

# U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

CBP Dec. 16–05

RIN 1515–AE08

## EXTENSION OF IMPORT RESTRICTIONS IMPOSED ON CERTAIN ARCHAEOLOGICAL AND ETHNOLOGICAL MATERIALS FROM THE REPUBLIC OF COLOMBIA

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

**ACTION:** Final rule.

**SUMMARY:** This document amends the U.S. Customs and Border Protection (CBP) regulations to reflect the extension of import restrictions on certain archaeological and ethnological materials from the Republic of Colombia (“Colombia”). The restrictions, which were originally imposed by CBP Decision (Dec.) 06–09 and extended by CBP Dec. 11–06, are due to expire on March 15, 2016. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has determined that factors continue to warrant the imposition of import restrictions and no cause for suspension exists. Accordingly, these import restrictions will remain in effect for an additional five years, and the CBP regulations are being amended to reflect this extension until March 15, 2021. These restrictions are being extended pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act that implemented the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. CBP Dec. 06–09 contains the Designated List of archaeological and ethnological materials of Colombia to which the restrictions apply.

**EFFECTIVE DATE:** March 15, 2016.

**FOR FURTHER INFORMATION CONTACT:** For legal aspects, Lisa L. Burley, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of International Trade, (202) 325-0215. For operational aspects, William R. Scopa, Branch Chief, Partner Government Agency Branch, Trade Policy and Programs, Office of International Trade, (202) 863-6554, *William.R.Scopa@cbp.dhs.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Pursuant to the provisions of the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention, implemented by the Convention on Cultural Property Implementation Act (Pub. L. 97-446, 19 U.S.C. 2601 *et seq.*), the United States entered into a bilateral agreement with the Republic of Colombia (“Colombia”) on March 15, 2006, concerning the imposition of import restrictions on certain archeological and ethnological materials from Colombia (the “Agreement”). On March 17, 2006, CBP published CBP Dec. 06-09 in the **Federal Register** (71 FR 13757), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions and included a list designating the types of articles covered by the restrictions.

Import restrictions listed in 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists.

Since the initial document was published on March 17, 2006, the import restrictions were extended on March 15, 2011. CBP published CBP Dec. 11-06 in the **Federal Register** (76 FR 13879) which amended 19 CFR 12.104g(a) to reflect the extension for an additional period of five years.

On July 23, 2015, the Department of State received a request by the Government of Colombia to extend the Agreement. Subsequently, the Department of State proposed to extend the Agreement. After considering the views and recommendations of the Cultural Property Advisory Committee, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, determined that the cultural heritage of Colombia continues to be in jeopardy from pillage of archaeological and ethnological materials and made the necessary determinations to extend the import restrictions for an additional five years. Diplomatic notes have been exchanged, reflecting the exten-

sion of those restrictions for an additional five-year period. Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect this extension of the import restrictions.

The Designated List of archaeological and ethnological materials from Colombia covered by these import restrictions is set forth in CBP Dec. 06–09. The Designated List may also be found at the following Internet Web site address: <http://eca.state.gov/cultural-heritage-center/cultural-property-protection/bilateral-agreements/colombia>.

The restrictions on the importation of these archaeological and ethnological materials from Colombia are to continue in effect for an additional five years. Importation of such materials continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

### **Inapplicability of Notice and Delayed Effective Date**

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). In addition, CBP has determined that such notice or public procedure would be impracticable and contrary to the public interest because the action being taken is essential to avoid interruption of the application of the existing import restrictions (5 U.S.C. 553(b)(B)). For the same reasons, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

### **Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

### **Executive Order 12866**

It has been determined that this rule is not a significant regulatory action under Executive Order 12866.

### **Signing Authority**

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

### **List of Subjects in 19 CFR Part 12**

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

### **Amendment to CBP Regulations**

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

## PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue 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.

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Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

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### § 12.104g [Amended]

■ 2. In § 12.104g, paragraph (a), the table is amended in the entry for Colombia by removing the reference to “CBP Dec. 11–06” and adding in its place “CBP Dec. 16–05”.

R. GIL KERLIKOWSKA,  
*Commissioner,*

*U.S. Customs and Border Protection.*

Dated: March 10, 2016.

TIMOTHY E. SKUD,  
*Deputy Assistant  
Secretary of the Treasury.*

[Published in the Federal Register, March 15, 2016 (81 FR 13721)]

## 8 CFR Part 212

### RIN 1651-AA97

## WAIVER OF PASSPORT AND VISA REQUIREMENTS DUE TO AN UNFORESEEN EMERGENCY

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This rule proposes to reinstate a 1996 amendment to a regulation in title 8 of the Code of Federal Regulations regarding a discretionary waiver of certain documentary requirements for non-immigrants seeking admission to the United States. The 1996 amendment allowed the legacy Immigration and Naturalization Service (INS) (now U.S. Customs and Border Protection) to waive passport and visa requirements for nonimmigrants due to an unforeseen emergency while preserving its ability to fine carriers for unlawfully bringing aliens who do not have a valid passport or visa to the United States. The U.S. Court of Appeals for the Second Circuit ruled that the legacy INS and the U.S. Department of State (State Department)

did not satisfy a statutory requirement to act jointly when the amendment was promulgated. As a result, the court found that the 1996 amendment to the regulation was procedurally deficient and reimposed an earlier version of the regulation that legacy INS and the State Department promulgated in 1994.

This rule proposes to reinstate the 1996 amendment with some technical amendments. DHS and the State Department have acted jointly in this matter and the State Department is publishing a parallel proposed rule to amend its regulation in today's edition of the **Federal Register**.

**DATES:** Comments must be received on or before May 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Joseph O'Donnell, Fines, Penalties and Forfeitures, Office of Field Operations, 202-344-1691.

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

- *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments via docket number USCBP-2016-0006.
- *Mail:* Border Security Regulations Branch, Office of Regulations and Rulings, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

*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 <http://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 the Office of International Trade, Regulations and Rulings, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

## SUPPLEMENTARY INFORMATION:

### Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. U.S. Customs and Border Protection (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 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

In general, nonimmigrant aliens must present an unexpired passport and, if required, a valid unexpired visa in order to be admitted to the United States. *See* section 212(a)(7)(B)(i) of the Immigration and Nationality Act, as amended (INA) (8 U.S.C. 1182(a)(7)(B)(i)). The Secretary of Homeland Security and the Secretary of State, acting jointly, in specified situations, as provided in section 212(d)(4) of the INA (8 U.S.C. 1182(d)(4)), may waive either or both of these requirements.<sup>1</sup> One of these situations is when the the agencies determine “in individual cases” that the nonimmigrant is unable to present the required documents due to an unforeseen emergency. *See* section 212(d)(4)(A) of the INA (8 U.S.C. 1182(d)(4)(A)). DHS regulations list those classes of persons who are not required to present a visa (or passport, in some cases) in 8 CFR 212.1. The unforeseen emergency waiver is provided for in 8 CFR 212.1(g).<sup>2</sup> The State Department has a similar provision in 22 CFR part 41.

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<sup>1</sup> Previously, the Attorney General acting jointly with the Secretary of State was authorized to waive the documentary requirements due to an unforeseen emergency. However, pursuant to the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135 (HSA), as of March 1, 2003, functions of the legacy INS of the Department of Justice and the legacy U.S. Customs Service of the Department of the Treasury were transferred to DHS. Specifically, pursuant to sections 102(a), 441, 1512(d) and 1517 of the HSA and 8 CFR 2.1, the authorities of the Attorney General, as described in section 212 of the INA (8 U.S.C. 1182), were transferred to the Secretary of Homeland Security, and the reference to the Attorney General in the statute is deemed to refer to the Secretary. Thus, the waiver authority in section 212 of the INA therefore now resides with the Secretary of Homeland Security acting jointly with the Secretary of State.

<sup>2</sup> An example of an unforeseen emergency may be where a nonimmigrant loses his or her passport and/or visa or has these documents stolen immediately prior to departure for the United States, and does not have time to obtain replacement documents.

### *1994 Regulatory Amendment*

On January 11, 1994, the legacy INS and the State Department each issued final rules amending their respective regulations to simplify the administrative procedure for granting unforeseen emergency waivers. *See* 59 FR 1467 and 59 FR 1473 (Jan. 11, 1994). The amended INS regulation (referred to in this document as the 1994 version of 212.1(g)) provided that the district director would have authority to grant a waiver of the passport and/or visa requirements under section 212(d)(4)(A) of the INA without the prior concurrence of the Department of State. Previously, the legacy INS needed to seek the concurrence of the State Department Visa Office prior to granting a waiver. The amended regulation also provided that a visa and a passport are not required of a nonimmigrant who satisfies the district director that the documents cannot be presented due to an unforeseen emergency. Specifically, the legacy INS amended 8 CFR 212.1(g) to provide that a visa and a passport are not required of a nonimmigrant who, either prior to his or her embarkation at a foreign port or place or at the time of arrival at a port of entry in the United States, satisfies the district director at the port of entry that, because of an unforeseen emergency, he or she is unable to present the required documents, in which case a waiver application shall be made on Form I-193. The amended regulation also provided that the district director may approve a waiver of documents in each case in which he or she is satisfied that the nonimmigrant cannot present the required documents because of an unforeseen emergency and the waiver would be appropriate in the circumstances. *See* 59 FR 1467-68.

The amended State Department regulation, 22 CFR 41.2(j), contained similar provisions.<sup>3</sup>

### *1996 Regulatory Amendment*

On March 22, 1996, the legacy INS published a final rule that amended the unforeseen emergency waiver in 8 CFR 212.1(g). *See* 61 FR 11717. Among other things, the legacy INS final rule removed the statement that a “visa and a passport are not required of a nonim-

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<sup>3</sup> The amended State Department regulation provided that a visa and passport are not required of an alien if, either prior to the alien’s embarkation abroad or upon arrival at a port of entry, the responsible district director of the Immigration and Naturalization Service in charge of the port of entry concludes that the alien is unable to present the required documents because of an unforeseen emergency. The amended State Department regulation further provided that any waiver of the visa or passport requirement may be granted by the INS district director pursuant to INA 212(d)(4)(A) without the prior concurrence of the Department of State in each case in which the district director concludes that the alien’s claim of emergency circumstances is legitimate and bona fide and that approval of the waiver would be appropriate under all of the attendant facts and circumstances. *See* 59 FR 1473 (Jan. 11, 1994).

migrant who . . . satisfies the district director at the port of entry that, because of an unforeseen emergency, he or she is unable to present the required documents. . . .” The legacy INS replaced this language with general language about the documentary requirements for a nonimmigrant seeking admission to the United States, a statement authorizing the legacy INS to waive the documentary requirements because of an unforeseen emergency, and a statement authorizing the legacy INS to revoke such a waiver. The amended text (referred to in this document as the 1996 version of 212.1(g)) provided that a nonimmigrant seeking admission to the United States must present an unexpired visa and a passport valid for the amount of time set forth in section 212(a)(7)(B) of the Act, or a valid border crossing identification card at the time of application for admission, unless the nonimmigrant satisfies the requirements described in one or more of the paragraphs (a) through (f) or (i) of 8 CFR 212.1. The amended text also provided that upon a nonimmigrant’s application on Form I–193, a district director at a port of entry may, in the exercise of his or her discretion, on a case-by-case basis, waive the documentary requirements, if satisfied that the nonimmigrant cannot present the required documents because of an unforeseen emergency. Finally, the amended text provided that the district director or the Deputy Commissioner may at any time revoke a waiver previously authorized pursuant to this paragraph and notify the nonimmigrant in writing to that effect. *See* 61 FR 11720–21.

One important distinction between the 1994 and 1996 versions of section 212.1(g) is that the 1994 version specifies that a visa and passport “are not required” of a nonimmigrant if the legacy INS (now CBP) concludes that the nonimmigrant is unable to present the required documents because of an unforeseen emergency. In contrast, the 1996 version does not include the phrase “are not required.” The absence of that language supported the legacy INS’ authority to fine carriers that transported aliens without a valid passport or visa even where the alien is granted a discretionary waiver under section 212(d)(4) of the INA.<sup>4</sup> Section 273 of the INA (8 U.S.C. 1323) makes

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<sup>4</sup> The Board of Immigration Appeals (Board) supported legacy INS’ interpretations of both the 1994 and 1996 versions of 8 CFR 212.1(g). Prior to the 1996 amendment to the regulation, the Board had held “that liability to fine was not incurred . . . for bringing to the United States a nonimmigrant alien without a valid visa when such alien was paroled into the United States and was subsequently granted a waiver of the nonimmigrant visa.” *Matter of United Airlines Flight UA802*, 22 I&N Dec. 777, 780 (BIA 1999) (citing *Matter of “Flight SR–4”*, 10 I&N Dec. 197 (BIA 1963)). However, in *Matter of Finnair Flight AY103*, 23 I&N Dec. 140 (BIA 2001), the Board held that a carrier was subject to a fine for bringing an alien passenger to the United States without a valid nonimmigrant visa even though the passenger was subsequently granted a waiver of the documentary requirements under the 1996–amended version of the regulation.

it unlawful for any person or company to bring an alien to the United States (other than from a foreign contiguous territory) who does not have a valid passport and an unexpired visa (if a visa is required), including under controlling regulations, and authorizes a fine against the carrier for each alien unlawfully brought into the United States.<sup>5</sup> On May 28, 1999, the State Department amended 22 CFR 41.2(j) in a similar manner.<sup>6</sup> See 64 FR 28915.

### *Litigation Challenging the 1996 Regulation*

Numerous airlines challenged the 1996 version of 212.1(g) in the U.S. District Court for the Eastern District of New York. Legacy INS had fined certain airlines for bringing undocumented aliens into the United States in violation of section 273 of the INA (8 U.S.C. 1323) even though some of the undocumented aliens had been granted unforeseen emergency waivers pursuant to 8 CFR 212.1(g) after the aliens arrived in the United States. Section 273 of the INA makes it unlawful for any person or company to bring an alien to the United States (other than from a foreign contiguous territory) who does not have a valid passport and an unexpired visa, if a visa was required, and authorizes a \$4,300 fine against the carrier for each alien unlawfully brought into the United States.<sup>7</sup> Legacy INS believed that granting unforeseen emergency waivers did not preclude the imposition of fines under section 273 of the INA on the airlines transporting such waiver recipients.

Several of the airlines that legacy INS fined claimed that the fines were not authorized because the 1996 version of 212.1(g) was void due to procedural defects. Specifically, they claimed that the INA required joint action between the legacy INS and State Department and that the 1996 version of 212.1(g) was deficient because the legacy INS acted on its own when promulgating the regulation. If the 1996 version was void, the 1994 version of 212.1(g) would control. As described above, the 1994 version specified that “a visa and passport

<sup>5</sup> Section 212(a)(7)(B)(i) of the INA, which concerns only nonimmigrants, uses the term “nonimmigrant.” Section 273 of the INA, which concerns immigrant and nonimmigrant aliens, uses the term “alien.” This document will generally use the term “nonimmigrant” when discussing the waiver provision contained in section 212(d)(4) of the INA or 8 CFR 212.1(g) and use the term “alien” when discussing the fines provision contained in section 273.

<sup>6</sup> The legacy INS amended 8 CFR 212.1(g) on two occasions in 2002. First, it added a reference to section 212.1(o). 67 FR 4784 (Jan. 31, 2002). Second, it updated the documentary requirements by adding the phrase “, issued by the DOS on Form DSP 150.” Finally, DHS amended this provision in 2007 to add U nonimmigrants to the list of nonimmigrants who are not required to satisfy the visa and passport requirement under section 212(a)(7)(B) of the INA consistent with other regulatory provisions. See 8 CFR 212.1(p).

<sup>7</sup> DHS adjusted the statutory fine of \$3,000 to \$4,300 to account for inflation. See 76 FR 74625 (Dec. 1, 2011).

are not required” of a nonimmigrant if the INS concludes that the nonimmigrant is unable to present the required documents because of an unforeseen emergency. Under this version, the legacy INS did not assess carrier fines for bringing in aliens who were unable to present a valid, unexpired visa and passport due to an unforeseen emergency.

### *1996 Regulation Found to Have Been Improperly Promulgated*

The district court ruled in favor of the legacy INS on this issue and the airlines appealed. On November 20, 2009, the United States Court of Appeals for the Second Circuit issued its opinion in *United Airlines, Inc. v. Brien*, 588 F.3d 158 (2d Cir. 2009), a consolidated appeal from three final orders of the lower court. Although the Second Circuit agreed with the Government’s view that the 1996 version of 8 CFR 212.1(g) would not have precluded the assessment of carrier fines when an unforeseen emergency waiver had been granted, it held that the 1996 amendment was void because it was improperly promulgated. The Court stated that section 212(d)(4)(A) of the INA “requires joint action, and the two agencies acted jointly when enacting the pre-1996 version of the regulation.” *United Airlines*, 588 F.3d at 179. The Court further stated that “[t]he INS’s attempt to amend the jointly enacted regulation on its own, therefore, [wa]s ineffective, and the pre-1996 version remains in effect” and that “[t]he INS’s failure to coordinate with the State Department in the amendment of the regulations render[ed] the 1996 amendment void.” *Id.* The Court also found that the 1999 State Department amendment of its regulation violated the joint action requirement, that the amendment should have undergone notice and comment rulemaking before being adopted, and that “the prior versions of both agencies’ regulations remain effective until the two agencies act *jointly* to amend them.” *Id.* at 180 (emphasis in original). As a result, the Court invalidated the 1996 amendment to 8 CFR 212.1(g), as well as subsequent amendments to the regulation made in 2002 and 2007.<sup>8</sup> The Court reinstated the 1994 version of the regulation.

### **Proposal**

DHS is now proposing to reinstate the 1996, 2002 and 2007 amendments to 8 CFR 212.1(g). DHS and the State Department have consulted and are each proposing parallel and simultaneous amendments to 8 CFR 212.1(g) and 22 CFR 41.2(i), respectively, to reinstate

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<sup>8</sup> The INS amended the regulation in 2002 to update documentary requirements, and DHS amended the regulation in 2007 to include U nonimmigrants among those who could seek a waiver. See 67 FR 71443 (Dec. 2, 2002) and 72 FR 53014 (Sept. 17, 2007).

the 1996, 2002 and 2007 amendments to 8 CFR 212.1(g) and the 1999 amendments to 22 CFR 41.2(i).<sup>9</sup> The State Department's Notice of Proposed Rulemaking is published in today's **Federal Register**. The issuance of parallel regulations was specifically sanctioned by the Court in *United Airlines* when it noted that “[t]he 1999 State Department amendment, like the 1996 INS amendment, violated the joint action requirement, and the prior versions of both agencies’ regulations remain effective until the two agencies act jointly to amend them.” 588 F.3d at 180.

With these amendments, DHS will be able to assess carrier fines under section 273 of the INA in appropriate cases notwithstanding that an “unforeseen emergency” waiver had been granted under section 212(d)(4)(A) of the Act and 8 CFR 212.1(g).<sup>10</sup>

## Regulatory Analyses

### *A. Executive Order 13563 and Executive Order 12866*

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is a “significant regulatory action,” although not an economically significant regulatory action, under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has reviewed this regulation.

In 1996, the legacy INS published a final rule (61 FR 11717) amending 8 CFR 212.1(g) which allowed for the waiver of the requirement of proper entry documentation for a nonimmigrant in an unforeseen emergency while still retaining the ability to fine the carrier for transporting an alien to the United States without proper entry documentation. In 2009, the U.S. Court of Appeals for the Second Circuit issued an opinion in *United Airlines, Inc. v. Brien*, 588 F.3d 158 (2d Cir. 2009) which held that the regulation amending 8 CFR 212.1(g) was improperly promulgated because the State Department and the legacy INS did not jointly promulgate the rule. In its ruling, the Court upheld CBP’s right to issue fines under section 273 of the INA when aliens do not receive a waiver but are otherwise allowed to

<sup>9</sup> 22 CFR 41.2(j) was redesignated as 22 CFR 41.2(i) in 2016. See 81 FR 5908.

<sup>10</sup> CBP generally would not consider it appropriate to apply a fine if CBP granted the waiver prior to the nonimmigrant alien’s boarding.

enter the United States without proper documents, such as when they are paroled into the United States.<sup>11</sup> This has led to a situation where carriers are being penalized inconsistently when they transport aliens to the United States without proper documentation. If an alien qualifies for parole, the carrier is fined. If an alien does not qualify for parole but receives a waiver, the carrier is not fined. Since the carrier is equally violative in these situations, CBP believes the penalties should be the same for each.

As such, DHS (functions of the legacy INS were transferred to DHS in 2003) and the State Department are now jointly promulgating rules to allow CBP to waive the requirement to present entry documents for nonimmigrants under an unforeseen emergency while still retaining the ability to fine the carrier a maximum penalty of \$4,300 for transporting an alien to the United States without proper entry documentation.

From FY 2010–2015, if this proposed rule had been in effect, carriers would have been subject to penalties averaging \$1.7 million per year for 950 violations to section 273 of the INA. This \$1.7 million represents a transfer from violative carriers to the United States government. To avoid the penalties imposed by this rule and existing penalties, carriers may adopt further oversight. CBP requests comment on any additional oversight costs that could result from this rule.

CBP currently issues penalties under this provision to any carriers that transport aliens without proper documents who are inadmissible, including when these aliens qualify for parole. Therefore, CBP will not have to set up a new process to fine carriers as a result of this rule. A penalty under this provision takes CBP approximately 2.5 hours to process. Therefore, on average this rule would take approximately 2,375 hours a year for CBP to administer.

Currently, carriers are penalized for violations of section 273 inconsistently. When a carrier transports an alien without proper documentation, whether it is penalized depends not on the nature of the carrier's violation, but on whether the alien it transported qualifies for a waiver. CBP believes it is more equitable to penalize carriers who violate section 273 equally. Additionally, CBP believes that the

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<sup>11</sup> An alien may be paroled into the United States when he or she appears to be inadmissible to the inspecting officer but is allowed into the United States for urgent humanitarian reasons or when that alien's entry is determined to be for significant public benefit. Parole does not constitute an admission to the United States and shall be terminated when, *inter alia*, the purpose of parole is accomplished or neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States. See 8 CFR 212.5(e). See <http://www.dhs.gov/definition-terms> for information on various types of parole.

penalty provisions in the proposed regulation provide an economic incentive to enforce the statutory requirements of section 273 of the INA.

For additional analysis on the impacts of this rule on small entities and a discussion of alternatives, *see* section B. Regulatory Flexibility Act.

### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations 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).

As discussed above, DHS and the State Department are proposing parallel and simultaneous amendments to 8 CFR 212.1(g) and 22 CFR 41.2(i) respectively, that would allow CBP to waive the passport and/or visa requirements for nonimmigrants due to an unforeseen emergency while retaining the ability to enforce the statutory requirement imposing a maximum penalty of \$4,300 on a carrier for transporting an alien to the United States without proper documentation.

The Regulatory Flexibility Act does not specify thresholds for economic significance but instead gives agencies flexibility to determine the appropriate threshold for a particular rule. CBP believes that a maximum penalty of \$4,300 may be considered a significant economic impact given the wide range of companies subject to the requirements of this rule and that it is possible that a specific small entity may receive more than one penalty in a year. Therefore CBP is preparing an Initial Regulatory Flexibility Analysis under section 603 of the Regulatory Flexibility Act.

It is unlawful under section 273 of the INA for any person or company to transport an alien to the United States (other than from a foreign contiguous territory) who does not have a valid passport and an unexpired visa (if a visa is required). 8 U.S.C. 1323. As such, it is possible that any person or company engaged in the transportation of aliens may be affected by the proposed rule. Below, Table 1 presents data on the industries CBP has identified that could be affected by this rule. While CBP finds that only 41 small entities have violated section 273 of the INA from FY 2008 to FY 2012, CBP is unable to

certify that substantial number of small entities will not be affected by the proposed regulation in the future.<sup>12</sup>

CBP is choosing not to certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, CBP has conducted the following Initial Regulatory Flexibility Analysis.

### 1. A Description of the Reasons Why Action by the Agency Is Being Considered

In 1996, the legacy INS published a final rule (61 FR 11717) amending 8 CFR 212.1(g) which allowed for the waiver of the requirement of proper entry documentation for a nonimmigrant in an unforeseen emergency while still retaining the ability to fine the carrier for transporting an alien to the United States without proper entry documentation. In 2009, the U.S. Court of Appeals for the Second Circuit issued an opinion in *United Airlines, Inc. v. Brien*, 588 F.3d 158 (2d Cir. 2009) which held that the regulation amending 8 CFR 212.1(g) was improperly promulgated because the State Department and the legacy INS did not jointly promulgate the rule. As such, DHS (functions of the legacy INS were transferred to DHS in 2003) and the State Department are now jointly promulgating rules to allow CBP to waive the requirement to present entry documents for nonimmigrants under an unforeseen emergency while still retaining the ability to fine the carrier for transporting an alien to the United States without proper entry documentation. CBP believes that the penalty provisions in the proposed regulation provide the necessary economic incentive to enforce the statutory requirements of section 273 of the INA.

### 2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of this regulation is to allow CBP to waive the requirement of proper entry documents for nonimmigrants in an unforeseen emergency while still retaining the ability to fine the carrier for transporting an alien to the United States without proper entry documentation. In general, nonimmigrant aliens must present an unexpired passport and, if required, a valid unexpired visa in order to be admitted to the United States. See section 212(a)(7)(B)(i) of the INA (8 U.S.C. 1182(a)(7)(B)(i)). The Secretary of Homeland Security and the Secretary of State, acting jointly, in specified situations, as

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<sup>12</sup> Since November 20, 2009 CBP has been unable to impose a penalty when a section 212(d)(4)(A) waiver has been granted to an alien without proper documentation. Nevertheless, the small entities listed in Table 1 transported aliens who received such waivers. The small entities responsible for transporting the aliens were not assessed a penalty.

provided in section 212(d)(4) of the INA (8 U.S.C. 1182(d)(4)), may waive either or both of these requirements. One of these situations is when the nonimmigrant is unable to present the required documents due to an unforeseen emergency. *See* section 212(d)(4)(A) of the INA. DHS regulations list those classes of persons who are not required to present a visa (or passport, in some cases) in 8 CFR 212.1. The unforeseen emergency waiver is provided for in 8 CFR 212.1(g). The State Department has a similar provision in 22 CFR part 41.

### 3. A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

It is unlawful under section 273 of the INA for any person or company to transport an alien to the United States (other than from a foreign contiguous territory) who does not have a valid passport and an unexpired visa (if a visa is required). As such, it is possible that any person or company engaged in the transportation of aliens may be affected by this rule. Below, Table 1 presents data on the industries CBP estimates could be affected by this rule. The data include the NAICS codes of an industry, a description of the industry, and the Small Business Administration's (SBA) guidance on what qualifies an entity to be considered small in the respective industry. Additionally, Table 1 includes the number small entities in the respective industry that have violated section 273 of the INA from FY 2008 through FY 2012.<sup>13</sup> Of the industries that could be affected, only four industries have had small entities that have violated section 273 of the INA from FY 2008 through FY 2012.

Table 1

NAICS	Industry description	SBA size standard	Small entities that have violated section 273 of the INA
481111 ..	Scheduled Passenger Air Transportation	<1,500 employees .....	0
481112 ..	Scheduled Freight Air Transportation ...	<1,500 employees .....	0
481211 ..	Nonscheduled Chartered Passenger Air Transportation .....	<1,500 employees .....	16
481212 ..	Nonscheduled Chartered Freight Air Transportation .....	<1,500 employees .....	0

<sup>13</sup> Since November 20, 2009, CBP has been unable to impose a penalty when a 212.1(g) waiver has been granted to an alien without proper documentation. Nevertheless, the small entities listed in Table 1 transported aliens who received 212.1(g) waivers. The small entities responsible for transporting the aliens were not assessed a penalty.

NAICS	Industry description	SBA size standard	Small entities that have violated section 273 of the INA
481219 ..	Other Nonscheduled Air Transportation .	<\$14 million in revenue .....	0
482111 ..	Line-Haul Railroads .....	<1,500 employees .....	0
482112 ..	Short Line Railroads .....	<500 employees .....	0
483111 ..	Deep Sea Freight Transportation .....	<500 employees .....	1
483112 ..	Deep See Passenger Transportation .....	<500 employees .....	0
483113 ..	Coastal and Great Lakes Freight Transportation .....	<500 employees .....	0
483114 ..	Coastal and Great Lakes Passenger Transportation .....	<500 employees .....	0
483211 ..	Inland Water Freight Transportation ...	<500 employees .....	0
483212 ..	Inland Water Passenger Transportation .	<500 employees .....	1
484230 ..	Specialized Freight (except, Used Goods) Trucking, Long-Distance .....	<\$25.5 million in revenue .....	0
485991 ..	Special Needs Transportation .....	<\$14 million in revenue .....	0
487110 ..	Scenic and Sightseeing Transportation, Land .....	<\$7 million in revenue .	0
488330 ..	Navigational Services to Shipping .....	<\$35.5 million in revenue .....	0
541614 ..	Process, Physical Distribution and Logistics Consulting Services .....	<\$14 million in revenue .....	23
621910 ..	Ambulance Services .....	<\$14 million in revenue .....	0

Sources: U.S. Census Bureau, Small Business Administration, and CBP.

To estimate the number of small entities to which the proposed rule will apply, CBP needs an estimate of the total number of small entities within an industry and the number of these small entities that are, or will be, engaged in the transportation of aliens.

The U.S. Census Bureau (Census) provides estimates of the number of entities within an industry. The Census organizes an industry by various intervals of annual revenue and number of employees.<sup>14</sup> Using these intervals and the SBA's small entity standards, CBP can estimate the number of small entities within an industry. However, the Census intervals do not necessarily correspond exactly with the SBA's small entity size standards. As an example, as shown in Table 2 below, the SBA's small entity size standards state that an entity classified under NAICS code 481211 is small if it has fewer than 1,500 employees. The Census, however, only has the following intervals of employees: 0–4 employees, 5–9 employees, 10–19 employees, 20–99

<sup>14</sup> <http://www.census.gov/econ/sub/>.

employees, 100–499 employees, and 500+ employees. It is not possible to differentiate between the entities in the 500+ employee interval that would be considered small under SBA’s small entity size standards (entities with fewer than 1,500 employees) and those entities the SBA does not consider small (entities with more than 1,500 employees). We therefore, sought an alternative data source to supplement the Census data. Any scheduled airline with a capacity of carrying over 18,000 pounds is required to report employee information to the Department of Transportation.<sup>15</sup> Using this data, we were able to identify carriers with over 1,500 employees, who are not considered small entities under the SBA size standards. We subtracted these airlines from the total small entities in each NAICS code to estimate the total small entities that could be affected by this rule. We note that these estimates could include businesses with over 1,500 employees that have a payload of less than 18,000 pounds or that do not offer scheduled flights. As there are a large number of small businesses with over 18,000 pounds of capacity, as shown in DOT’s data, we do not believe there are many, if any, large carriers that are not included in DOT’s data. We request comment on this matter.

Although CBP can use the Census and DOT data to provide an estimate of the number of small entities that have the potential to be affected by this rule, CBP cannot use the Census data to determine the number of small entities that are, or will be, engaged in the transportation of aliens within a reasonable degree of accuracy.<sup>16</sup> As shown in both Tables 1 and 2, however, CBP’s internal records show that only 41 small entities from FY 2008 to FY 2012 violated section 273 of the INA and thus would have been subject to a penalty if this rule were in effect. CBP seeks comment on the number of small entities that are, or will be, engaged in the transportation of aliens.

Table 2

NAICS	Industry description	SBA Size Standard	Total number of entities	Total number of small entities	Small entities that have violated section 273 of the INA
481111	Scheduled Passenger Air Transportation .	<1,500 employees	258 .....	233 .....	0
481112	Scheduled Freight Air Transportation .	<1,500 employees	232 .....	227 .....	0

<sup>15</sup> <http://transtats.bts.gov/Employment/>.

<sup>16</sup> For instance, CBP cannot tell which scheduled transport aliens and which do, or will, not transport passenger air transportation entities do, or will, aliens.

NAICS	Industry description	SBA Size Standard	Total number of entities	Total number of small entities	Small entities that have violated section 273 of the INA
481211	Nonscheduled Chartered Passenger Air Transportation. ....	<1,500 employees	1498 .....	1498 .....	16
481212	Nonscheduled Chartered Freight Air Transportation .....	<1,500 employees	171 .....	171 .....	0
481219	Other Nonscheduled Air Transportation .	\$14 million in revenue. ....	476 .....	477 .....	0
482111	Line-Haul Railroads .	<1,500 employees	not available	not available	0
482112	Short Line railroads .	<500 employees ..	not available	not available	0
483111	Deep Sea Freight Transportation .....	<500 employees ..	231 .....	213 .....	1
483112	Deep See Passenger Transportation .....	<500 employees ..	48 .....	41 .....	0
483113	Coastal and Great Lakes Freight Transportation.....	<500 employees ..	376 .....	350 .....	0
483114	Coastal and Great Lakes Passenger Transportation.....	<500 employees ..	170 .....	170 .....	0
483211	Inland Water Freight Transportation .....	<500 employees ..	319 .....	294 .....	0
483212	Inland Water Passenger Transportation .....	<500 employees ..	235 .....	233 .....	1
484230	Specialized Freight (except, Used Goods) Trucking, Long-Distance. ....	\$25.5 million in revenue. ....	9,839 .....	9,476 .....	0
485991	Special Needs Transportation .....	\$14 million in revenue. ....	2,130 .....	2,026 .....	0
487110	Scenic and Sightseeing Transportation, Land. ....	\$7 million in revenue .....	646 .....	121 .....	0
488330	Navigational Services to Shipping ...	\$35.5 million in revenue. ....	728 .....	693 .....	0
541614	Process, Physical Distribution and Logistics Consulting Services. ....	\$14 million in revenue. ....	6,379 .....	6,058 .....	23
621910	Ambulance Services .	\$14 million in revenue. ....	3,150 .....	2,941 .....	0

Sources: U.S. Census Bureau, Small Business Administration, and CBP.

#### 4. A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities

### Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The proposed regulation does not propose changes to any required reporting, recordkeeping, or compliance requirements. The objective of the proposed rule is to allow CBP in an unforeseen emergency to waive the requirement that a nonimmigrant present proper entry documents in order to be admitted into the United States while retaining the ability to fine the carrier that did not comply with the requirements pertaining to the proper transportation of an alien to the United States. When the nonimmigrant without proper documentation is not admitted, including when he or she is granted parole, CBP already has the authority to fine the carrier that did not comply with the requirements. This rule would only affect the carriers transporting aliens for whom CBP waives the document requirement. As discussed above, the proposed rule could affect any small entity that transports an alien without proper entry documentation.

#### 5. An Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule

The State Department is jointly promulgating this rule with DHS. DHS does not view this as duplicative, overlapping, or in conflict with this proposed rule as it is a judicial requirement stemming from the opinion in *United Airlines, Inc. v. Brien*, 588 F.3d 158 (2d Cir. 2009), which held that the 8 CFR 212.1(g) was improperly promulgated because the State Department and the legacy INS did not promulgate the rule jointly.

#### 6. A Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

Alternative 1 (chosen alternative): Allows CBP to waive the requirement for nonimmigrants to present valid documentation for entry into the United States in an unforeseen emergency while retaining the ability to enforce the statutory requirement imposing a maximum penalty of \$4,300 on a carrier, regardless of size, for transporting an alien to the United States without proper documentation. When the nonimmigrant without proper documentation is not admitted, including when he or she is granted parole, CBP already has the authority to fine the carrier that did not comply with the requirements.

Alternative 2: Same as Alternative 1, but waive the penalty in Alternative 1 for small entities.

Alternative 3: No regulatory action (*i.e.* the world as it is now).

CBP has chosen to implement Alternative 1. CBP believes that a penalty mechanism is necessary in order to enforce the statutory prohibition on transporting aliens into the United States without proper documentation. In addition, this rule would end the current inconsistency in fines for violations of section 273. Finally, CBP believes that the penalty provisions in the proposed regulation provide an economic incentive to enforce the statutory requirements of section 273 of the INA.

Alternative 2 would eliminate the economic impact of the proposed rule on noncompliant small entities. CBP believes that it would also eliminate economic incentive to enforce the statutory requirement for small entities. Furthermore, 8 CFR 273.5 sets forth the mitigation criteria for the mitigation of fines under § 273(e) of the INA and applies the administrative procedures provided for in 8 CFR 280.12 and 280.51. In determining the amount of the mitigation, CBP may take into account the effectiveness of the carrier's screening procedures, the carrier's history of fines, and the existence of extenuating circumstances. This mitigation is available to any carrier, including small entities.

Alternative 3 would eliminate the economic impact of the proposed rule for all noncompliant carriers, regardless of size. In addition, the current inconsistency in fines for violations of section 273 would continue—carriers who transport aliens who qualify for parole would be fined if they do not adhere to the requirements of section 273, but those who transport aliens who qualify for unforeseen emergency waivers would not be fined.

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

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.*, requires agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *D. Executive Order 13132*

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### *E. Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) an agency may not conduct, 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 collections of information for this NPRM are included in an existing collection for DHS Form I–193 (OMB control number 1651–0107).

### **List Of Subjects in 8 CFR Part 212**

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

### **Amendments to the Regulations**

For the reasons stated in the preamble, DHS proposes to amend part 212 of title 8 of the Code of Federal Regulations (8 CFR part 212), as set forth below:

#### **PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANT; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE**

■ 1. The authority citation for part 212 continues to read as follows:

**Authority:** 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); 8 CFR part 2.

■ 2. Section 212.1(g) is revised to read as follows:

#### **§ 212.1 Documentary Requirements for Nonimmigrants.**

\* \* \* \* \*

(g) *Unforeseen emergency.* A nonimmigrant seeking admission to the United States must present an unexpired visa and passport valid for the amount of time set forth in section 212(a)(7)(B)(i) of the Act, 8 U.S.C. 1182(a)(7)(B)(i), or a valid biometric border crossing card issued by the DOS on Form DSP–150, at the time of application for

admission, unless the nonimmigrant satisfies the requirements described in one or more of paragraphs (a) through (f) or (i), (o), or (p) of this section. Upon a nonimmigrant's application on Form I-193, or successor form, "Application for Waiver of Passport and/or Visa," a district director may, in the exercise of its discretion, on a case-by-case basis, waive either or both of the documentary requirements of section 212(a)(7)(B)(i) if satisfied that the nonimmigrant cannot present the required documents because of an unforeseen emergency. The district director may at any time revoke a waiver previously authorized pursuant to this paragraph and notify the nonimmigrant in writing to that effect.

\* \* \* \* \*

Dated: February 29, 2016.

JEH CHARLES JOHNSON,  
*Secretary.*

[Published in the Federal Register, March 8, 2016 (81 FR 12032)]



**ACCREDITATION AND APPROVAL OF ALTOL CHEMICAL  
AND ENVIRONMENTAL LABORATORY, INC., AS A  
COMMERCIAL LABORATOR**

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

**ACTION:** Notice of accreditation of Altol Chemical and Environmental Laboratory, Inc., as a commercial laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Altol Chemical and Environmental Laboratory, Inc., has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes for the next three years as of July 23, 2014.

**DATES:** The accreditation and approval of Altol Chemical and Environmental Laboratory, Inc., as commercial gauger and laboratory became effective on July 23, 2014. The next triennial inspection date will be scheduled for July 2017.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12, that Altol Chemical and Environmental Laboratory, Inc., Sabanetas Industrial Park, Building M-1380, Ponce, PR 00715, has been accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12. Altol Chemical and Environmental Laboratory, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-01 .....	ASTM D-287 .....	Standard test method for API Gravity of crude petroleum products and petroleum products (Hydrometer Method).
27-02 .....	ASTM D 1298 .....	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27-08 .....	ASTM D-86 .....	Standard Test Method for Distillation of Petroleum Products.
27-11.....	ASTM D 445 .....	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Velocity).
27-13 .....	ASTM D-4294 .....	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.

Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: March 9, 2016.

IRA S. REESE,  
*Executive Director,  
Laboratories and Scientific  
Services Directorate.*

**ACCREDITATION AND APPROVAL OF CHEMICAL AND  
PETROCHEMICAL INSPECTIONS AS A COMMERCIAL  
GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Chemical and Petrochemical Inspections as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Chemical and Petrochemical Inspections has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of September 18, 2015.

**DATES:** The accreditation and approval of Chemical and Petrochemical Inspections as commercial gauger and laboratory became effective on September 18, 2015. The next triennial inspection date will be scheduled for September 2018.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Chemical and Petrochemical Inspections, 5300 39th St., Groves, TX 77619, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR Chemical and Petrochemical Inspections is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
3 .....	Tank gauging.
7 .....	Temperature determination.
8 .....	Sampling.
12 .....	Calculations.
17 .....	Maritime measurement.

Chemical and Petrochemical Inspections is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-05 .....	D4928 .....	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27-08 .....	D86 .....	Standard Test Method for Distillation of Petroleum Products.
27-48 .....	D4052 .....	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [CBPGaugersLabs@cbp.dhs.gov](mailto:CBPGaugersLabs@cbp.dhs.gov). Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: March 10, 2016.

IRA S. REESE,  
*Executive Director,  
 Laboratories and Scientific  
 Services Directorate.*

[Published in the Federal Register, March 17, 2016 (81 FR 14458)]

**MODIFICATION OF THE NATIONAL CUSTOMS  
 AUTOMATION PROGRAM (NCAP); TESTS CONCERNING  
 THE PARTNER GOVERNMENT AGENCY MESSAGE SET  
 FOR CERTAIN DATA REQUIRED BY THE  
 ENVIRONMENTAL PROTECTION AGENCY (EPA)**

**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 modify three National Customs Automation Program (NCAP) tests concerning the electronic transmission through the Automated Commercial Environment (ACE) of certain import data required by the Environmental Protection Agency (EPA) for commodities regulated by the EPA. These modifications revise the number of persons who may participate in the three previously announced NCAP tests.

**DATES:** The modifications of the PGA Message Set Tests described in this notice are effective March 14, 2016. These modified tests will continue until concluded by way of announcement in the **Federal Register**. Comments concerning this notice and any aspect of the announced modifications may be submitted during each of the test periods to the address set forth below.

**ADDRESSES:** Comments concerning this notice and any aspect of the modified PGA Message Set Test may be submitted at any time during the testing periods via email to Josephine Baiamonte, ACE Business Office (ABO), Office of International Trade, at *josephine.baiamonte@cbp.dhs.gov*. In the subject line of your email, please indicate, “*Comment on PGA Message Set Test FRN.*”

**FOR FURTHER INFORMATION CONTACT:** For technical questions related to the application or request for an ACE Portal Account contact the ACE Account Service Desk by calling 1–866–530–4172, selecting option 1, then option 2, or by emailing *ACE.Support@cbp.dhs.gov* for assistance. For EPA-related questions, contact Carol S. Holmes, Senior Counsel, Office of Civil Enforcement, U.S. Environmental Protection Agency, at *Holmes.Carol@epa.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization (“Customs Modernization Act”), North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, Dec. 8, 1993) (19 U.S.C. 1411). Through NCAP, the thrust of customs modernization has been on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for processing commercial trade data which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while

ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. The Automated Broker Interface (ABI) is the electronic data interchange (EDI) system that enables members of the trade community to file electronically required import data with CBP and transfers that data to ACE.

CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace specific legacy ACS functions. Each release will begin with a test and, if the test is successful, will end with mandatory use of the new ACE feature, thus retiring the legacy ACS function. Each release builds on previous releases and sets the foundation for subsequent releases.

For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments is set forth below in Section XI and entitled, "Development of ACE Prototypes." The procedures and criteria related to participation in the prior ACE test pilots remain in effect unless otherwise explicitly changed by this or subsequent notices published in the **Federal Register**.

## II. Authorization for the Test

The Customs Modernization Act provisions provide the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The tests described in this notice are authorized pursuant to § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) which provides for the testing of NCAP programs or procedures. *See* Treasury Decision (T.D.) 95-21, 60 FR 14211 (March 16, 1995).

## III. International Trade Data System (ITDS)

These tests are also in furtherance of the International Trade Data System (ITDS) key initiatives, set forth in section 405 of the Security and Accountability for Every Port Act of 2006 ("SAFE Port Act") (Sec. 405, Pub. L. 109-347, 120 Stat. 1884, Oct. 13, 2006) (19 U.S.C. 1411(d)) and in Executive Order 13659 of February 19, 2014, *Streamlining the Export/Import Process for America's Businesses*, 79 FR 10657 (February 25, 2014). The purpose of ITDS, as stated in section 405 of the SAFE Port Act, is to eliminate redundant information requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data

required by all participating Federal agencies. CBP is developing ACE as the “single window” for the trade community to comply with the ITDS requirement established by the SAFE Port Act.

Executive Order 13659 requires that by December 31, 2016, ACE, as the ITDS “single window,” have the operational capabilities to serve as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export, and to transition from paper-based requirements and procedures to faster and more cost-effective electronic submissions to, and communications with, U.S. government agencies.

#### **IV. Partner Government Agency (PGA) Message Set Test**

The PGA Message Set is the data needed to satisfy the PGA reporting requirements. ACE enables the message set by acting as the “single window” for the submission of trade-related data required by the PGAs only once to CBP. After validation, the data will be made available to the relevant PGAs involved in import, export, and transportation-related decision making. The data will be used to fulfill merchandise entry requirements and may allow for earlier release decisions and more certainty for the importer in determining the logistics of cargo delivery. Also, by virtue of being electronic, the PGA Message Set will eliminate the necessity for the submission and subsequent handling of paper documents.

Under the Paperwork Reduction Act of 1995 (Public Law 104–13, 109 Stat. 163, codified at 44 U.S.C. 3501–3520) (PRA), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget (OMB). A collection of information, however, is exempt from the requirements of the PRA if fewer than ten (10) persons will be asked to provide the information.

This notice addresses the modification of the following three previously announced tests under the NCAP with respect to the number of test participants. (Please note that all terms, conditions, rules and requirements announced in the previous notices concerning the submission through ACE of certain EPA data through the PGA Message Set continue to apply except to the extent expressly modified by this notice.)

### *A. Non-Road Vehicles and Engines*

On December 13, 2013, CBP published a notice in the **Federal Register** announcing CBP's plan to modify the PGA Message Set test to allow for electronic filings of certain EPA import data with CBP for a variety of vehicles and engines. *See* 78 FR 75931 (December 13, 2013). That test notice did not limit the number of filers or participants. As the collection of electronic information under the PGA Message Set EPA Non-road Vehicles and Engines is governed by the PRA and the test notice inadvertently indicated that there was an OMB-approved Information Collection Request (ICR) for this additional information collection when there is not such an ICR for this additional information, participation in the non-road vehicles and engines portion of the test is hereby limited to nine (9) or fewer filers (*see* Section IX below). Accordingly, in order to comply with the participation limitation of the PRA, only up to nine filers seeking to participate in this test will be accepted at this stage of the test. CBP will accept applications throughout the duration of this test.

Applicants who qualify for this test but are not accepted because the limit of nine filers has been reached will have their applications placed on hold until and unless CBP lifts the limit on participation. All applicants will be notified that they have, or have not, been accepted into the test. If the limitation is lifted applicants will be notified of whether CBP has accepted their request to participate in the test and the date they can begin participation. CBP will not, however, publish another notice if the limitation is lifted. Rather, CBP will contact those who have applied and notify them that the limitation for participants has been lifted. Additionally, this test is expanded to all entries filed in ACE at any port in the customs territory of the United States.

### *B. Notice of Arrival: Pesticides or Pesticidal Devices*

On February 4, 2015, CBP published a notice in the **Federal Register** announcing CBP's plan to modify the PGA Message Set test to expand the use of the ACE PGA Message Set to transmit Environmental Protection Agency (EPA) Notice of Arrival of Pesticides and Devices (NOA) import data in the ocean and rail modes of transportation. *See* 80 FR 6098. That notice indicated that CBP would accept an unlimited number of participants for the test. As the collection of electronic information under the PGA Message Set EPA NOA is governed by the PRA and the test notice inadvertently indicated there was an OMB-approved Information Collection Request (ICR) for this additional information collection when there is not such an ICR for this additional information, participation in the test is hereby limited

to nine (9) or fewer participants (*see* Section IX below). Accordingly, in order to comply with the participation limitation of the PRA, only up to nine filers seeking to participate in this test will be accepted throughout the duration of the test.

CBP will accept applications throughout the duration of this test. All applicants will be notified that they have, or have not, been accepted into the test. Applicants who qualify for this test but are not accepted because the limit of nine filers has been reached will have their applications placed on hold until and unless CBP lifts the limit on participation. If the limitation is lifted applicants will be notified of whether CBP has accepted their request to participate in the test and the date they can begin participation. CBP will not, however, publish another notice if the limitation is lifted. Rather, CBP will contact those who have applied and notify them that the limitation has been lifted. (If the limitation is lifted, the test will also require the mandatory filing of the product label affixed to the pesticide cargo via the pdf format into the Digital Image System, which must accompany the electronic filing of the Notice of Arrival PGA Message Set). Additionally, this test is expanded to all entries filed in ACE at any port in the customs territory of the United States.

### *C. Ozone Depleting Substances*

In the **Federal Register** notice announcing the test for the submission of data and information related to the importation of Ozone Depleting Substances (ODS) through the PGA Message Set, CBP announced that the test would be limited to nine (9) or fewer filers. *See* 78 FR 75931 (December 13, 2013). All PRA requirements for the ODS pilot have been met since the publication of the above-referenced December 13, 2013, **Federal Register** notice (*see* Section IX below). Therefore, the limitation of nine filers is lifted and there is no longer a limit to the number of parties who may participate in this test. Applications may be submitted throughout the duration of the test and applicants will be notified of their acceptance into the test and the date they may begin participating. Additionally, this test is expanded to all modes of transportation, not exclusively ocean as was previously the case, and to all entries filed in ACE at any port in the customs territory of the United States.

### **V. Test Duration**

Except as stated below, the modification of all three of the PGA Message Set Tests announced in this notice are effective on March 14, 2016. The modified PGA Message Set Tests will continue until concluded by way of announcement in the **Federal Register**.

At the conclusion of the testing, an evaluation will be conducted and

the results of that evaluation will be published in the **Federal Register** and the *Customs Bulletin* as required by section 101.9(b)(2) of the CBP regulations (19 CFR 101.9(b)(2)).

## VI. Comments

All interested parties are invited to comment on any aspect of these ACE Portal Account Tests, as modified by this notice, for the duration of the modified tests. CBP requests comments and feedback on all aspects of these modifications, including the design, conduct and implementation of the modifications, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement these modifications.

## VII. Waiver of Regulations Under This Test

For purposes of these tests, any provision in title 19 of the Code of Federal Regulations including, but not limited to, the provisions found in part 12 that are inconsistent with the requirements set forth in this notice are waived for the duration of these tests. *See* 19 CFR 101.9(b). This document, however, does not waive any recordkeeping requirements found in part 163 of title 19 of the Code of Federal Regulations (19 CFR part 163) and the Appendix to part 163 (commonly known as the “(a)(1)(A) list”).

## VIII. Previous Notices

All requirements, terms and conditions, and aspects of the ACE tests discussed in previous notices are hereby incorporated by reference into this notice and continue to be applicable, unless changed by this notice.

## IX. Paperwork Reduction Act

The collection of information related to the importation of Ozone Depleting Substances has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) and assigned OMB Information Collection Request (ICR) numbers 2060–0170 and 2060–0498. With respect to the two other ICRs, EPA will request OMB approval for its ICRs for the collection of information related to (1) the importation of non-road vehicles and engines and (2) the notice of arrival for pesticides or devices consistent with proposed revisions to the related CBP regulations at 19 CFR part 12. Once OMB approves those information collections CBP will lift the limit on participation in (1) the non-road vehicles and engines test and (2) the notice of arrival for pesticides or devices test.

## X. Confidentiality

All data submitted and entered into ACE may be subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential by CBP, except to the extent as otherwise provided by law. The Electronic Export Information (EEI) is also subject to the confidentiality provisions of 15 CFR 30.60. As stated in previous notices, participation in these or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act (FOIA) request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

## XI. Development of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004); 70 FR 5199 (February 1, 2005).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).

- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).
- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE)

Cargo Release to Allow Importers and Brokers to Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System: 79 FR 36083 (June 25, 2014).
- Announcement of eBond Test: 79 FR 70881 (November 28, 2014).
- eBond Test Modifications and Clarifications: Continuous Bond Executed Prior to or Outside the eBond Test May Be Converted to an eBond by the Surety and Principal, Termination of an eBond by Filing Identification Number, and Email Address Correction: 80 FR 899 (January 7, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System Relating to Animal and Plant Health Inspection Service (APHIS) Document Submissions: 80 FR 5126 (January 30, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the use of Partner Government Agency Message Set through the Automated Commercial Environment (ACE) for the Submission of Certain Data Required by the Environmental Protection Agency (EPA): 80 FR 6098 (February 4, 2015).
- Announcement of Modification of ACE Cargo Release Test to Permit the Combined Filing of Cargo Release and Importer Security Filing (ISF) Data: 80 FR 7487 (February 10, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Type 03 Entries and Advanced Capabilities for Truck Carriers: 80 FR 16414 (March 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Air Cargo Test: 80 FR 39790 (July 10, 2015).
- National Customs Automation Program (NCAP) Concerning Remote Location Filing Entry Procedures in the Automated Commercial Environment (ACE) and the Use of the Document Image

System for the Submission of Invoices and the Use of eBonds for the Transmission of Single Transaction Bonds: 80 FR 40079 (July 13, 2015).

- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set Regarding Types of Transportation Modes and Certain Data Required by the National Highway Traffic Safety Administration (NHTSA): 80 FR 47938 (August 10, 2015).
- ACE Export Manifest for Vessel Cargo Test: 80 FR 50644 (August 20, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency (PGA) Message Set Through the Automated Commercial Environment (ACE): 80 FR 52051 (August 27, 2015).
- ACE Export Manifest for Rail Cargo Test: 80 FR 54305 (September 9, 2015).
- Automated Commercial Environment (ACE) Fillings for Electronic Entry/Entry Summary (Cargo Release and Related Entry): 80 FR 61278 (October 13, 2015).
- Modification of the National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Document Image System (DIS) Regarding Future Updates and New Method of Submission of Accepted Documents: 80 FR 62082 (October 15, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release Test for Entry Type 52 and Certain Other Modes of Transportation: 80 FR 63576 (October 20, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Portal Account Test to Establish the Exporter Portal Account: 80 FR 63817 (October 21, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Customs Environment (ACE) Entry Summary, Accounts and Revenue (ESAR) Test of Automated

Entry Summary Types 51 and 52 and Certain Modes of Transportation: 80 FR 63815 (October 21, 2015).

- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set Regarding the Toxic Substances Control Act (TSCA) Certification Required by the Environmental Protection Agency (EPA): 81 FR 7133 (February 10, 2016).

Dated: March 9, 2016.

BRENDA B. SMITH,  
*Assistant Commissioner,*  
*Office of International Trade.*

[Published in the Federal Register, March 14, 2016 (81 FR 13399)]



## AGENCY INFORMATION COLLECTION ACTIVITIES:

### Holders or Containers Which Enter the United States Duty Free

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

**ACTION:** 30-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Holders or Containers which enter the United States Duty Free. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

**DATES:** Written comments should be received on or before April 14, 2016 to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and

Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [aira\\_submission@omb.eop.gov](mailto:aira_submission@omb.eop.gov) or faxed to (202) 395-5806.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

**SUPPLEMENTARY INFORMATION:** This proposed information collection was previously published in the **Federal Register** (80 FR 80380) on December 24, 2015, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/ or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

**Title:** Holders or Containers which Enter the United States Duty Free.

**OMB Number:** 1651-0035.

**Abstract:** Item 9803.00.50 under the Harmonized Tariff Schedules of the United States (HTSUS), codified as 19 U.S.C. 1202, provides for the duty-free entry of substantial holders or containers of foreign manufacture if duty had been paid upon a previous importation pursuant to the provisions of 19 CFR 10.41b.

19 CFR 10.41 provides that substantial holders or containers are to have prescribed markings in clear and conspicuous letters of such a size that they will be easily discernable. Section 10.41b of the CBP

regulations eliminates the need for an importer to file entry documents by instead requiring the marking of the containers or holders to indicate the HTSUS numbers that provide for duty free treatment of the containers or holders.

In order to comply with 19 CFR 10.41b, the owner of the holder or container is required to place the markings on a metal tag or plate containing the following information: 9801.00.10, HTSUS; the name of the owner; and the serial number assigned by the owner. In the case of serially numbered holders or containers of foreign manufacture for which free clearance under 9803.00.50 HTSUS is claimed, the owner must place markings containing the following information: 9803.00.50 HTSUS; the port code numbers of the port of entry; the entry number; the last two digits of the fiscal year of entry covering the importation of the holders and containers on which duty was paid; the name of the owner; and the serial number assigned by the owner.

**Current Actions:** CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

**Type of Review:** Extension (with no change).

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 20.

**Estimated Number of Responses per Respondent:** 18.

**Estimated Number of Total Annual Responses:** 360.

**Estimated Total Annual Burden Hours:** 90.

Dated: March 10, 2016.

TRACEY DENNING,  
*Agency Clearance Officer,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, March 15, 2016 (81 FR 13814)]

## **AGENCY INFORMATION COLLECTION ACTIVITIES:**

### **Exportation of Used Self-Propelled Vehicles**

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

**ACTION:** 30-Day notice and request for comments; Extension of an existing collection of information.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Bud-

get (OMB) for review and approval in accordance with the Paperwork Reduction Act: Exportation of Used Self-Propelled Vehicles. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

**DATES:** Written comments should be received on or before April 11, 2016 to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-5806.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

**SUPPLEMENTARY INFORMATION:** This proposed information collection was previously published in the **Federal Register** (80 FR 79056) on December 18, 2015, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/ or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a

matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

**Title:** Exportation of Used-Propelled Vehicles.

**OMB Number:** 1651-0054.

**Abstract:** CBP regulations require an individual attempting to export a used self-propelled vehicle to furnish documentation to CBP, at the port of export, the vehicle and documentation describing the vehicle, which includes the Vehicle Identification Number (VIN) or, if the vehicle does not have a VIN, the product identification number. Exportation of a vehicle will be permitted only upon compliance with these requirements. This requirement does not apply to vehicles that were entered into the United States under an in-bond procedure, a carnet, or temporary importation bond. The required documentation includes, but is not limited to, a Certificate of Title or a Salvage Title, the VIN, a Manufacturer's Statement of Origin, etc. CBP will accept originals or certified copies of Certificate of Title. The purpose of this information is to help ensure that stolen vehicles or vehicles associated with other criminal activity are not exported.

Collection of this information is authorized by 19 U.S.C. 1627a which provides CBP with authority to impose export reporting requirements on all used self-propelled vehicles, and by title IV, section 401 of the Anti-Car Theft Act of 1992, 19 U.S.C. 1646(c), which requires all persons exporting a used self-propelled vehicle to provide to the CBP, at least 72 hours prior to export, the VIN and proof of ownership of each automobile. This information collection is provided for by 19 CFR part 192. Further guidance regarding these requirements is provided at: [http://www.cbp.gov/xp/cgov/trade/basic\\_trade/export\\_docs/motor\\_vehicle.xml](http://www.cbp.gov/xp/cgov/trade/basic_trade/export_docs/motor_vehicle.xml).

**Current Actions:** CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

**Type of Review:** Extension (without change).

**Affected Public:** Individuals and Businesses.

**Estimated Number of Respondents:** 750,000.

**Estimated Number of Total Annual Responses:** 750,000.

**Estimated Time per Response:** 10 minutes.

**Estimated Total Annual Burden Hours:** 125,000.

Dated: March 7, 2016.

TRACEY DENNING,  
Agency Clearance Officer,  
U.S. Customs and Border Protection.

**AGENCY INFORMATION COLLECTION ACTIVITIES:**  
**Accreditation of Commercial Testing Laboratories and  
Approval of Commercial Gaugers**

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

**ACTION:** 60-Day Notice and request for comments; extension of an existing collection of information.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

**DATES:** Written comments should be received on or before May 16, 2016 to be assured of consideration.

**ADDRESSES:** Written comments may be mailed to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost

burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

**Title:** Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers.

**OMB Number:** 1651-0053.

**Form Number:** Form 6478.

**Abstract:** Commercial laboratories seeking accreditation or approval must provide the information specified in 19 CFR 151.12 to Customs and Border Protection (CBP), and Commercial Gaugers seeking CBP approval must provide the information specified under 19 CFR 151.13. This information may be submitted on CBP Form 6478. After the initial approval and/or accreditation, a private company may “extend” its approval and/or accreditation to add facilities by submitting a formal written request to CBP. This application process is authorized by Section 613 of Public Law 103-182 (NAFTA Implementation Act), codified at 19 U.S.C. 1499, which directs CBP to establish a procedure to accredit privately owned testing laboratories. The information collected is used by CBP in deciding whether to approve individuals or businesses desiring to measure bulk products or to analyze importations. Instructions for completing these applications are accessible at: <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>. CBP Form 6478 is accessible at: [http://www.cbp.gov/sites/default/files/documents/CBP%20Form%206478\\_0.pdf](http://www.cbp.gov/sites/default/files/documents/CBP%20Form%206478_0.pdf)

**Current Actions:** This submission is being made to extend the expiration date with a change to the burden hours based on updated estimates of the number of applicants and record keepers associated with this information collection. There are no changes to the information collected.

**Type of Review:** Extension (with change).

**Affected Public:** Businesses.

*Applications for Commercial Testing and Approval of Commercial Gaugers:*

**Estimated Number of Annual Respondents:** 8.

**Estimated Time per Response:** 1.25 hours.

**Estimated Total Annual Burden Hours:** 10.

*Record Keeping Associated with Applications for Commercial Testing and Approval of Commercial Gaugers:*

**Estimated Number of Respondents:** 180.

**Estimated Time per Response:** 1 hour.

**Estimated Total Annual Burden Hours:** 180.

Dated: March 10, 2015.

TRACEY DENNING,  
*Agency Clearance Officer,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, March 16, 2016 (81 FR 14120)]



## **AGENCY INFORMATION COLLECTION ACTIVITIES:**

### **User Fees**

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

**ACTION:** 30-Day notice and request for comments; Extension of an existing collection of information.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: User Fees. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours but no change to the information collected. This document is published to obtain comments from the public and affected agencies.

**DATES:** Written comments should be received on or before April 14, 2016 to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-5806.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** This proposed information collection was previously published in the **Federal Register** (80 FR 75684) on December 3, 2015, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/ or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

**Title:** User Fees.

**OMB Number:** 1651–0052.

**Form Number:** CBP Forms 339A, 339C and 339V.

**Abstract:** The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA– Pub. L. 99–272; 19 U.S.C. 58c) authorizes the collection of user fees by Customs and Border Protection (CBP). The collection of these fees requires submission of information from the party remitting the fees to CBP. This information is submitted on three forms including the CBP Form 339A for aircraft at: <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%20339A.pdf>, CBP Form 339C for commercial vehicles at: <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%20339C.pdf>, and CBP Form 339V for vessels at: <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%20339V.pdf>. The information on these forms may also be

filed electronically at: <https://dtops.cbp.dhs.gov/>. This collection of information is provided for by 19 CFR 24.22.

In addition, CBP requires express consignment courier facilities (ECCFs) to file lists of couriers using the facility in accordance with 19 CFR 128.11. In cases of overpayments, carriers using the courier facilities may send a request to CBP for a refund in accordance with 19 CFR 24.23(b). This request must specify the grounds for the refund. ECCFs are also required to file a quarterly report in accordance with 19 CFR 24.23(b)(4).

**Current Actions:** This submission is being made to extend the expiration date with a change to the burden hours as a result of a new pilot that CBP is planning that will allow for a new payment option for commercial truck single-crossing user fees. This new pilot program will allow commercial truck carriers who opt for the single-crossing user fee to prepay the single-crossing user fee online via the DTOPS Web site prior to arrival at a port of entry. As a result, the estimated number of users for the DTOPS Web site (Form 339C—Vehicles) was increased from 50,000 to 90,000.

**Type of Review:** Extension (with change).

**Affected Public:** Carriers.

#### **CBP Form 339A—Aircraft**

**Estimated Number of Respondents:** 15,000.

**Estimated Number of Annual Responses:** 15,000.

**Estimated Time per Response:** 16 minutes.

**Estimated Total Annual Burden Hours:** 4,005.

#### **CBP Form 339C—Vehicles**

**Estimated Number of Respondents:** 90,000.

**Estimated Number of Annual Responses:** 90,000.

**Estimated Time per Response:** 20 minutes.

**Estimated Total Annual Burden Hours:** 29,700.

#### **CBP Form 339V—Vessels**

**Estimated Number of Respondents:** 10,000.

**Estimated Number of Annual Responses:** 10,000.

**Estimated Time per Response:** 16 minutes.

**Estimated Total Annual Burden Hours:** 2,670.

**ECCF Quarterly Report****Estimated Number of Respondents: 18.****Estimated Number of Annual Responses: 72.****Estimated Time per Response: 2 hours.****Estimated Total Annual Burden Hours: 144.****ECCF Application and List of Couriers****Estimated Number of Respondents: 3.****Estimated Number of Annual Responses: 12.****Estimated Time per Response: 30 minutes.****Estimated Total Annual Burden Hours: 6.**

Dated: March 10, 2016.

TRACEY DENNING,  
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