

will, by regulation, notify the submitter at least five days prior to disclosure. This allows the submitter an opportunity to respond, as well as to pursue an injunction against release in district court.

10. The Commission's regulations do not require separation of the opportunity to comment and notice of release. However, it was the Commission's practice in processing CEII requests to issue these notifications separately. As the Commission explained in its September 21 Order, combining the two will increase the efficiency of processing CEII requests. *See* September 21 Order at P 9–10. But those opposing release will continue to have ten days of notice before the information is released.

11. Contrary to EEI's assertion, there is no inconsistency in the application of the rules to CEII and FOIA requests. The combined notice that the Commission sends pursuant to the September 21 Order explains that a submitter has an opportunity (5-day minimum) to submit timely comments opposing release. *See* 18 CFR 388.112(d). It further explains that if the submitter provides timely comments, he or she will be notified in advance of the release of any information in accordance with 18 CFR 388.112(e) (another 5-day minimum). In other words, if the submitter provides comments, a second notice of release follows the first (a total of 10-day minimum). In the event timely comments opposing release are not received, the combined notice constitutes notice of release of the specified document in accordance with 18 CFR 388.112(e), subject to an appropriate non-disclosure agreement. The combined opportunity to comment and notice of release does not reduce the submitter's opportunity to respond or to pursue judicial relief.

Requirements To Comply With Procedural Requirements

12. The September 21 Order states that an application will be rejected in its entirety if information is mislabeled as CEII or a legal justification for CEII is not provided. The purpose of that rule is to dissuade applicants from carelessly using the CEII designation because such misuse prevents interested parties and other deserving members of the public from accessing needed information in the timeliest manner. As the Commission said in the September 21 NOPR, the "Commission retains its concern for CEII filing abuses and will take action against applicants or parties who knowingly misfile information as

CEII."¹⁷ The Commission disagrees with EEI's assertion that rejection is unacceptably harsh. Applications are frequently rejected for failure to comply with procedural requirements. *See, e.g., ANR Pipeline Co.*, 103 FERC ¶ 61,261 at P 8 (2003) (rejecting filing without prejudice to filing a fully supported application in accordance with the Commission's regulations). In instances in which documents are rejected for filing, the rejection is usually without prejudice and no substantive rights are lost. *Id.* The application must merely be refiled in accordance with the procedural requirements. That is not harsh, but rather promotes the proper use of the CEII designation.

The Commission orders:

EEI's request for rehearing is denied as described above. The California State Agencies' request for reconsideration is rejected in this docket as untimely filed.

By the Commission.

Philis J. Posey,
Acting Secretary.

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DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 123

Advance Electronic Presentation of Cargo Information for Truck Carriers Required To Be Transmitted Through ACE Truck Manifest at Ports in the States of Vermont, North Dakota and New Hampshire

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

ACTION: Final rule.

SUMMARY: Pursuant to section 343(a) of the Trade Act of 2002 and implementing regulations, truck carriers and other eligible parties are required to transmit advance electronic truck cargo information to the Bureau of Customs and Border Protection (CBP) through a CBP-approved electronic data interchange. In a previous document, CBP designated the Automated Commercial Environment (ACE) Truck Manifest System as the approved interchange and announced that the requirement that advance electronic cargo information be transmitted through ACE would be phased in by groups of ports of entry. This document announces that at all land border ports

in Vermont and New Hampshire and at the land border ports in North Dakota in which ACE has not yet been required, truck carriers will be required to file electronic manifests through the ACE Truck Manifest System.

DATES: Trucks entering the United States through land border ports of entry in the states of Vermont and New Hampshire and at the ports of St. John, Fortuna, Ambrose, Carbury, Noonan, Dunseith, Sherwood, Antler, Northgate, Westhope, and Portal in the state of North Dakota, will be required to transmit the advance information through the ACE Truck Manifest system effective July 12, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. James Swanson, via e-mail at james.d.swanson@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 343(a) of the Trade Act of 2002, as amended (the Act; 19 U.S.C. 2071 note), required that CBP promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail or truck). The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP.

On December 5, 2003, CBP published in the *Federal Register* (68 FR 68140) a final rule to effectuate the provisions of the Act. In particular, a new section 123.92 (19 CFR 123.92) was added to the regulations to implement the inbound truck cargo provisions. Section 123.92 describes the general requirement that, in the case of any inbound truck required to report its arrival under section 123.1(b), if the truck will have commercial cargo aboard, CBP must electronically receive certain information regarding that cargo through a CBP-approved EDI system no later than 1 hour prior to the carrier's reaching the first port of arrival in the United States. For truck carriers arriving with shipments qualified for clearance under the FAST (Free and Secure Trade) program, section 123.92 provides that CBP must electronically receive such cargo information through the CBP-approved EDI system no later than 30 minutes prior to the carrier's reaching the first port of arrival in the United States.

¹⁷ September 21 NOPR at P 17.

ACE Truck Manifest Test

On September 13, 2004, CBP published a notice in the **Federal Register** (69 FR 55167) announcing a test allowing participating Truck Carrier Accounts to transmit electronic manifest data for inbound cargo through ACE, with any such transmissions automatically complying with advance cargo information requirements as provided in section 343(a) of the Trade Act of 2002. Truck Carrier Accounts participating in the test were given the ability to electronically transmit the truck manifest data and obtain release of their cargo, crew, conveyances, and equipment via the ACE Portal or electronic data interchange messaging.

A series of notices announced additional deployments of the test, with deployment sites being phased in as clusters. Clusters were announced in the following notices published in the **Federal Register**: 70 FR 30964 (May 31, 2005); 70 FR 43892 (July 29, 2005); 70 FR 60096 (October 14, 2005); 71 FR 3875 (January 24, 2006); 71 FR 23941 (April 25, 2006); 71 FR 42103 (July 25, 2006); 71 FR 77404 (December 26, 2006) and 72 FR 7058 (February 14, 2007).

CBP continues to test ACE at various ports. CBP will continue, as necessary, to announce in subsequent notices in the **Federal Register** the deployment of the ACE truck manifest system test at additional ports.

Designation of ACE Truck Manifest System as the Approved Data Interchange System

In a notice published October 27, 2006 (71 FR 62922), CBP designated the Automated Commercial Environment (ACE) Truck Manifest System as the approved EDI for the transmission of required data and announced that the requirement that advance electronic cargo information be transmitted through ACE would be phased in by groups of ports of entry.

ACE will be phased in as the required transmission system at some ports even while it is still being tested at other ports. However, the use of ACE to transmit advance electronic truck cargo information will not be required in any port in which CBP has not first conducted the test.

The October 27, 2006, document identified all land border ports in the states of Washington and Arizona and the ports of Pembina, Neche, Walhalla, Maida, Hannah, Sarles, and Hansboro in North Dakota as the first group of ports where use of the ACE Truck Manifest System is mandated. Subsequently, CBP announced on January 19, 2007 (72 FR 2435) that, after 90 days notice, the use

of the ACE Truck Manifest System will be mandatory at all land border ports in the states of California, Texas and New Mexico. On February 23, 2007 (72 FR 8109), CBP announced that, again after 90 days notice, the ACE Truck Manifest System will be mandatory at all land border ports in Michigan and New York, as well.

ACE Mandated at Land Border Ports of Entry in Vermont and New Hampshire and Identified Ports in North Dakota

Applicable regulations (19 CFR 123.92(e)) require CBP, 90 days prior to mandating advance electronic information at a port of entry, to publish notice in the **Federal Register** informing affected carriers that the EDI system is in place and fully operational. Accordingly, CBP is announcing in this document that, effective 90 days from the date of publication of this notice, truck carriers entering the United States through land border ports of entry in the states of Vermont and New Hampshire and through the ports of St. John, Fortuna, Ambrose, Carbury, Noonan, Dunseith, Sherwood, Antler, Northgate, Westhope, and Portal, in the state of North Dakota, will be required to present advance electronic cargo information regarding truck cargo through the ACE Truck Manifest System. Together with the ports announced in 71 FR 62922, use of the ACE Truck Manifest System will, 90 days from the date of publication of this notice, be mandatory in all land border ports in the state of North Dakota, as well as the land border ports in the states of Vermont and New Hampshire.

Although other systems that have been deemed acceptable by CBP for transmitting advance truck manifest data will continue to operate and may still be used in the normal course of business for purposes other than transmitting advance truck manifest data, use of systems other than ACE will no longer satisfy advance electronic cargo information requirements at the ports of entry announced in this document as of July 12, 2007.

Compliance Sequence

CBP will be publishing subsequent notices in the **Federal Register** as it phases in the requirement that truck carriers utilize the ACE system to present advance electronic truck cargo information at other ports. ACE will be phased in as the mandatory EDI system at the ports identified below in the sequential order in which they are listed. The sequential order provided below is somewhat different than that announced in the October 27, 2006, notice. Although further changes to this

order are not currently anticipated, CBP will state in future notices if changes do occur. In any event, as mandatory ACE is phased in at these remaining ports, CBP will always provide 90 days' notice through publication in the **Federal Register** prior to requiring the use of ACE for the transmission of advance electronic truck cargo information at a particular group of ports.

The remaining ports at which the mandatory use of ACE will be phased in, listed in sequential order, are as follows:

1. All land border ports in the states of Idaho and Montana.
2. All land border ports in the state of Maine.
3. All land border ports in the states of Alaska and Minnesota.

Dated: April 6, 2007.

Deborah J. Spero,

Acting Commissioner, Customs and Border Protection.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9313]

RIN 1545-BG29

Corporate Reorganizations; Additional Guidance on Distributions Under Sections 368(a)(1)(D) and 354(b)(1)(B); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to temporary regulations (TD 9313) that were published in the **Federal Register** on Thursday, March 1, 2007 (72 FR 9262) providing guidance regarding the qualification of certain transactions as reorganizations described in section 368(a)(1)(D) where no stock and/or securities of the acquiring corporation are issued and distributed in the transaction.

DATES: This correcting amendment is effective April 13, 2007.

FOR FURTHER INFORMATION CONTACT: Bruce A. Decker at (202) 622-7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction are under section 368 of the Internal Revenue Code.