

U.S. Customs and Border Protection

19 CFR PART 4
CBP DEC. 17-20
RIN 1651-AB15

CIVIL MONETARY PENALTY ADJUSTMENTS FOR INFLATION

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

ACTION: Final rule.

SUMMARY: This rule amends U.S. Customs and Border Protection (CBP) regulations to adjust for inflation the amounts that CBP can assess as civil monetary penalties for the following three violations—transporting passengers between coastwise points in the United States by a non-coastwise qualified vessel; towing a vessel between coastwise points in the United States by a non-coastwise qualified vessel; and dealing in or using an empty stamped imported liquor container after it has already been used once. These adjustments are being made in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act) which was enacted on November 2, 2015. Other CBP civil penalty amounts were adjusted pursuant to this 2015 Act in previously published rule documents published in the **Federal Register** on July 1, 2016, and January 27, 2017, but the adjustments for these three civil penalties were inadvertently left out of those documents.

DATES: This rule is effective on December 8, 2017. The adjusted penalty amounts will be applicable for penalties assessed after December 8, 2017 if the associated violations occurred after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Millie Gleason, Office of Field Operations, U.S. Customs and Border Protection. Phone: (202) 325-4291.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74 section 701 (Nov. 2, 2015)) (2015 Act).¹ The 2015 Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) (1990 Inflation Adjustment Act) to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act required agencies to: (1) Adjust the level of civil monetary penalties with an initial “catch-up” adjustment through issuance of an interim final rule (IFR) and (2) make subsequent annual adjustments for inflation. Through the “catch-up” adjustment, agencies were required to adjust the maximum amounts of civil monetary penalties to more accurately reflect inflation rates. The 2015 Act directed the Office of Management and Budget (OMB) to issue guidance to agencies on implementing the initial “catch-up” adjustment. The 2015 Act required that agencies publish their IFRs in the **Federal Register** no later than July 1, 2016 and that the adjusted amounts were to take effect no later than August 1, 2016.

For the subsequent annual adjustments, the 2015 Act requires agencies to increase the penalty amounts by a cost-of-living adjustment. The 2015 Act directs OMB to provide guidance to agencies each year to assist agencies in making the annual adjustments. The 2015 Act requires agencies to make the annual adjustments no later than January 15 of each year and to publish the adjustments in the **Federal Register**.

The Department of Homeland Security (DHS) undertook a review of the civil penalties that DHS and its components administer to determine which penalties would need adjustments. On July 1, 2016, DHS published an IFR adjusting the civil monetary penalties with an initial “catch-up” adjustment, as required by the 2015 Act. *See* 81 FR 42987. DHS calculated the adjusted penalties based upon nondiscretionary provisions in the 2015 Act and upon guidance issued by OMB on February 24, 2016.² The adjusted penalties were effective for civil penalties assessed after August 1, 2016 (the effective date of the IFR) whose associated violations occurred after November 2, 2015 (the

¹ The 2015 Act was enacted as part of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015).

² OMB, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, February 24, 2016. <https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>.

date of enactment of the 2015 Act).³ On January 27, 2017, DHS published a final rule adopting as final the civil monetary penalty adjustment methodology from the IFR and making the 2017 annual inflation adjustment pursuant to the 2015 Act and upon guidance OMB issued to agencies on December 16, 2016.⁴ *See* 82 FR 8571.

As discussed in Section II below, three civil monetary penalties assessed by CBP and subject to the 2015 Act were inadvertently omitted from these DHS rulemakings.

II. CBP Penalties

CBP assesses or enforces penalties under various titles of the United States Code (U.S.C.) and the Code of Federal Regulations (CFR). These penalties include civil monetary penalties for certain violations of title 8 of the CFR pursuant to the Immigration and Nationality Act of 1952,⁵ as well as certain civil monetary penalties for customs violations for laws codified in title 19 of the U.S.C. and the CFR. CBP assesses many of the title 19 penalties under the Tariff Act of 1930, as amended, and as discussed in the IFR preamble at 81 FR 42987, the 2015 Act specifically exempts Tariff Act penalties from the inflation adjustment requirements in the 2015 Act. For that reason, DHS did not list those penalties in the tables of CBP penalty adjustments in the DHS rulemakings. There are also various other monetary penalties found throughout the U.S.C. and CFR which CBP may seek to issue or enforce but which were not included in the tables because they fall within the purview of another Department or Agency for purposes of the 2015 Act.⁶

However, three non-Tariff Act penalties that are assessed by CBP were inadvertently omitted from the DHS rulemakings. The first is a penalty set forth at 19 U.S.C. 469, and not reflected in the CBP regulations, for dealing in or using already used empty stamped

³ DHS published a correction to the IFR on August 23, 2016 to correct one amendatory instruction. *See* 81 FR 57442.

⁴ OMB, Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, December 16, 2016. https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf.

⁵ Public Law 82-414, as amended (INA). The INA contains provisions that impose penalties on persons, including carriers and aliens, who violate specified provisions of the INA. While CBP is responsible for enforcing various provisions of the INA and assessing penalties for violations of those provisions, all the penalty amounts CBP can assess for violations of the INA are set forth in one section of title 8 of the CFR—8 CFR 280.53. For a complete list of the INA sections for which penalties are assessed, in addition to a brief description of each violation, *see* the IFR preamble at 81 FR 42989-42990.

⁶ For example, CBP may enforce the Clean Diamond Trade Act penalty set forth in 19 U.S.C. 3907, which falls within the purview of the Department of Treasury. *See* 31 CFR part 501, app. A.

imported liquor containers. The other two penalties are set forth in title 46 of the U.S.C., 46 U.S.C. 55103 and 46 U.S.C. 55111 and reflected in the CBP regulations in 19 CFR part 4. Pursuant to 46 U.S.C. 55103(b) and 19 CFR 4.80(b)(2), CBP assesses penalties for transporting passengers between coastwise points in the United States by a non-coastwise qualified vessel. Pursuant to 46 U.S.C. 55111(c) and 19 CFR 4.92, CBP assesses penalties for towing a vessel between coastwise points in the United States by a non-coastwise qualified vessel.

This final rule adjusts these penalty amounts using the same civil monetary penalty adjustment methodology that DHS announced in the IFR (81 FR 42987) and finalized in the DHS final rule (82 FR 8571), and detailed below.

III. Inflation Adjustment Methodology Required by 2015 Act

A. Overview

The 2015 Act provides a new method for calculating inflation adjustments. The new method differs substantially from the methods that agencies used in the past when conducting inflation adjustments pursuant to the 1990 Inflation Adjustment Act. The new method is intended to more accurately reflect inflation. Previously, when agencies conducted adjustments to civil penalties, they did so under rules that required significant rounding of figures. For example, an agency would round a penalty increase that was greater than \$1,000, but less than or equal to \$10,000, to the nearest multiple of \$1,000. While this allowed penalties to be kept at round numbers, it meant that agencies would often not increase penalties at all if the inflation factor was not large enough. Furthermore, increases to penalties were capped at 10 percent, which meant that longer periods without an inflation adjustment could cause a penalty to rapidly lose value in real terms. Over time, the formula used in the 1990 Inflation Adjustment Act calculations frequently caused penalties to lose value relative to actual inflation. The 2015 Act removed these rounding rules, and instead instructs agencies to round penalties to the nearest \$1. While this creates penalty values that are no longer round numbers, it does ensure that agencies will increase penalties each year to a figure commensurate with the actual calculated inflation.

To better reflect the original impact of civil penalties, the 2015 Act “resets” the inflation calculations by excluding prior inflationary adjustments under the Inflation Adjustment Act. To do this, the 2015 Act requires agencies to identify, for each penalty, the year that Congress originally enacted the maximum penalty level/range of

minimum and maximum penalty levels or the year that the agency last adjusted the penalty amount other than to pursuant to the Inflation Adjustment Act, and the corresponding penalty amount(s). The 2015 Act then requires agencies to perform an initial “catch-up” adjustment, using the original amounts of civil penalties as a baseline, so that the 2016 penalty levels are equal, in real terms, to the penalty amounts as they were originally established. The 2015 Act also requires agencies to make subsequent annual adjustments to increase the penalty amounts by a cost-of-living adjustment.

B. Catch-Up Adjustment

This section sets forth the initial “catch-up” adjustment for three civil monetary penalties assessed by CBP that were inadvertently omitted from the DHS rulemakings. The catch-up adjustments for these three penalties are listed in Table 1 below. This table shows how DHS would have initially increased the penalties pursuant to the 2015 Act. The table contains the following information:

- In the first column (penalty name), we provide a description of the penalty.
- In the second column (citation), we provide the statutory cite from the United States Code (U.S.C.) and the regulatory cite from the Code of Federal Regulations (CFR).
- In the third column (current penalty), we list the existing penalty in effect on November 2, 2015.
- In the fourth column (baseline penalty (year)), we provide the amount and year of the penalty as enacted by Congress or as last changed through a mechanism other than pursuant to the Inflation Adjustment Act, whichever is later.
- In the fifth column (2016 multiplier), we list the multiplier used to adjust the penalty pursuant to the initial OMB catch-up guidance. The multiplier is determined by the year of enactment or last adjustment of the penalty. The multiplier is based upon the Consumer Price Index (CPI-U) for the month of October 2015, not seasonally adjusted.
- In the sixth column (preliminary new penalty), we list the amount obtained by multiplying the Baseline Penalty from column 4 with the Multiplier from column 5. This amount will be the catch-up adjustment amount, if, in accordance with the 2015

Act, this level does not increase penalty levels by more than 150 percent of the corresponding levels in effect on November 2, 2015.

- In the seventh column (adjusted 2016 penalty), we provide the number for the penalty as it would have been adjusted for 2016. To derive this number, we compare the preliminary new penalty with the current penalty from column 3. The adjusted new penalty is the lesser of either the preliminary new penalty or an amount equal to 150 percent more than the current penalty.

TABLE 1—U.S. CUSTOMS AND BORDER PROTECTION CIVIL PENALTIES
INITIAL CATCH-UP ADJUSTMENTS

Penalty name	Citation	Current penalty	Baseline penalty* (year)	2016 Multiplier**	Preliminary new penalty [2016 multiplier × baseline penalty]	Adjusted 2016 penalty [increase capped at 150% more than current penalty]
Penalty for dealing in or using empty stamped imported liquor containers.	19 U.S.C. 469	\$200	\$200 (1879) ...	23.54832	\$4,710	\$500.
Penalty for transporting passengers between coastwise points in the United States by a non-coastwise qualified vessel.	46 U.S.C. 55103(b) 19 CFR 4.80(b)(2).	\$300	\$200 (1898) ...	23.54832	\$4,710	\$750.
Penalty for towing a vessel between coastwise points in the United States by a non-coastwise qualified vessel.	46 U.S.C. 55111(c) 19 CFR 4.92.	\$350–\$1100, plus \$60 per ton.	\$250–\$1000, plus \$50 per ton (1940).	16.98843	\$4,247–\$16,988, plus \$849 per ton.	\$875–\$2,750, plus \$150 per ton.

* The amount of the penalty and the year when the penalty was established or last adjusted in statute or regulation other than pursuant to the Inflation Adjustment Act of 1990.

** OMB, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Table A: 2016 Civil Monetary Penalty Catch-Up Adjustment Multiplier by Calendar Year, February 24, 2016. <https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>.

C. 2017 Adjustments

This final rule also makes the 2017 annual inflation adjustment pursuant to the 2015 Act and the guidance OMB issued to agencies on December 16, 2016.⁷ Pursuant to 28 U.S.C. 2461 note sec. 6, as amended by the 2015 Act, the penalty amounts adjusted by this final rule will be applicable for penalties assessed after December 8, 2017 where the associated violation occurred after November 2, 2015 (*i.e.*, the date the 2015 Act was signed into law). Consistent with OMB guidance, the 2015 Act does not change previously assessed penalties that the agency is actively collecting or has collected.

In Table 2 below, we show: (1) The civil penalty (or penalties) name, (2) the penalty statutory and/or regulatory citation, (3) the penalty amount as it would have been adjusted in 2016 (see Table 1), (4) the cost-of-living adjustment multiplier for 2017 that OMB provided in its December 16, 2016 guidance, and (5) the new 2017 adjusted penalty.

Additionally, we have made conforming edits to the regulatory text for the new adjusted penalty amounts in 19 CFR 4.80(b)(2) and 19 CFR 4.92. Because the 19 U.S.C. 469 penalty is not included in the CFR, there are no conforming edits to be made to the regulatory text. However, this penalty is listed in Table 2 for informational purposes.

TABLE 2—U.S. CUSTOMS AND BORDER PROTECTION CIVIL PENALTIES
2017 ADJUSTMENTS

Penalty name	Citation	Adjusted 2016 penalty (see Table 1)	2017 Multiplier*	New penalty as adjusted by this final rule
Penalty for dealing in or using empty stamped imported liquor containers.	19 U.S.C. 469	\$500	1.01636	\$508.**
Penalty for transporting passengers between coastwise points in the United States by a non-coastwise qualified vessel.	46 U.S.C. 55103(b) 19 CFR 4.80(b)(2).	\$750	1.01636	\$762.

⁷ See footnote 4.

Penalty name	Citation	Adjusted 2016 penalty (see Table 1)	2017 Multiplier*	New penalty as adjusted by this final rule
Penalty for towing a vessel between coastwise points in the United States by a non-coastwise qualified vessel.	46 U.S.C. 55111(c) 19 CFR 4.92.	\$875–\$2,750, plus \$150 per ton.	1.01636	\$889–\$2,795, plus \$152 per ton.

* OMB, Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, December 16, 2016.

https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf.

** No applicable conforming edit to regulatory text.

IV. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the **Federal Register** (5 U.S.C. 553(b)) and to provide interested persons with the opportunity to submit comments (5 U.S.C. 553(c)). The APA also requires agencies to provide a delayed effective date (of not less than 30 days) for substantive rules. 5 U.S.C. 553(d). The 2015 Act, however, specifically instructed that agencies are to make the required annual adjustments notwithstanding section 553 of title 5, United States Code.

DHS is promulgating this final rule to ensure that the amount of civil penalties that CBP assesses or enforces that was inadvertently omitted from the DHS rulemakings reflects the statutorily mandated ranges as adjusted for inflation. The 2015 Act provides a clear non-discretionary formula for adjustment of the civil penalties; DHS and CBP have been charged only with performing ministerial computations to determine the amounts of adjustments for inflation to civil monetary penalties. Additionally, although the 2015 Act requires publication of an IFR to take effect not later than August 1, 2016, that date has passed and publishing a separate IFR to account for these inadvertently omitted penalty adjustments would cause unnecessary delay. Further, this final rule merely applies the adjustment methodology that DHS provided for public comment in the 2016 IFR and finalized in the 2017 final rule. DHS finds that it is unnecessary to seek further public comment regarding the application of the finalized methodology to these three penalties. For these reasons, and as specified in the 2015 Act, DHS finds good cause to promulgate these

CBP civil monetary penalty adjustments as a final rule and finds that the prior public notice-and-comment procedures and delayed effective date requirements of the APA are unnecessary and do not apply to this rule.

As described in Section I above, the 2015 Act requires agencies to make annual adjustments to civil monetary penalties no later than January 15 of each year and to publish the adjustments in the **Federal Register**. DHS will make future annual inflation adjustments required pursuant to the 2015 Act by final rule notwithstanding the notice-and-comment and delayed effective date requirements of the APA, as required by the 2015 Act. For future annual adjustments, DHS will update the penalty amounts by applying a cost-of-living adjustment multiplier pursuant to OMB guidance. DHS will publish a final rule that provides a table with the adjusted penalty amounts and that updates the numbers in the regulatory text accordingly. DHS will incorporate the three CBP penalties adjusted in this final rule into such future annual adjustment final rules.

V. Regulatory Analyses

A. *Executive Orders 12866, 13563, and 13771*

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) 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. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

OMB has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action it is not subject to the requirements of Executive Order 13771. *See* OMB’s Memorandum, “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017) at Q2.

This final rule makes nondiscretionary adjustments to existing civil monetary penalties in accordance with the 2015 Act and OMB guid-

ance.⁸ DHS therefore did not consider alternatives and does not have the flexibility to alter the adjustments of the civil monetary penalty amounts as provided in this rule. To the extent this final rule increases civil monetary penalties, it would result in an increase in transfers from persons or entities assessed a civil monetary penalty to the government.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). *See* 5 U.S.C. 601–612. The Regulatory Flexibility Act does not apply to this final rule because a notice of proposed rulemaking was not required for the reasons stated above.

C. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. This final rule will not result in such an expenditure.

D. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule, because this final rule does not trigger any new or revised recordkeeping or reporting.

VI. Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a). Accordingly, this document is signed by the Secretary of Homeland Security.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Exports, Freight, Harbors, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

For the reasons stated in the preamble, CBP amends 19 CFR part 4 as follows:

⁸ See footnotes 2 and 4.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 1. The authority citation for part 4 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

* * * * *

Sections 4.80, 4.80a, and 4.80b also issued under 19 U.S.C. 1706a; 28 U.S.C. 2461 note; 46 U.S.C. 12112, 12117, 12118, 50501–55106, 55107, 55108, 55110, 55114, 55115, 55116, 55117, 55119, 56101, 55121, 56101, 57109; Pub. L. 108–7, Division B, Title II, § 211;

* * * * *

Section 4.92 also issued under 28 U.S.C. 2461 note; 46 U.S.C. 55111;

* * * * *

■ 2. Revise § 4.80(b)(2) to read as follows:

§ 4.80 Vessels entitled to engage in coastwise trade.

* * * * *

(b) * * *

(2) The penalty imposed for the unlawful transportation of passengers between coastwise points is \$300 for each passenger so transported and landed on or before November 2, 2015, and \$762 for each passenger so transported and landed after November 2, 2015 (46 U.S.C. 55103, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015).

* * * * *

■ 3. Revise § 4.92 to read as follows:

§ 4.92 Towing.

No vessel other than a vessel documented for the coastwise trade, or which would be entitled to be so documented except for its tonnage (see § 4.80), may tow a vessel other than a vessel in distress between points in the U.S. embraced within the coastwise laws, or for any part of such towing (46 U.S.C. 55111). The penalties for violation of this provision occurring on or before November 2, 2015, are a fine of from \$350 to \$1100 against the owner or master of the towing vessel and a further penalty against the towing vessel of \$60 per ton of the towed vessel. The penalties for violation of this provision occurring after

November 2, 2015, are a fine of from \$889 to \$2,795 against the owner or master of the towing vessel and a further penalty against the towing vessel of \$152 per ton of the towed vessel (46 U.S.C. 55111, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015).

Dated: December 5, 2017.

ELAINE C. DUKE,
Acting Secretary of Homeland Security.

[Published in the Federal Register, December 8, 2017 (82 FR 57821)]

**DELAY OF TRANSITION OF THE GENERATING,
TRANSMITTING AND UPDATING OF DAILY AND
MONTHLY STATEMENTS FROM THE AUTOMATED
COMMERCIAL SYSTEM TO THE AUTOMATED
COMMERCIAL ENVIRONMENT**

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

ACTION: Delay of transition of statement processing.

SUMMARY: On November 8, 2017, U.S. Customs and Border Protection (CBP) published a notice in the **Federal Register** announcing plans to make the Automated Commercial Environment (ACE) the sole electronic data interchange (EDI) system authorized by CBP for generating, transmitting, and updating daily and monthly statements for all entries except reconciliation (type 09) entries. The changes announced in that notice were to become operational on December 9, 2017. This notice announces that the date for the transition to ACE as the sole CBP-authorized EDI system for statement processing is delayed until January 6, 2018. ACE will not be the official system of records for statements until that time.

DATES: As of January 6, 2018, ACE will be the sole CBP-authorized EDI system for generating, transmitting, and updating daily and monthly statements, and the Automated Commercial System (ACS) will no longer be a CBP-authorized EDI system for such purpose.

FOR FURTHER INFORMATION CONTACT: For policy-related questions, contact Randy Mitchell, Commercial Operations, Revenue and Entry, Trade Policy and Programs, Office of Trade, via email at otentrysummary@cbp.dhs.gov, or telephone at (202) 863-6532. For technical questions, contact Celestine Harrell, Revenue Modernization Branch, Trade Transformation Office, Office

of Trade, via email at *Celestine.Harrell@cbp.dhs.gov*, or telephone at (202) 325-0101, with a subject line identifier reading “Statement Processing in ACE”.

SUPPLEMENTARY INFORMATION:

On November 8, 2017, U.S. Customs and Border Protection (CBP) published a notice in the **Federal Register** (82 FR 51852) announcing plans to make the Automated Commercial Environment (ACE) the sole electronic data interchange (EDI) system authorized by CBP for generating, transmitting, and updating daily and monthly statements for all entries except reconciliation (type 09) entries as of December 8, 2017. The document also announced that, beginning on December 8, 2017, the Automated Commercial System (ACS) would no longer be a CBP-authorized EDI system for such purposes.

This notice announces that beginning January 6, 2018, ACE will become the sole CBP-authorized EDI system for processing daily and monthly statements, and ACS will no longer be a CBP-authorized EDI system for such purpose.

Dated: December 5, 2017.

CYNTHIA F. WHITTENBURG,
*Deputy Executive Assistant Commissioner,
Office of Trade.*

[Published in the Federal Register, December 8, 2017 (82 FR 58010)]

**REVENUE MODERNIZATION: MOBILE COLLECTIONS &
RECEIPT (MCR) PILOT**

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

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) will be conducting a pilot test program to allow for the electronic payment of certain taxes and fees imposed on commercial vessels prior to or upon a vessel’s arrival at four designated ports of entry. The pilot also introduces portable, electronic devices that authorized CBP employees will use to electronically process payments of certain taxes and fees and to send electronic receipts via email. The pilot will not affect the amount of taxes and fees due, the clearance process, or the proof of documentation required to be presented to CBP. This notice describes the pilot, including its purpose, procedures, locations, and how to participate, and invites public comment on any aspect of the pilot.

DATES: The pilot will begin no earlier than January 8, 2018 and will continue for 18 months at the designated ports of entry. Comments concerning this notice and all aspects of the pilot may be submitted at any time during the pilot to the address set forth below.

ADDRESSES: Written comments concerning any aspect of the pilot should be submitted to the CBP Revenue Modernization (“Rev Mod”) Office at revmod@cbp.dhs.gov. In the subject line of your email please indicate “Comment on Mobile Collections & Receipt Pilot.”

FOR FURTHER INFORMATION CONTACT: Kathleen Druitt, Rev Mod Program Manager, Office of Finance, U.S. Customs and Border Protection, via email at kathleen.c.druitt@cbp.dhs.gov or by telephone at (202) 427–8448. For additional information, please visit www.cbp.gov/368.

SUPPLEMENTARY INFORMATION:

Background

U.S. Customs and Border Protection (CBP) collects various maritime taxes and fees with regard to commercial vessels that enter ports of entry, proceed coast-wise, or utilize certain customs services at a port. These maritime taxes and fees include tonnage taxes and light money, Consolidated Omnibus Budget Reconciliation Act (COBRA) user fees, Agriculture Quarantine and Inspection (AQI) user fees, and navigation fees.¹ CBP regulations require payment of these taxes and fees by cash or check and specify a paper-based payment process that occurs at the ports.

Current Payment Methods

CBP regulations require that most customs duties, taxes, fees, interest, and other charges be paid by cash or check. *See* title 19 Code of Federal Regulations section 24.1 (19 CFR 24.1). Accordingly, a party responsible for the payment of commercial vessel maritime taxes and fees must pay all applicable tonnage taxes, light money, COBRA user fees, AQI user fees, and navigation fees, including the prepayment of annual COBRA user fees, by cash or check only. Maritime taxes and fees cannot be paid by credit card or through any other electronic method.

¹ *See* 46 U.S.C. 60301–60303 and 19 CFR 4.20–4.23 (tonnage tax and light money); 19 U.S.C. 58c and 19 CFR 24.22(b) (COBRA user fees); 19 U.S.C. 58a and 19 CFR 4.98 (navigation fees); and 21 U.S.C. 136a and 7 CFR 354.3(b) (AQI user fees). CBP collects AQI user fees pursuant to an inter-agency agreement with the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service.

Current Payment Process

Pursuant to CBP regulations, maritime taxes and fees are paid at the port to an authorized CBP employee either onboard the vessel or at the port office. *See* 19 CFR 24.2. Specifically, all applicable tonnage taxes, light money, and COBRA user fees must be paid to an authorized CBP employee on arrival at a port of entry. *See* 19 CFR 4.20 (tonnage taxes and light money) and 19 CFR 24.22(b) (COBRA user fee). Annual COBRA user fees may be prepaid. In such case, they must be paid at the port office. *See* 19 CFR 24.22(b)(3). Navigation fees and AQI user fees must be paid at the time the applicable service is provided. *See* 19 CFR 4.98 (navigation fees) and 7 CFR 354.3(b) (AQI user fee).

When a cash register is unavailable to process a payment, such as when payment is made directly to a CBP officer, the officer must process the payment by filling out CBP Collection Receipt Form 368 (Form 368) and, if tonnage tax is paid, a Certificate of Payment of Tonnage Tax Form 1002 (Form 1002). *See* 19 CFR 4.23. Form 368 is used to process payments of maritime taxes and fees. It is a serially-numbered, triplicate carbon-copy form that comes in books of 50. Form 1002 is used by CBP to confirm a vessel owner's payment of tonnage tax. It is a serially-numbered, carbon-copy duplicate form. Both forms are used by vessel owners to provide evidence to CBP officers at other ports or at subsequent entries that a particular tax or fee has been paid.

In order to process a payment using Form 368 or 1002, the CBP officer must manually calculate the applicable taxes and fees due, manually complete the forms, and collect the cash or check payment. CBP employees must then process the payment by manually entering the payment information into CBP systems. CBP must treat the Form 368 books as cash and must perform multiple processes to ensure their security and accuracy, including taking inventory, auditing completed books, auditing in-use books, accounting for lost books, and investigating any alleged misuse of books. Additionally, a CBP officer who collects payment for an amount over \$100 in the form of a government check, personal check, traveler's check, or money order must obtain the approval and signature of the Customs officer in charge in order to accept the payment. *See* 19 CFR 24.1(b)(2). Upon payment, the CBP officer provides the commercial vessel operator with a carbon copy of the completed Form 368 and Form 1002, if applicable, which the vessel operator may use as proof of payment at subsequent ports and entries.

Revenue Modernization: Mobile Collections & Receipt Pilot

The Mobile Collections & Receipt (MCR) pilot introduces the MCR system, which through its interface with *Pay.gov*² and the Automated Commercial Environment (ACE), will enable entities that are participating in the pilot to pay certain commercial vessel taxes and fees online upon or prior to the vessel's arrival at designated ports of entry. The commercial vessel maritime taxes and fees eligible for payment online through this pilot are: regular tonnage tax, special tonnage tax, light money, COBRA user fees, including the prepayment of the annual COBRA fee, AQI user fees, and navigation fees. Additionally, pursuant to the pilot, CBP will use the MCR system to electronically process payments of commercial vessel taxes and fees made at the port and to send electronic versions of Forms 368 and 1002 via email.

Purpose of the Pilot

CBP is working towards the elimination of cash and check payments of maritime taxes and fees by allowing for electronic payments and automating the collection and receipt process. The purpose of the MCR pilot is to modernize the payment and processing of commercial vessel maritime taxes and fees for pilot participants by introducing a new optional electronic payment method, automating the calculation of fees, and introducing electronic receipts.

The pilot will provide benefits to both CBP and to commercial vessel owners and operators. Cash and check collection at the port of entry is a manual, burdensome, and time-consuming process. The automation and online payment option for certain taxes and fees will reduce the time necessary to accept and process a payment, improve processing and clearance times of vessels, and ensure applicable fees are calculated correctly. This will result in cost savings for pilot participants.

Additionally, the pilot will enable CBP to process the collection, accounting, and transmittal of maritime taxes and fees more efficiently. Under the pilot, CBP officers will no longer be required to manually calculate applicable fees, manually complete Forms 368 and 1002, perform the various manual audit and security processes related to the protection of Form 368 books, or manually enter data when payments are made by cash or check. Under the pilot, CBP officers will not be required to obtain the signature of the Customs officer in charge for payments over \$100 made with a government check, personal check, traveler's check, or money order. These in-

² *Pay.gov* is a Web site managed by the Department of Treasury that enables individuals to make online payments to the federal government using various forms of payment, including credit cards, debit cards, direct debit, or digital wallet services such as PayPal.

creased efficiencies will provide CBP officers more time to perform higher priority mission support activities.

Participation in the Pilot

Any commercial vessel agent or other entity responsible for payment of commercial vessel taxes and fees at designated ports of entry may participate in the pilot. At this time, only four ports of entry, discussed below, are designated. No application is required to participate. However, in order to receive notification emails from the MCR system, a commercial vessel agent or other party submitting payment must create an MCR profile and maintain a valid email address as part of the profile. For more information and for instructions on how to create an MCR profile, visit www.cbp.gov/368. When a commercial vessel arrives at a designated port, the vessel's agent or other party wishing to receive email notifications or receive electronic versions of Forms 368 and 1002 will be able to confirm his or her email address and provide additional email addresses for this purpose.

Description and Implementation of the Pilot

The MCR pilot authorizes entities that are participating in the pilot to pay certain commercial vessel taxes and fees online through the MCR Web site with respect to vessels arriving at designated ports of entry. Additionally, CBP employees will be able to access the MCR system through either a portable, electronic device or a desktop computer to view commercial vessel arrival data, automatically calculate applicable fees, electronically process payments, create electronic versions of Forms 368 and 1002, and send the forms via email.

Online Payments

The MCR system will automatically identify the commercial vessels that are due to arrive within a certain number of days at the designated ports of entry. The MCR system will then determine whether the arrival information submitted to CBP through approved electronic data interchange systems, such as ACE, is sufficient to calculate the applicable maritime taxes and fees due for each commercial vessel. If there is sufficient information, CBP will send a notification email to those carriers or vessel agents that have created a profile with the MCR system. The notification email will state that the applicable maritime taxes and fees have been calculated for a specific commercial vessel and payment can now be made on the MCR Web site. The party responsible for payment will then have the opportunity to log-on to the MCR Web site, review the calculated amount of taxes and fees due, and, through MCR's interface with *Pay.gov*, sub-

mit payment online through *Pay.gov*. After payment is accepted, the MCR system will send an electronic version of Form 368 and Form 1002, if applicable, to the email address or addresses provided by the party that made the payment. Electronic payments will be accepted on the MCR Web site from prior to the vessel's arrival and up to the time the vessel is cleared by CBP. Payments required for CBP clearance must be made before clearance is granted.

Only commercial vessel maritime taxes and fees are eligible for prepayment online through this pilot. The commercial vessel maritime taxes and fees eligible for potential prepayment online through this pilot are: Regular tonnage tax, special tonnage tax, light money, COBRA user fees, including the prepayment of the annual COBRA fee, AQI user fees, and navigation fees. CBP may expand the pilot to include additional taxes and fees. Any expansion of the fees that are eligible for online payment will be announced in the **Federal Register** and posted on the CBP Web site, <http://www.cbp.gov>.

Process at the Designated Ports of Entry

When a commercial vessel arrives at a designated port of entry, a CBP employee will access the MCR system to determine whether the applicable taxes and fees have been prepaid online for that vessel. If the applicable taxes and fees have not been prepaid online, the vessel agent or other party responsible for payment will have the option to pay all applicable taxes and fees either electronically through the MCR system or at the port of entry with cash or check. If payment is made by cash or check, the CBP officer accepting payment will access the MCR system to review any relevant arrival information, automatically calculate the applicable fees, prepare an electronic version of Form 368 and Form 1002, if applicable, and email an electronic copy of the forms to the vessel operator, owner, or agent. In all situations, CBP officers will have the ability to review, amend, or add data as needed to accurately calculate applicable taxes and fees prior to entering or clearing a vessel.

Throughout the pilot, commercial vessel agents and other entities responsible for payment will continue to be able to pay applicable maritime taxes and fees to an authorized CBP employee by cash or check. CBP will provide electronic versions of Forms 368 and 1002 as a receipt for all payments, regardless of whether payment was made in person by cash or check or paid online. The port office will provide paper copies of Forms 368 and 1002 upon request.

This pilot will not affect the amount of taxes and fees due or the requirement that all applicable fees must be paid prior to the issuance of a clearance certificate. Additionally, vessel operators will

continue to be required to present paper copies of Forms 368 and 1002 as proof of payment at subsequent ports and entries.

Designated Ports of Entry and Duration of the Pilot

The pilot will initially operate at the following ports of entry: Los Angeles-Long Beach, California; New Orleans, Louisiana; Gulfport, Mississippi; and, Mobile, Alabama.

The pilot will begin no earlier than January 8, 2018 and will continue for 18 months. If it is determined that the pilot is working successfully at these initial ports, the pilot may be expanded to additional ports of entry, extended for an additional period of time, and/or expanded to include additional maritime fees, taking into consideration any comments that are received. Any expansion or extension of the pilot would be announced in the **Federal Register**.

Privacy

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

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)) requires that CBP consider the impact of paperwork and other information collection burdens imposed on the public. 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 the Office of Management and Budget. There is no information collection associated with this pilot, so the provisions of the PRA do not apply.

Authorization for the Pilot

This pilot is being conducted in accordance with 19 CFR 101.9(a), which authorizes the Commissioner to impose requirements different from those specified in the CBP regulations for the purposes of conducting a test program or procedure designed to evaluate the effectiveness of new technology or operational procedures regarding the processing of passengers, vessels, or merchandise. For participants in this pilot, CBP will waive the requirements to pay tonnage tax, light money, COBRA user fees, AQI user fees, and navigation fees by cash or check at the time of arrival or when the applicable service is provided, if the participant has paid all applicable taxes and fees due online prior to the vessel's arrival or prior to the time the vessel is cleared by CBP. The pilot also permits CBP officers to process the payment of checks over \$100 without obtaining authorization from the Customs officer in charge.

Dated: December 5, 2017.

SEAN MILDREW,
*Acting Assistant Commissioner,
Office of Finance.*

[Published in the Federal Register, December 8, 2017 (82 FR 58008)]



GRANT OF “LEVER-RULE” PROTECTION

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

ACTION: Notice of grant of “Lever-rule” protection.

SUMMARY: Pursuant to 19 C.F.R. 133.2(t), this notice advises interested parties that Customs & Border Protection (CBP) has granted the application from Colgate-Palmolive Company seeking “Lever-rule” protection for one federally registered and recorded trademark.

FOR FURTHER INFORMATION CONTACT: William Wittwer, Intellectual Property Rights Branch, Regulations and Rulings, Office of International Trade, (202) 325–0357.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 C.F.R. § 133.2(t), this notice advises interested parties that CBP has granted the application from Colgate-Palmolive Company seeking “Lever-rule” protection as published in the *Customs Bulletin*, Vol. 51, No. 41 on October 11, 2017. Protection was sought against the importation of certain toothpaste products not authorized for sale in the United States bearing the “Colgate” trademark (U.S. Trademark Registration No. 227,647; CBP Recordation No. TMK 88–00297) manufactured in Mexico, Argentina, Brazil, China, Colombia, Guatemala, India, Poland, Saudi Arabia, Thailand, Venezuela and Vietnam. Protection was also requested for certain products produced in the United States, however “Lever-rule” protection is not available for goods produced within the United States. CBP has determined that the above-referenced trademark is entitled to Lever-rule protection with respect to those physically and materially different toothpaste products, manufactured in Mexico, Argentina, Brazil, China, Colombia, Guatemala, India, Poland, Saudi Arabia, Thailand, Venezuela and Vietnam bearing the Colgate trademarked recorded as TMK 88–00297.

Dated: December 13, 2017

CHARLES R. STEUART,
Chief
Intellectual Property Rights Branch
Regulations and Rulings
Office of International Trade

