraphs (a), (b), and (c). CBP proposes to divide paragraph (a) of section 4.5 (“Exemptions from reports of arrival and entry”) into lower paragraphs that are headed “Vessels owned by the United States,” “Additional DoD-owned vessels,” and “DoD-chartered vessels.” These paragraphs would be further subdivided for additional clarity and ease of reading.

In 4.5(a), CBP proposes to change the current phrase “it is ballast” to “in ballast” to reflect proper use of the term. Additionally, “Department of Defense” is to be abbreviated “DoD” in all but its first occurrence in 4.5(a). The phrase “be entered” in paragraph (b) would be changed to the proper phrase “make formal entry,” and paragraph (c) would include a reference to newly designated paragraph (a)(1) to eliminate ambiguity. With regard to the cargo declaration requirement in section 4.5 for DoD-chartered vessels (which can be found in proposed new paragraph (a)(3)(iii)), CBP proposes to include language to clarify that the duplicate cargo declaration form must be made available to the officer at the pier upon arrival. Finally, CBP proposes to replace the word “shall” where it appears in section 4.5 with “will” or “must,” as applicable.

CBP also proposes to divide paragraph (b) of section 122.41 to include lower paragraphs (b)(1) and (b)(2).

Executive Order 12866

Executive Order 12866, as supplemented by Executive Order 13563, requires Federal agencies to assess the benefits and costs of regulatory action, recognizing that some costs and benefits are difficult to quantify. 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.” The proposed rule is not a “significant regulatory action” under Executive Order 12866. As such, the Office of Management and Budget has not reviewed this rule under that Order.

The proposed rule, if finalized, would extend the existing exemption for cargo and passengers transported by DoD to include all vessels and aircraft chartered by, owned by, or under the complete control and management of DoD that transport cargo and/or passengers that have been approved for carriage in the DTS. Extending the existing exemption facilitates the operations of another government agency, thus conveying a benefit to that agency. Because it merely extends the exemption to cargo and passengers approved for carriage in the DTS, the proposed regulation will not impose any costs or

confer any benefits to private citizens or businesses. CBP welcomes comments on this conclusion.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires federal agencies to examine the impact a rule would have on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This rule proposes to extend the current DoD exemption to entry to include vessels and aircraft chartered by, owned by, or under the complete control and management of DoD when they are transporting cargo and/or that are approved for carriage in the DTS. Because this proposed exemption does not impose any new costs on small entities, it will not have a significant economic impact on a substantial number of small entities. We welcome comments on this conclusion. If we do not receive any comments contradicting our findings, we will certify that this rule will not have a significant economic impact on a substantial number of small entities at the final rule stage.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1955 (44 U.S.C. 3507 et seq.), this document contains no new information and collection requirements that require Office of Management and Budget approval.

SIGNING AUTHORITY

This notice of proposed rulemaking is being issued in accordance with 19 CFR 0.2(a). Accordingly, this notice of proposed rulemaking is signed by the Secretary of Homeland Security.

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 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Alcohol and alcoholic beverages, Cigars and cigarettes, Cuba, Customs duties and inspection, Drug traffic control, Freight, Penalties, Reporting and recordkeeping requirements, Security measures.

Proposed Amendments to the Regulations

For the reasons set forth in the preamble, CBP proposes to amend 19 CFR parts 4 and 122 as set forth below.

PART 4 – VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and specific citations for § 4.5 continue 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.

* * * * *

Section 4.5 is also issued under 19 U.S.C. 1441;

* * * * *

2. Amend § 4.0 by adding paragraph (h) to read as follows:

§ 4.0 General definitions.

* * * * *

(h) Defense Transportation System (DTS). The Defense Transportation System (DTS) is the transportation system controlled by the Department of Defense (DoD) under which DoD manages the secure shipment of cargo and personnel in peace and war. It is administered pursuant to DoD Directive 4500.09E.

3. Revise § 4.5 to read as follows:

§ 4.5 Government vessels.

(a) Exemptions from reports of arrival and entry. — (1) Vessels owned by the United States. No report of arrival or entry will be required of any vessel:

(i) Owned by or under the complete control and management of the United States or any of its agencies;

(ii) Manned wholly by members of the uniformed services of the United States, or by personnel in the civil service of the United States, or by both; and

(iii) Either in ballast or transporting only property of the United States and/or passengers traveling on official business of the United States.

(2) Additional DoD-owned vessels. For DoD-owned vessels not meeting the requirements of paragraph (a)(1) of this section, no report of arrival or entry will be required if the vessel is:

(i) Owned by or under the complete control and management of the U.S. Department of Defense (DoD);

(ii) Manned wholly by members of the uniformed services of the United States, or by personnel in the civil service of the United States, or by both; and

(iii) Either in ballast or transporting only passengers and/or cargo approved for carriage in the Defense Transportation System (DTS), as defined in § 4.0(h) of this part.

(3) DoD-chartered vessels. (i) Entry exemption. Entry will not be required of any vessel chartered by DoD, manned entirely by the civilian crew of the vessel carrier under contract to DoD, and carrying only passengers and/or cargo approved for carriage in the DTS.

(ii) Clearance requirement. Notwithstanding § 4.60(b)(3) of this part, no DoD-chartered vessel operated as provided in this paragraph (a)(3) is exempt from vessel clearance requirements.

(iii) Cargo declaration requirement upon arrival. If any cargo is on board a DoD-chartered vessel, the master or commander of the DoD-chartered vessel arriving from abroad must file a Cargo Declaration, CBP Form 1302, or an equivalent form issued by DoD, in duplicate. The original of each Cargo Declaration or equivalent form required under this paragraph must be filed with the port director within 48 hours after the arrival of the vessel. The other copy must be made available for use by the discharging officer at

the pier and must be presented upon arrival of the vessel. See § 148.73 of this chapter with respect to baggage on carriers operated by DoD.

(b) Non-exempt vessels. The arrival of every vessel owned or controlled and manned as described in paragraph (a) of this section but transporting property or passengers other than property of the United States, passengers traveling on official business of the United States, or passengers and/or cargo approved for carriage in the DTS, and every vessel so owned or controlled, but not so manned, whether in ballast or transporting cargo or passengers, must be reported in accordance with § 4.2 and the vessel must make formal entry in accordance with § 4.9.

(c) Foreign government vessels. Every vessel owned by, or under the complete control and management of, any foreign nation will be exempt from or subject to the laws relating to report of arrival and entry under the same conditions as a vessel owned by or controlled by the United States, as described in paragraph (a)(1) of this section.

PART 122 – AIR COMMERCE REGULATIONS

4. The general authority citation 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.

5. Amend § 122.1 by adding paragraph (n) to read as follows:

§ 122.1 General definitions.

* * * * *

(n) Defense Transportation System (DTS). The Defense Transportation System (DTS) is the transportation system controlled by the Department of Defense (DoD) under which

DoD manages the secure shipment of cargo and personnel in peace and war. It is administered pursuant to DoD Directive 4500.09E.

6. Amend § 122.41 as follows:

- a. Revise paragraph (b);
- b. Redesignate paragraph (c) as paragraph (d); and
- c. Add new paragraph (c).

The revision and addition read as follows:

§ 122.41 Aircraft required to enter.

* * * * *

(b) Aircraft owned by or under the complete control and management of the U.S. Department of Defense (DoD), if the aircraft is:

(1) Manned entirely by members of the armed forces or civil service of the United States; and

(2) Transporting only passengers and/or cargo approved for carriage in the Defense Transportation System (DTS), as defined in § 122.1(n) of this part.

(c) Aircraft chartered by DoD, if the aircraft is:

(1) Manned entirely by the civilian crew of the air carrier under contract to DoD; and

(2) Transporting only passengers and/or cargo approved for carriage in the DTS.

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Dated: February 3, 2012

Janet Napolitano,
Secretary.

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