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**DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection**

**Announcement of Test Concerning Manifesting and Entry of Residue Found in
Instruments of International Traffic (IITs)**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to conduct a test concerning the manifesting and entry of residual cargo found in containers arriving as Instruments of International Traffic (IIT). The document also announces that CBP will begin enforcement of HQ Ruling H026715, dated June 19, 2009, when the test announced in this document begins. In HQ Ruling H026715, CBP held that in order to ensure the safety and security of the transportation of IIT containers and the CBP Officers who may examine or work in close proximity to them, IIT containers with residual cargo should not be manifested as empty consistent with the advance cargo information reporting requirements authorized pursuant to 19 U.S.C. 2071 note. The modified ruling, HQ H026715, requires that residue within containers be "classified, entered, and manifested."

CBP recognizes that the trade community believes that the requirement to manifest and enter for residual cargo in accordance with the current regulations would be overly burdensome. As a result, CBP, with input from the trade, has developed a test in

order to determine a less burdensome way for the trade to manifest and enter residual cargo in IITs while also ensuring the safety and security of CBP Officers and the transportation of such IITs. Accordingly, this test will allow for a new type of entry designed to capture residue in containers that will be cleaned or re-filled that can be made off the manifest through an indicator that identifies it as a Residue Entry.

Parties not wishing to participate in the test, however, will be required to “classify, enter, and manifest” (formal or informal entry) the residual cargo in accordance with the underlying statutes and their implementing regulations when the test begins.

DATES: CBP will begin enforcement of the requirement to manifest and enter residual cargo beginning [INSERT 90 days AFTER THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. The test announced in this notice will also commence on that date and will run for a period of one year, which may be extended. CBP will begin an evaluation of the test approximately 90 days after commencement.

ADDRESS: Comments concerning this notice or any aspect of the test may be submitted via email, with a subject line identifier reading “Comment on the Residue Manifesting and Entry Test”, to OFO-CARGORELEASE@cbp.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Amy E. Hatfield, Branch Chief, Cargo Conveyance & Security, Office of Field Operations, (202) 365-2698.

SUPPLEMENTARY INFORMATION:

Background

A notice was published in the Customs Bulletin, Vol. 42, No. 35, on August 20, 2008, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C.

1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057, December 8, 1993), proposing to modify HQ Ruling 113219, dated July 12, 1994, which allowed containers meeting the requirements of 19 U.S.C. 1322(a) and 19 CFR 10.41a as IITs and containing residual chemicals to be entered as empty containers.

Consistent with CBP's treatment of similar commodities such as petroleum slops, and to ensure the safety and security of the transportation of such containers and CBP Officers, CBP proposed to modify the ruling to hold that the containers should not be manifested as empty and that the chemical residue contained therein should be "classified, entered, and manifested." This position is in furtherance of the advance cargo information reporting requirements authorized pursuant to 19 U.S.C. 2071 note; and the implementing CBP regulations set forth in 19 CFR 4.7, 123.91, and 123.92. The trade was invited to submit comments on the proposed modification of the 1994 ruling.

Upon review of the comments from the trade on the proposed modification, CBP issued a modification of HQ 113219 on June 19, 2009. This modification, HQ H026715, was published in the Customs Bulletin, Vol. 43, No. 28, on July 17, 2009. The modification ruling confirmed the reasoning of the proposed modification, stating that in order to be consistent with CBP's treatment of similar commodities, such as petroleum slops, and to ensure the safety and security of the transportation of such containers and the CBP Officers who may examine or work in close proximity to them, these containers should not be manifested as empty because these containers are not completely empty. CBP has an interest in knowing this for border and CBP Officer security. This ruling

became effective for containers arriving in the United States on or after August 16, 2009.

Due to concerns voiced by the trade about the burdens imposed by this ruling, CBP delayed enforcement of this ruling. CBP established a residual cargo working group that included representation from CBP as well as trade alliances from each mode of transportation, in order to implement this ruling. The working group helped establish manifest threshold limits for residual cargo that would be permissible to enter as residual cargo. The working group also helped establish methods of importation that would comply with the 2009 ruling in a less burdensome way. It was determined that CBP would need a test to evaluate the effectiveness of the procedures developed by the working group. As CBP began developing the test, it met many times with the trade and conducted a series of webinars with them. See

http://www.cbp.gov/xp/cgov/trade/trade_outreach/info_iits/.

Implementation of an Operational Test

Through this Notice, CBP is announcing the commencement of the Residue Manifesting and Entry Test (“Residue Test”) that will provide specific test procedures concerning how to manifest and enter residual cargo. The Residue Test will require suspension of certain CBP regulations (title 19 of the Code of Federal Regulations (CFR)). Current electronic functionality will be used in the implementation of this test.

Authority for Test

The Residue Test is being conducted in accordance with § 101.9(a) of the CBP regulations (19 CFR 101.9(a)), which prescribes general test requirements.

This Test is Independent from ACE Implementation of Manifest Requirements (M1 Vessel and Rail Manifest)

In a Notice published in the **Federal Register** on March 29, 2012, 77 FR 19030, CBP announced that the Automated Commercial Environment (ACE) will be the only CBP-approved electronic data interchange (EDI) system for submitting required advance cargo information for ocean and rail cargo (referred to as the ACE e-manifest Ocean and Rail M1 manifest functionality). The March 29, 2012 Notice further announced that the effective date of this change was September 29, 2012. This Notice is unrelated to the ACE M1 Vessel and Rail Manifest Notice mandating the use of ACE in the vessel and rail modes. The Residue Test announced here applies to the manifesting and entry of residue notwithstanding the system in which the electronic submission of cargo information occurs.

Eligibility for the Residue Test

The Residue Test is open to any party submitting manifest or advance cargo information or any other party who has the right to make entry under 19 U.S.C. 1484.

Participants and non-participants in the Residue Test will be afforded the ability to help CBP develop procedures and engage CBP in discovering efficiencies that might be achieved in the manifesting and processing of entries of residual cargo. It should be noted that non-participation in this test does not relieve one from the obligation to manifest and enter residual cargo. Furthermore, one's liability for user fees under 19 U.S.C. 58c is not affected by this test.

Ports Where Test Will Occur

The Residue Test may be used nationwide.

TEST PROCEDURES

Procedures for each mode (rail, truck, ocean, and air) of transport are described separately in this Notice, and are as follows:

1. Test Procedures for Rail Environment

a. In General

All data must be submitted electronically. All containers must be manifested whether they are empty or contain residue.

b. Containers Arriving Clean – No Residue

Any container arriving clean (i.e., with no residue) must be manifested as an empty IIT, consistent with current requirements. Entry is not currently required for any empty container manifested in this fashion and will not be required under the Residue Test.

c. Containers Arriving With Cargo Exceeding 7%

Any arriving container that contains cargo exceeding 7% of the total capacity of the container by weight or volume, using industry standards, must be manifested. A consumption entry will be required, either formal or informal, depending upon its value and applicable regulations. Entry requirements and payment of duties, taxes, and fees, as applicable and as provided by law, will apply.

d. Containers Arriving With Cargo Not Exceeding 7%

Any arriving container with cargo not exceeding 7% of the container's total capacity by weight or volume, using industry standards, will be considered to contain residual cargo and the container must be manifested and entered as having residue.

If the residual cargo has **no commercial value**, i.e., the container will either be cleaned in accordance with the law, with the residue destroyed, or re-filled for export, CBP will: (1) accept the declaration of the carrier, or the importer of record if other than the carrier, that the residue has no commercial value (\$0 value) and the country of origin is the country from which the container is arriving; (2) require that the type of residue be described up to the 6-digit HTSUS; and (3) require a residue entry designating that the residue cargo has no commercial value.

CBP will release this merchandise under the low value mechanism of 19 U.S.C. 1321, so no merchandise processing fee will be due. For purposes of the Residue Test, this type of entry will be known as a residue entry.

Regulations concerning the making of entry of low value shipments are waived for this portion of the Residue Test. Under the Residue Test, the carrier will have the right to make a residue entry and entry can be made off the manifest with no further documentary requirements if the container is below the set limits.

e. ACE System Procedures for IITs with Residue Not Exceeding 7% (Rail Manifest)

(1) Carrier sends Bill of Lading (BOL) message (X12 309) with Bill Type 23 indicated.

(2) When Bill Type 23 is used, the carrier must also submit value (0 to 200) and country of origin information. Additionally, a reference identifier, ZF, has been created specifically for this type of shipment.

(3) Bills of Type 23 with the ZF qualifier will be identified by the system to the CBP officer reviewing the manifest for review and mass posting of release.

(4) Release Notifications (1C) will be sent electronically to the carrier and Secondary Notify Parties as currently enabled in the system.

f. Recordkeeping

A manifest record indicating a residue entry has been filed will be sufficient to meet record keeping requirements for residue entries under the 7% threshold. The record must be maintained by the entry filer in accordance with 19 CFR Part 163.

2. Test Procedures for Truck Environment

a. In General

All data must be submitted electronically. All containers must be manifested whether they are empty or contain residue.

b. Containers Arriving Clean – No Residue

Any container arriving clean (i.e., with no residue) must be manifested as an empty IIT, consistent with current requirements. Entry is not currently required for any empty container manifested in this fashion and will not be required under the Residue Test.

c. Containers Arriving With Cargo Exceeding 3%

Any arriving container that contains cargo exceeding 3% of the total capacity of the container by weight or volume, using industry standards, must be manifested. A consumption entry will be required, either formal or informal, depending upon its value and applicable regulations. Entry requirements and payment of duties, taxes, and fees, as applicable and as provided by law, will apply.

d. Containers Arriving With Cargo Not Exceeding 3%

Any arriving container with cargo not exceeding 3% of the container's total capacity by weight or volume, using industry standards, must be manifested and entered as having residual cargo.

If the residual cargo has **no commercial value**, i.e., the container will either be cleaned, in accordance with the law, with the residue destroyed or re-filled for export, CBP will: (1) accept the declaration of the carrier or the importer of record if other than the carrier, that the residue has no commercial value (\$0 value) and the country of origin is the country from which the IIT is arriving; (2) require that the type of residue be described up to the 6-digit HTSUS; and (3) require a residue entry designating that the residue cargo has no commercial value.

CBP will release this merchandise under the low value mechanism of 19 U.S.C. 1321 so no merchandise processing fee will be due. For purposes of the Residue Test, this type of entry will be known as a residue entry.

Regulations concerning the making of entry of low value shipments are waived for this portion of the Residue Test. For purposes of the Residue Test, the carrier will have the right to make a residue entry and entry can be made off the manifest with no further documentary requirements if the container is below the set limits.

e. System Procedures for Trucks Arriving with IITs with Residue Not Exceeding 3%

(1) In the Manifest Bill of Lading details the carrier would use either type code '13' for Section 321 release without the Food and Drug Administration-Bio Terrorism

Act (FDA-BTA) considerations, or type code '35' for 321 release with FDA-BTA considerations.

(2) If the carrier uses the ACE Portal for submission, these identifiers are all drop down values in the manifest creation screens.

(3) If either type code is used, the carrier must supply 'Customs Shipment Value' and 'country of origin'.

(4) Value submitted must currently be greater than 0 and less than \$200. CBP is working to change this edit to accept 0 but will establish a value of \$1 as an acceptable alternative to 0 if not available.

(5) CBP will review at arrival and post release.

(6) Release Notifications (1C) will be sent electronically to the carrier and Secondary Notify Parties as currently enabled in the system.

f. Recordkeeping

A manifest record indicating a residue entry has been filed will be sufficient to meet record keeping requirements for residue entries under the 3% threshold. The record must be maintained by the entry filer in accordance with 19 CFR Part 163.

3. Test Procedures for Ocean Environment

a. In General

All data must be submitted electronically. All containers must be manifested whether they are empty or contain residue.

b. Container Arriving Clean – No Residue

Any container arriving clean (i.e., with no residue) must be manifested as an

empty IIT, consistent with current requirements. Entry is not currently required for any empty container manifested in this fashion and will not be required under the Residue Test.

c. Container Arriving With Cargo Exceeding 3%

Any arriving container that contains cargo exceeding 3% of the total capacity of the container by weight or volume, using industry standards, must be manifested. A consumption entry will be required, either formal or informal, depending upon its value and applicable regulations. Entry requirements and payment of duties, taxes, and fees, as applicable and as provided by law, will apply.

d. Container Arriving With Cargo Not Exceeding 3%

Any arriving container with residual cargo not exceeding 3% of the container's total capacity by weight or volume, using industry standards, must be manifested and entered as having residue.

If the residue has **no commercial value**, i.e., the IIT will either be cleaned, in accordance with the law, with the residue destroyed or re-filled for export, CBP will:

(1) accept the declaration of the carrier, or the importer of record if other than the carrier, that the residue has no commercial value (\$0 value) and the country of origin is the country from which the IIT is arriving; (2) require that the type of residue be described up to the 6-digit HTSUS; and (3) require a residue entry designating that the residue cargo has no commercial value.

CBP will release this merchandise under the low value mechanism of 19 U.S.C. 1321, so that no merchandise processing fee or harbor maintenance fee will be due.

For purposes of the Residue Test, this type of entry will be known as a residue entry.

Regulations concerning the making of entry of low value shipments are waived for this portion of the Residue Test. For purposes of the Residue Test, the carrier will have the right to make a residue entry and entry can be made off the manifest with no further documentary requirements if the container is below the set limits.

e. ACE System Procedures for Containers with Residue Not Exceeding 3% (Vessel Manifest)

(1) Regular Bill submitted electronically via EDI process at the master or simple bill level.

(2) Qualifiers for IIT with Residue (TBD) should be the first line of text in the description field, which will include value and country of origin information.

(3) A request for clearance should be made to the CBP port of arrival via existing port procedures for release request notifications.

(4) CBP will manually post release in ACE.

(5) Release Notifications (1C) will be sent electronically to the carrier and Secondary Notify Parties as currently enabled in the system.

f. Recordkeeping

A manifest record indicating a residue entry has been filed will be sufficient to meet record keeping requirements for residue entries under the 3% threshold. The record must be maintained by the entry filer in accordance with 19 CFR Part 163.

4. Test Procedures for the Air Environment

a. In General

All data must be submitted electronically. All containers must be manifested whether they are empty or contain residue.

b. Container Arriving Clean – No Residue

Any container arriving clean (i.e., with no residue) must be manifested as an empty IIT, consistent with current requirements. Entry is not currently required for any empty container manifested in this fashion and will not be required under the Residue Test.

c. Container Arriving With Cargo Exceeding 5%

Any arriving container that contains cargo exceeding 5% of the total capacity of the container by weight or volume, using industry standards, must be manifested.

A consumption entry will be required, either formal or informal, depending upon its value and applicable regulations. Entry requirements and payment of duties, taxes, and fees, as applicable and as provided by law, will apply.

d. Container Arriving With Cargo Not Exceeding 5%

Any arriving container with cargo not exceeding 5% of the container's total capacity by weight or volume, using industry standards, must be manifested and entered as having residue.

If the residual cargo has **no commercial value**, i.e., the IIT will either be cleaned, in accordance with the law, with the residue destroyed or re-filled for export, CBP will:

(1) accept the declaration of the carrier, or the importer of record if other than the carrier, that the residue has no commercial value (\$0 value) and the country of origin is the

country from which the IIT is arriving; (2) require that the type of residue be described up to the 6-digit HTSUS; and (3) require a residue entry designating that the residue cargo has no commercial value.

CBP will release this merchandise under the low value mechanism of 19 U.S.C. 1321, so that no merchandise processing fee will be due. For purposes of the Residue Test, this type of entry will be known as a residue entry.

Regulations concerning the making of entry of low value shipments are waived for this portion of the Residue Test. For purposes of this test, the carrier will have the right to make a residue entry and entry can be made off the manifest with no further documentary requirements if the commercial value is below the set limits.

e. System Procedures for IIT with Residue Not Exceeding 5% (Air Manifest)

(1) If Standard Air Freight

- (a) A Regular Bill should be submitted electronically via EDI process.
- (b) Qualifiers for IIT with Residue (TBD) should be the first line of text in the description field, which will include the value and country of origin information.
- (c) A request for clearance should be made to the CBP port of arrival via existing port procedures for release request notifications.
- (d) CBP will manually post release in Air Manifest (AMS).
- (e) Release Notifications (1C) will be sent electronically to the carrier and Secondary Notify Parties as currently enabled in the system.

(2) If Express Air Shipment

- (a) A request using entry type 86 can be filed in Air AMS Express codes.
- (b) If entry type 86, then value and country of origin are required fields.
- (c) System identifies shipment to CBP users at arrival port.
- (d) Release Notifications are sent electronically as enabled in the system.

f. Air Cargo Advance Screening (ACAS) Filing

ACAS filings will not be required for containers with residue in the air environment.

g. Recordkeeping

A manifest record indicating a residue entry has been filed will be sufficient to meet record keeping requirements for entries of residue under the 5% threshold. The record must be maintained by the entry filer in accordance with 19 CFR Part 163.

BONDING

No additional bonding is required for the Residue Test.

WAIVER OF REGULATIONS

Any provision in title 19 of the CFR including, but not limited to, provisions found in Subpart C to Part 143 and Subpart C to Part 128 relating to entry/entry summary processing and any manifest reporting requirements set forth in Part 4, 122, or 123 that are inconsistent with the requirements set forth in this notice are waived for the duration of the Residue Test. See 19 CFR 101.9(a).

Any and all other government agency requirements relating to transport, manifesting, and entry must be met, including the Environmental Protection Agency requirements that are set forth in 19 CFR Part 12.

ENFORCEMENT

Residue cargo must be entered and manifested either in compliance with the current regulations or in compliance with the test procedures set forth in this notice as of 90 days after the date of publication in the **Federal Register**. While CBP plans to phase in enforcement of this requirement, both participants and non-participants in this test must comply with all other CBP laws and regulations.

TEST DURATION

The Residue Test will begin on or about 90 days after the date of publication in the **Federal Register** and will run for one year, unless extended. If the Residue Test is successful, amendments to the CBP regulations will be proposed.

TEST EVALUATION

All interested parties are invited to comment on any aspect of this test at any time. To ensure adequate feedback, participants are encouraged to provide an evaluation of this

test. CBP needs comments and feedback on all aspects of this test to determine whether to modify, alter, expand, limit, continue, end or implement this program by regulation.

Dated: August 22, 2013

David J. Murphy
Acting Assistant Commissioner
Office of Field Operations

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