

# U.S. Customs and Border Protection



## DEPARTMENT OF THE TREASURY

19 CFR Part 24

CBP Dec. No. 19-10

RIN 1515-AE47

### AMENDMENT TO STATEMENT PROCESSING AND AUTOMATED CLEARINGHOUSE (ACH)

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

**ACTION:** Interim final rule; solicitation of comments.

**SUMMARY:** This document amends the U.S. Customs and Border Protection (CBP) regulations regarding statement processing and Automated Clearinghouse (ACH) to reflect that CBP will identify final statements as paid upon the completion of the funds transfer. Additionally, this document makes certain technical corrections to the CBP regulations on statement processing and ACH.

**DATES:** This interim final rule is effective September 7, 2019; comments must be received by November 4, 2019.

**ADDRESSES:** You may submit comments, identified by *docket number* USCBP-2019-0032, by *one* of the following methods:

- *Federal eRulemaking Portal* at <http://www.regulations.gov>. Follow the instructions for submitting comments via Docket No. USCBP-2019-0032.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, 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 be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, 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.

**FOR FURTHER INFORMATION CONTACT:** Kara Welty, Debt Management Branch, Revenue Division, Office of Finance, (866) 530–4172, [collectionscapabilityowners@cbp.dhs.gov](mailto:collectionscapabilityowners@cbp.dhs.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim final rule. See **ADDRESSES** above for information on how to submit comments. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this regulatory change. Comments that will provide the most assistance to CBP will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information or authority that support such recommended change.

### **II. Background on Statement Processing**

Upon importation, the importer becomes liable to CBP for the amount of duties, taxes, and fees estimated to be payable on the merchandise. See 19 U.S.C. 1505(a) and sections 141.1(a), (b) and 141.3 of title 19 of the Code of Federal Regulations (19 CFR 141.1(a), 141.1(b), and 141.3). One way in which estimated duties, taxes, and fees can be deposited with CBP is by transmitting the estimated duties, taxes, and fees to CBP pursuant to statement processing, as described in 19 CFR 24.25. See 19 CFR 141.101.

Statement processing is a voluntary automated program for participants in the Automated Broker Interface (ABI), allowing the grouping of entry/entry summaries and entry summaries, by either importer or by filer, on a daily basis. See 19 CFR 24.1(a)(8) and 24.25(a). Any duties, taxes, and fees (as well as interest, if applicable) that are related to the grouped entry/entry summaries and entry summaries may be paid with a single payment, rather than by individual checks for each entry. See 19 CFR 24.25(a) and 143.32(p).

The ABI filer must elect whether payment for a particular entry summary will be by individual check or by statement processing upon the transmission of entry/entry summary and entry summary data to CBP through ABI. *See* 19 CFR 24.25(c)(1). The election of statement processing for a particular entry summary also requires the ABI filer to elect (1) whether the entry summary is to be grouped by the importer or broker, and (2) a valid scheduled statement date, which shall be within ten (10) days of entry, but not on a Saturday, Sunday, or holiday. *See* 19 CFR 24.25(c)(1) and (e).

On the scheduled statement date, CBP provides the ABI filer with a preliminary statement that is transmitted electronically to the filer using a CBP-authorized Electronic Data Interchange (EDI) system. 19 CFR 24.25(c)(2) and 143.32(p). The preliminary statement contains all entry/entry summaries and entry summaries scheduled for that statement date and the amount of duties, taxes, and fees due for payment. *See* 19 CFR 24.1(a)(8), 24.25(c)(2), and 143.32(p). The ABI filer is required to ensure that payment is made on each preliminary statement within ten (10) working days of the entry of the related merchandise. *See* 19 CFR 24.25(c)(2), (c)(3), and (e).

The preferred method of payment for ABI users of statement processing is by ACH, except where the importer has provided a separate check payable to “U.S. Customs and Border Protection” for customs charges (mixing of payment methods for a single statement is prohibited). *See* 19 CFR 24.1(a)(8) and 24.25(a). There are two (2) ACH payment processes—the ACH debit process and the ACH credit process, each of which is explained below with respect to its current state and how that will change under the amended regulations.

### **III. ACH Payment Processes**

#### *A. ACH Debit Process*

The ACH debit process is an arrangement in which the filer electronically provides payment authorization for the Department of the Treasury (Treasury)-designated ACH processor bank to perform an electronic debit to the payor’s bank account. *See* 19 CFR 24.25(a). ABI filers using this process are required to provide CBP with the bank account and routing number for each account from which ACH payments are to be electronically debited. *See* 19 CFR 24.25(b)(2). The ABI filer initiates the payment process by transmitting one ACH debit authorization per preliminary statement to CBP through ABI. *See* 19 CFR 24.25(a) and (c). If the ACH debit authorization is error-free, then CBP will accept the ACH debit authorization and provide the ABI filer with a message confirming CBP’s acceptance of the ACH debit authorization. *See* 19 CFR 24.25(c)(4).

Currently, upon CBP's acceptance of the ACH debit authorization, CBP identifies the preliminary statement as paid and posts the appropriate amounts to the related entries. CBP then initiates the funds transfer by sending an electronic message to the Treasury-designated ACH processor bank instructing the Treasury-designated ACH processor bank to perform an electronic debit to the payor's bank account. *See* 19 CFR 24.25(a) and (c)(4). CBP generally makes the final statement available to the ABI filer the day following the acceptance of the ACH payment. *See* 19 CFR 24.25(c)(4). A final statement serves as evidence of the payment of a preliminary statement through an ACH transaction. *See* 19 CFR 24.25(c)(4).

Even though the preliminary statement is currently identified as paid upon acceptance of the ACH debit authorization, the funds transfer is usually not completed until two (2) business days after CBP's acceptance of the ACH debit authorization. To more accurately reflect the status of the funds transfer, CBP is amending its regulations to remove the requirement to identify the preliminary statement as paid. The preliminary statement will still be issued; but, instead, the amended regulations will require CBP to identify the final statement as paid and post the appropriate amounts to the related entries upon receiving confirmation from Treasury that the funds are available and transferred to CBP (which marks the completion of the funds transfer).

The amendments to the CBP regulations do not affect the timeliness of the payment, which remains based upon the date of CBP's acceptance of the ACH debit authorization. Once CBP receives confirmation from Treasury that the funds are available and transferred to CBP, then CBP will treat the date of CBP's acceptance of the ACH debit authorization as the effective payment date for purposes of determining the timeliness of the payment. The date of CBP's acceptance of the ACH debit authorization also remains the date for the calculation of interest and/or liquidated damages, if applicable; the calculation is unaffected by this amendment to the CBP regulations pertaining to ACH debit payments.

#### *B. ACH Credit Process*

Pursuant to 19 CFR 24.26(a), ACH credit is an optional payment method that allows a payor to electronically transmit statement processing payments under 19 CFR 24.25, deferred tax payments under 19 CFR 24.4, or bill payments under 19 CFR 24.3, through its financial institution, directly to the CBP account maintained by Treasury. Currently, when an importer uses the ACH credit process, CBP will,

upon the acceptance of the credit payment, identify the preliminary statement as paid and post the appropriate amounts to the related entries. *See* 19 CFR 24.25(c)(4).

In order to promote consistency with the amendments to the ACH debit process, CBP is also amending 19 CFR 24.25(c)(4) to reflect that CBP will identify final statements, as opposed to preliminary statements, as paid for the ACH credit process. As explained above for the ACH debit process, these changes do not affect either the timeliness of the payment or the date for the calculation of interest and/or liquidated damages, if applicable, for the ACH credit process.

### *C. Implementation of Changes*

In order to provide for the changes to the ACH payment processes discussed above, and to provide clarity regarding which aspects of the payment processes are not affected, this document amends § 24.25(c)(4) by revising this provision and by splitting this provision into three (3) subparagraphs—paragraphs (c)(4)(i) through (iii).

Paragraph (c)(4)(i) of § 24.25 reflects that, for purposes of determining the timeliness of the statement payment (as well as the calculation of any interest and/or liquidated damages, if applicable), CBP will continue to use the date of acceptance of the ACH debit payment authorization or ACH credit payment as the payment date once CBP receives confirmation from Treasury that the funds are available and transferred to CBP.

Paragraph (c)(4)(ii) of § 24.25 reflects the changes to CBP's internal accounting procedures; particularly, that CBP will, upon receiving confirmation from Treasury that the funds are available and transferred to CBP, identify the final statement as paid and post the appropriate amounts to the related entries.

Paragraph (c)(4)(iii) of § 24.25 reflects that CBP will continue to generally make available to the filer the final statement on the day following the receipt of the ACH payment by CBP. This paragraph also clarifies that CBP continues to accept final statements (for ACH transactions) and cancelled checks as evidence that can be used to prove that statement payment has occurred.

## **IV. Nomenclature Updates**

This document also proposes to update the nomenclature in § 24.25, due to the renaming of the U.S. Customs Service to U.S. Customs and Border Protection. Specifically, this document is amending paragraph (a) of § 24.25, by replacing the reference to “U.S. Customs Service” with “U.S. Customs and Border Protection”, as well as making a grammatical change to the phrase “Customs charges” to be in the

lower case. Second, due to the renaming of the U.S. Customs Service to U.S. Customs and Border Protection, this document proposes to replace references to “Customs” with “CBP” in § 24.25.

## **V. Statutory and Regulatory Requirements**

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

The Administrative Procedure Act (APA) requirements in 5 U.S.C. 553 govern agency rulemaking procedures. Section 553(b) of the APA generally requires notice and public comment before issuance of a final rule. In addition, section 553(d) of the APA requires that a final rule have a 30-day delayed effective date. The APA, however, provides exceptions from the prior notice and public comment requirement and the delayed effective date requirements, when an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest. CBP finds that prior notice and comment are unnecessary and that good cause exists to issue this rule effective upon publication.

Prior notice and comment are unnecessary because the rule does not substantively alter the underlying rights or interests of importers or filers. Instead, the rule is essentially technical by merely modifying the regulations to reflect the marking of a statement as paid to coincide with the completion of the funds transfer for the ACH debit and credit payment processes. CBP will continue to treat the date of CBP’s acceptance of the ACH debit authorization and the ACH credit payment as the effective payment date for purposes of determining the timeliness of the statement payment (as well as for the calculation of any interest and/or liquidated damages, if applicable) once CBP receives confirmation from Treasury that the funds are available and transferred to CBP. Accordingly, the trade community will experience no delays, interruptions or process changes associated with this change to the regulations. This change only affects CBP’s internal accounting procedures and does not alter the substantive rights of the members of the trade community.

### *B. Executive Orders 13563, 12866 and 13771*

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. Executive Order 13771 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.”

This interim final rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed this regulation. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* OMB’s Memorandum titled “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

### *C. 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 an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

### *D. Paperwork Reduction Act*

This interim final rule does not impose an additional information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and does not involve any material change to the existing approved information collection by the Office of Management and Budget (OMB) under assigned OMB control number 1651–0078.

An agency may not conduct or sponsor, 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.

### *E. Signing Authority*

This document is being issued by CBP in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

## **List of Subjects in 19 CFR Part 24**

Accounting, Claims, Harbors, Reporting and recordkeeping requirements, Taxes.

## Amendments to the Regulations

For the reasons stated above, part 24 of title 19 of the Code of Federal Regulations (19 CFR part 24) is amended as set forth below:

### PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 1. The general authority citation for part 24 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

\* \* \* \* \*

■ 2. In § 24.25:

■ a. Paragraph (a), third sentence, is amended by:

■ 1. Removing the phrase “U.S. Customs Service” and adding the phrase “U.S. Customs and Border Protection” in its place;

■ 2. Removing the phrase “Customs charges” and adding the phrase “customs charges” in its place; and

■ 3. Removing the word “Customs” before the phrase “(see § 111.29(b) of this chapter)” and adding the word “CBP” in its place.

■ b. Paragraph (a), seventh sentence is amended by removing the word “Customs” and adding the word “CBP” in its place;

■ c. Paragraph (b) is amended by removing the word “Customs” in each place that it appears and adding in each place the word “CBP”;

■ d. Paragraph (c)(2) is amended by removing the word “Customs” in each place that it appears and adding in each place the word “CBP”;

■ e. Paragraph (c)(4) is revised;

■ f. Paragraph (d) is amended by removing the word “Customs” in each place that it appears and adding in each place the word “CBP”; and

■ g. Paragraph (e) is amended in the last sentence by removing the word “Customs” and adding in its place the word “CBP”.

The revision reads as follows:

#### § 24.25 Statement processing and Automated Clearinghouse.

\* \* \* \* \*

(c) \* \* \*

(4) Payments made through ACH are processed as follows: (i) *Payment date; interest and liquidated damages.* The date of acceptance of the ACH debit payment authorization or ACH credit payment for the preliminary statement is the payment date when determining com-

pliance with the due date for scheduled statements and for purposes of § 24.3a of this part, and subject to the provisions of § 113.62(a)(1)(i) and (m)(4) of this chapter.

(ii) *Issuance of final statement.* CBP shall, upon confirmation from the Department of the Treasury that funds are available and transferred to CBP, identify the final statement as paid and post the appropriate amounts to the related entries.

(iii) *Evidence of payment.* The final statement generally shall be available to the filer the day following the receipt of the ACH payment by CBP. The final statement may be utilized as evidence that statement payment has occurred through an ACH transaction. In other instances, a cancelled check may serve as evidence of payment.

\* \* \* \* \*

Dated: August 29, 2019.

ROBERT E. PEREZ,  
*Deputy Commissioner,*  
*U.S. Customs and Border Protection.*

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

[Published in the Federal Register, September 5, 2019 (84 FR 46678)]



**19 CFR Parts 12 and 141**

**CBP Dec. No. 19-11**

**RIN 1651-AB02**

**TECHNICAL CORRECTION TO CENTERS OF  
EXCELLENCE AND EXPERTISE REGULATIONS**

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

**ACTION:** Final rule; technical correction.

**SUMMARY:** On December 20, 2016, U.S. Customs and Border Protection (CBP) published an interim final rule in the **Federal Register**, which established the Centers of Excellence and Expertise (Centers) as a permanent organizational component of the agency and transitioned certain operational trade functions to the Center directors that traditionally resided with the port directors. This technical correction clarifies two sections of CBP regulations that do not currently reflect CBP's operational structure or the objective of the "Regulatory Implementation of the Centers of Excellence and Expertise" interim final rule. This document amends CBP regulations to correct the discrepancies.

**DATES:** This final rule is effective on September 5, 2019.

**FOR FURTHER INFORMATION CONTACT:** Lori Whitehurst, CBP Office of Field Operations, by telephone at (202) 344-2536 or by email at *lori.j.whitehurst@cbp.dhs.gov*; or Susan S. Thomas, CBP Office of Field Operations, by telephone at (202) 344-2511 or by email at *susan.s.thomas@cbp.dhs.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On December 20, 2016, U.S. Customs and Border Protection (CBP) published the “Regulatory Implementation of the Centers of Excellence and Expertise” interim final rule (Centers IFR) in the **Federal Register** (81 FR 92978), which established the Centers of Excellence and Expertise (Centers) as a permanent organizational component of CBP and transitioned certain trade functions to the Centers. As part of this transition, the Centers IFR amended certain regulations to provide Center directors with the authority to make decisions normally reserved for port directors. However, two of the regulations in title 19 of the Code of Federal Regulations (CFR), 19 CFR 12.73(j) and 141.113(b), do not currently reflect the Center directors’ authority provided in the Centers IFR as discussed further below. This document amends these sections to correct the discrepancies. CBP will publish a final rule addressing the public comments received for the Centers IFR at a later date.

**II. Amendatory Changes**

*Section 12.73(j)*

Section 12.73(j) was amended in the Centers IFR to provide that, if good cause is shown, the Center director, rather than the port director, has the authority to extend the period of time that the importer has to submit the necessary U.S. Environmental Protection Agency (EPA) declaration providing that a vehicle or engine being imported conforms to Federal emission requirements. Additionally, the Centers IFR specified that the EPA declaration must be delivered by the importer to CBP, either to the port of entry or electronically. This extended the authority to collect the document to either the Center director or port director.

On December 27, 2016, seven days after publication of the Centers IFR, 19 CFR 12.73(j) was amended by the “Importations of Certain Vehicles and Engines Subject to Federal Antipollution Emission Standards” final rule publication in the **Federal Register** (81 FR 94974) as part of a substantial revision of part 12. This final rule resulted in contradictory regulatory text in 19 CFR 12.73(j) that only

partially reflected the authority of the Center directors. As a result, the current regulation only partially accounts for the edits made by the Centers IFR and two discrepancies regarding the Center directors' authority must be addressed in this document.

Currently, § 12.73(j) contains an inconsistency. It states that the importer or consignee must deliver documentation of EPA approval to CBP, either at the port of entry or electronically, but later requires that EPA approval must be delivered to the port director. Pursuant to the Centers IFR, the EPA document must be delivered to CBP, either to the port of entry or electronically, to extend the authority to collect the document to either the Center director or port director. This document corrects § 12.73(j) accordingly. It is noted that if the EPA approval is not delivered to CBP within the specified period, § 12.73(j) remains unchanged in that the importer or consignee must deliver or cause to be delivered to the port director those vehicles that were released under a bond.

Additionally, § 12.73(j) currently states that the Center director may set a later deadline for submission based on good cause; yet subsequently, the paragraph states that the port director sets the later deadline. To reconcile these contradictions in the current regulatory text and to reflect the changes made in the Centers IFR, CBP is correcting the text in § 12.73(j) to provide that, if good cause is shown, the Center director, rather than the port director, has the authority to extend the period of time for submission of the EPA approval.

#### *Section 141.113(b)*

Due to an accidental omission in the amendatory instructions in the Centers IFR, 19 CFR 141.113(b) was not revised as CBP intended. As described in the preamble to the Centers IFR, CBP intended to amend § 141.113(b) to provide that if the Center director, rather than the port director, finds during the conditional release period of an imported textile or textile product, that the textile or textile product is not entitled to admission into the commerce of the United States because the country of origin of the textile or textile product was not accurately represented to CBP, he or she shall promptly demand its return to CBP custody. Although this amendment was described in the preamble of the Centers IFR, due to an inadvertent error, the instruction to amend § 141.113(b) by replacing 'port director' with 'Center director' was omitted in the Centers IFR. Thus, this document amends § 141.113(b) accordingly.

### III. Signing Authority

This document is being issued in accordance with 19 CFR 0.2(a), which provides that the authority of the Secretary of the Treasury with respect to CBP regulations that are not related to customs revenue functions was transferred to the Secretary of Homeland Security pursuant to section 403(1) of the Homeland Security Act of 2002. Accordingly, this final rule to amend such regulations may be signed by the Secretary of Homeland Security (or his delegate).

### List of Subjects in 19 CFR Parts 12 and 141

Reporting and recordkeeping requirements.

### Amendments to the Regulations

For the reasons given above, parts 12 and 141 of title 19 of the Code of Federal Regulations (19 CFR parts 12 and 141) are 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 §§ 12.73 and 12.74 continues 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.

\* \* \* \* \*

Sections 12.73 and 12.74 also issued under 19 U.S.C. 1484, 42 U.S.C. 7522, 7601;

\* \* \* \* \*

■ 2. The third and fourth sentences of § 12.73(j) are revised to read as follows:

#### § 12.73 Importation of motor vehicles and motor vehicle engines.

\* \* \* \* \*

(j) \* \* \* If the EPA approval is not delivered to CBP, either to the port of entry or electronically, within the specified period, the importer or consignee must deliver or cause to be delivered to the port director those vehicles which were released under a bond required by this paragraph (j). In the event that the vehicle or engine is not redelivered within five (5) days following the date the exemption or exclusion indicated on the EPA declaration form expires, or any later deadline specified by the Center director, whichever is later, liquidated damages will be assessed in the full amount of the bond, if it is a single entry bond, or if a continuous bond is used, in the amount that would have been assessed under a single entry bond.

\* \* \* \* \*

## PART 141—ENTRY OF MERCHANDISE

■ 3. The general authority citation for part 141 and the specific authority citation for

### § 141.113 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1448, 1484, 1498, 1624.

\* \* \* \* \*

Section 141.113 also issued under 19 U.S.C. 1499, 1623.

### § 141.113 [Amended]

■ 4. Section 141.113(b) is amended by removing the words “port director” and adding in their place the words “Center director”.

Dated: August 30, 2019.

ROBERT E. PEREZ,  
*Deputy Commissioner,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, September 5, 2019 (84 FR 46676)]

## MODIFICATION AND CLARIFICATION OF THE NATIONAL CUSTOMS AUTOMATION PROGRAM TEST REGARDING PERIODIC MONTHLY STATEMENTS

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

**ACTION:** General notice.

**SUMMARY:** This document announces changes to the U.S. Customs and Border Protection’s (CBP) National Customs Automation Program (NCAP) test concerning periodic monthly statements (PMS) to reflect that CBP will identify PMS as paid upon the completion of the funds transfer when payment is made via Automated Clearinghouse (ACH). The trade community will experience no delays, interruptions, or process changes associated with the modifications. Except to the extent expressly announced or modified by this document, all aspects, rules, terms and conditions announced in previous notices regarding the test remain in effect. For ease of reference, CBP is reproducing the entire test, with the changes, in this document.

**DATES:** The changes made by this notice are effective September 7, 2019.

**ADDRESSES:** Comments concerning this test program may be submitted via email to Kara Welty at [collectionscapabilityowners@cbp.dhs.gov](mailto:collectionscapabilityowners@cbp.dhs.gov) with a subject line identifier reading, “Periodic Monthly Statements.”

**FOR FURTHER INFORMATION CONTACT:** For policy-related questions, contact Kara Welty, Debt Management Branch, Revenue Division, Office of Finance, *collectionscapabilityowners@cbp.dhs.gov*, or (866) 530-4172. For technical questions related to transmissions using the Automated Broker Interface (ABI), contact your assigned client representative. Interested parties without an assigned client representative should direct their questions via email to the Client Representative Branch at *gmb.clientrepoutreach@cbp.dhs.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background on National Customs Automation Program (NCAP) Test Concerning PMS**

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization in the North American Free Trade Agreement (NAFTA) Implementation Act (Customs Modernization Act) (Pub. L. 103-182, 107 Stat. 2057, 2170, December 8, 1993) (19 U.S.C. 1411). Through NCAP, the thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE) as the CBP-authorized electronic data interchange (EDI) system. ACE is an automated and electronic system for commercial trade processing 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 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. CBP's modernization efforts are accomplished through phased releases of ACE component functionality. Section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) provides for the testing of NCAP components.

On February 4, 2004, CBP published a notice in the **Federal Register** that announced a plan to conduct an NCAP test concerning PMS (hereinafter, referred to as the "PMS test"), which allows an importer or an importer's designated broker to deposit estimated duties, taxes, and fees on a monthly basis. *See* 69 FR 5362 (February 4, 2004). CBP modified and clarified the PMS test in thirteen (13) subsequent **Federal Register** notices published on: September 8, 2004 (69 FR 54302); February 1, 2005 (70 FR 5199); August 8, 2005 (70 FR 45736); September 22, 2005 (70 FR 55623); January 20, 2006 (71 FR 3315); June 2, 2006 (71 FR 32114); October 17, 2008 (73 FR 61891); December 12, 2016 (81 FR 89482); January 9, 2017 (82 FR 2385); January 17, 2017 (82 FR 4900); June 8, 2017 (82 FR 26699); June 30, 2017 (82 FR 29910); and November 1, 2017 (82 FR 50656).

As part of the PMS test, CBP issues a Preliminary PMS for entries to NCAAP test participants on a monthly basis. NCAAP test participants must then deposit payment for the estimated duties, taxes, and fees attributable to the entries, with CBP, via Automated Clearinghouse (ACH). There are two (2) ACH payment processes—the ACH debit process and the ACH credit process. In the sections below, this document contains a description of the current state of the PMS test as it relates to the ACH debit and the ACH credit payment processes, as well as the modifications and clarifications to the PMS test made by this document. For ease of reference, this document also republishes the PMS test in its entirety, with updates to reflect the modifications and clarifications made in the past, as well as by this document.

## **II. ACH Debit Process**

### *A. Background on Payment of PMS via ACH Debit Process*

An ACH debit participant initiates the payment process by transmitting one ACH debit authorization per Periodic Daily Statement to CBP through ABI. If the ACH debit authorization is error-free, CBP accepts the ACH debit authorization and provides the ACH debit participant with a message confirming CBP's acceptance of the ACH debit authorization. The ACH debit participant is required to ensure that the money amount, which will be identified on the Preliminary PMS, is—in fact—available in the ACH debit participant's bank account on the 15th day of the month following the month in which the merchandise scheduled for monthly processing is either entered or released, whichever comes first, unless the importer or the importer's designated broker elects an earlier date. On that day, CBP transmits the debit authorizations compiled in the Preliminary PMS from the Periodic Daily Statements to the designated financial institution, and CBP then identifies the Preliminary PMS as paid.

CBP subsequently generates the Final PMS on the night that CBP transmits the debit authorizations to the designated financial institution, and then transmits the Final PMS to the importer or the importer's designated broker. The Final PMS serves as evidence of the payment of the Preliminary PMS through an ACH transaction; but, the funds transfer is usually not completed until two (2) business days after the transmission of the debit authorizations to the designated financial institution.

### *B. PMS Test Modification and Clarification Related to ACH Debit Process*

This document announces that, in order to more accurately reflect the status of the funds transfer, CBP will no longer identify an ACH

debit participant's Preliminary PMS as paid immediately upon the transmission of the ACH debit authorizations to the designated financial institution by CBP (which occurs on the 15th day of the month following the month in which the merchandise scheduled for monthly processing is either entered or released, whichever comes first, unless the importer or the importer's designated broker selects an earlier date). The Preliminary PMS will still be issued; but, instead, CBP will issue the Final PMS and identify it as paid upon receiving confirmation from the Department of the Treasury (Treasury) that the funds are available and transferred to CBP (which marks the completion of the funds transfer).

The modifications announced in this document do not affect the timeliness of the payment, which remains based upon the date of CBP's acceptance of the ACH debit authorizations for the entries. Once CBP receives confirmation from Treasury that the funds are available and transferred to CBP, then CBP will treat the date of CBP's acceptance of the ACH debit authorizations as the effective payment date for purposes of determining the timeliness of the payments for the entries. The date of CBP's acceptance of the ACH debit authorizations also remains the date for the calculation of interest and/or liquidated damages, if applicable; the calculation is unaffected by the modifications announced in this document. It is important to note that this modification only applies to importers who participate in the test program. For all other importers participating in statement processing via ABI, the current regulation, 19 CFR 24.25(c)(4), continues to govern when CBP identifies a statement as paid.

### **III. ACH Credit Process**

#### *A. Background on Payment of PMS via ACH Credit Process*

The ACH credit process permits participants to electronically transmit payment for PMS, through the ACH credit participant's financial institution, directly to the CBP account maintained by Treasury. The ACH credit participant is required to ensure that CBP receives the ACH credit payment no later than the 15th day of the month following the month in which the merchandise scheduled for monthly processing is either entered or released, whichever comes first, unless the importer or the importer's designated broker elects an earlier date. If the 15th day of that month falls on a weekend or holiday, the ACH credit participant is required to ensure that CBP receives the ACH credit payment by the business day directly preceding such weekend or holiday. Currently, CBP identifies a Preliminary PMS as paid upon the acceptance of the ACH credit payment by CBP, which equates to the collection and settlement date. CBP generates the

Final PMS on the night that CBP accepts the ACH credit payment, and then transmits the Final PMS to the importer or the importer's designated broker. The Final PMS serves as evidence of the payment of the Preliminary PMS through an ACH transaction.

*B. Test Modification and Clarification Related to ACH Credit Process*

In order to promote consistency with the modifications of the PMS test in relation to ACH debit payments, this document also modifies the PMS test to reflect that CBP will identify the Final PMS, as opposed to Preliminary PMS, as paid for the ACH credit process. As explained above for the ACH debit process, these changes do not affect either the timeliness of the payment or the date for the calculation of interest and/or liquidated damages, if applicable, for the ACH credit process. It is important to note that this modification only applies to importers who participate in the test program. For all other importers participating in statement processing via ABI, the current regulation, 19 CFR 24.25(c)(4), continues to govern when CBP identifies a statement as paid.

#### **IV. Republication of Periodic Monthly Statement (PMS) Test**

*A. Overview of Modifications and Clarifications of the Test*

This section provides a description of the process for entries scheduled for monthly payment, as of this date, including the modifications and clarifications made by this notice. Several modifications and clarifications of the PMS test have been announced after the PMS test's most recent republication in a **Federal Register** notice on January 20, 2006. See 71 FR 3315 (January 20, 2006). Accordingly, this republication of the PMS test reflects several substantive modifications and clarifications of the PMS test that were not reflected in the PMS test's previous republication in the January 20, 2006 **Federal Register** notice.

First, in order to reflect the modifications and clarifications made by this notice, this document addresses the ACH payment processes in three (3) separate paragraphs—paragraph f pertains exclusively to the ACH debit process, paragraph g pertains exclusively to the ACH credit process, and new paragraph h pertains to both ACH payment processes.

- Paragraph f establishes when ACH debit participants are required to submit the ACH debit authorizations, when CBP will transmit the ACH debit authorizations to the financial institution, and when the money amount identified on the Preliminary

Periodic Monthly Statement should, in fact, be available in an ACH debit participant's bank account.

- Paragraph g provides when, for ACH credit participants, CBP must receive the ACH credit payment.
- New Paragraph h provides that, upon the completion of the funds transfer, CBP will issue the Final Periodic Monthly Statement and identify it as paid, transmit the Final Periodic Monthly Statement to the importer or the importer's designated broker, and treat the date of CBP's acceptance as the effective payment date of the PMS for purposes of calculation of interest and/or liquidated damages, if applicable. Any references to the marking of a PMS as paid and the generation of the Final Periodic Monthly Statement (previously contained in paragraphs f and g of the republication of the PMS test that was published in the January 20, 2006 **Federal Register** notice) have been moved to paragraph h to reflect that, for both ACH debit and ACH credit participants, CBP will no longer identify a PMS as paid or issue a Final Periodic Monthly Statement prior to the completion of the funds transfer.

Second, new paragraphs i and j contain modifications of the PMS test that were announced in a **Federal Register** notice published on June 2, 2006. *See* 71 FR 32114 (June 2, 2006). Paragraph i pertains to the payment of estimated duties, taxes, and fees for single entries or incremental entries involving split shipments. Paragraph j pertains to the payment of estimated duties, taxes, and fees for single entries or incremental entries involving unassembled or disassembled entities.

### *B. Periodic Monthly Statement (PMS) Test*

Entries scheduled for monthly payment will be processed as follows:

- a. As entries are filed with CBP, the importer or the importer's designated broker schedules them for monthly payment.
- b. CBP posts all entries that are scheduled for monthly payment on the Preliminary Periodic Daily Statement.
- c. The importer or the importer's designated broker processes entry summary presentation transactions for each Preliminary Periodic Daily Statement within 10 working days of the date of entry.
- d. After summary information has been filed, CBP posts the scheduled entries on the Final Periodic Daily Statement.
- e. Entries appearing on the Final Periodic Daily Statements and scheduled for monthly payment appear on the Preliminary Periodic Monthly Statement. CBP will generate the Preliminary Periodic

Monthly Statement by the 11th calendar day of the month following the month in which the merchandise is either entered or released, whichever comes first, unless the importer or the importer's designated broker selects an earlier date.

f. Automated Clearinghouse (ACH) debit participants are required to submit one debit authorization for each Preliminary Periodic Daily Statement at any time from the creation of the Preliminary Periodic Daily Statement until the creation of the related Preliminary Periodic Monthly Statement. If an ACH debit participant fails to submit an ACH debit authorization for a Preliminary Periodic Daily Statement within 10 working days of the date of entry, payment for the Preliminary Periodic Daily Statement is considered late; however, the ACH debit participant will still be permitted to submit the ACH debit authorization. CBP will transmit the debit authorizations compiled in the Preliminary Periodic Monthly Statement to the financial institution on the 15th working day of the month following the month in which the merchandise is either entered or released, whichever comes first, unless the importer or the importer's designated broker selects an earlier date. ACH debit participants must ensure that the money amount identified on the Preliminary Periodic Monthly Statement is, in fact, available in their bank account by the 15th working day of that month.

g. For ACH credit participants, CBP must receive the ACH credit payment no later than the 15th day of the month following the month in which the merchandise scheduled for monthly processing is either entered or released, whichever comes first, or if that day falls on a weekend or holiday, the business day directly preceding such weekend or holiday, unless the importer or the importer's designated broker selects an earlier date.

h. For both ACH credit and ACH debit participants, once CBP receives confirmation from Treasury that the funds are available and transferred to CBP (which marks the completion of the funds transfer), then CBP will: (1) Issue the Final Periodic Monthly Statement and identify it as paid; (2) transmit the Final Periodic Monthly Statement to the importer or the importer's designated broker; and (3) treat the date of CBP's acceptance of the ACH credit or debit payment as the effective payment date of the PMS for purposes of the calculation of interest and/or liquidated damages, if applicable. CBP will generate the Final Periodic Monthly Statement on the night that payment is processed.

i. Importers choosing to file a single entry involving split shipments consistent with the provisions of 19 CFR 141.57(d)(1) or unassembled or disassembled entities consistent with the provisions of 19 CFR

141.58(d)(1) may pay estimated duties, taxes, and fees attributable to those entries through the method set forth in the PMS test. The date of filing of that entry identifies the month in which entry is filed and establishes the obligation to pay estimated duties, taxes, and fees by the 15th working day of the month following the month in which entry is filed.

j. Importers choosing to file incremental entries involving split shipments consistent with the provisions of 19 CFR 141.57(d)(2) or unassembled or disassembled entities consistent with the provisions 19 CFR 141.58(d)(2) as a special permit for immediate delivery after the arrival of the first portion (Incremental Release) also may pay estimated duties, taxes, and fees attributable to that entry through the method set forth in the PMS test. The date that the importer obtains release of the first portion of the entity (as provided in 19 CFR 141.57(e) or 19 CFR 141.58(e)) will identify the month that the entry is filed and establishes the obligation to pay estimated duties, taxes, and fees by the 15th working day of the month following the month in which entry is filed.

Participants should note that if they voluntarily remove an entry from a Periodic Daily Statement before expiration of the 10-working-day period after release, that entry may be placed on another Periodic Daily Statement falling within the same 10-working-day period. If, however, participants remove an entry from a Periodic Daily Statement after expiration of the 10-working-day period after release, the entry may be the subject of a claim for liquidated damages for late payment.

## **V. Previous Notices and Suspension of Regulations**

For purposes of this test, any provision in title 19 of the Code of Federal Regulations including, but not limited to, the provisions found in parts 24, 141, 142, and 143 thereof relating to entry summary filing and processing that are inconsistent with the requirements set forth in this notice are waived for the duration of the test. *See* 19 CFR 101.9(b). This document 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”).

Dated: August 29, 2019.

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

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Declaration of Owner and Declaration of Consignee When Entry is Made by an Agent**

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

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

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection 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 of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and must be submitted (no later than October 29, 2019) to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0093 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP\_PRA@cbp.dhs.gov*.

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229-1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email *CBP\_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at *https://www.cbp.gov/*.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduc-

tion Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### Overview of This Information Collection

**Title:** Declaration of Owner and Declaration of Consignee When Entry is made by an Agent.

**OMB Number:** 1651-0093.

**Form Number:** CBP Forms 3347 and 3347A.

**Abstract:** CBP Form 3347, *Declaration of Owner*, is a declaration from the owner of imported merchandise stating that he/she agrees to pay additional or increased duties, therefore releasing the importer of record from paying such duties. This form must be filed within 90 days from the date of entry. CBP Form 3347 is provided for by 19 CFR 24.11 and 141.20.

When entry is made in a consignee's name by an agent who does not meet the qualifications in 19 CFR 141.19(b)(2), meaning that the agent does not have knowledge of the facts and/or is not authorized under a proper power of attorney by that consignee, a declaration from the consignee on CBP Form 3347A, *Declaration of Consignee When Entry is Made by an Agent*, may be filed with the entry documentation or the entry summary. If the declaration is filed on CBP Form 3347A, then no bond to produce a declaration of the consignee is required. If the declaration is not filed at entry or entry summary, bond must be given to produce such declaration, and the declaration must be presented within six months after the date that the bond was given. CBP Form 3347A is provided for by 19 CFR 141.19(b)(2).

CBP Forms 3347 and 3347A are authorized by 19 U.S.C. 1485 and

are accessible at <https://www.cbp.gov/newsroom/publications/forms?title=3347&=Apply>.

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

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

**Affected Public:** Businesses.

*CBP Form 3347*

**Estimated Number of Respondents:** 900.

**Estimated Number of Responses per Respondent:** 6.

**Estimated Total Annual Responses:** 5,400.

**Estimated Time per Response:** 6 minutes.

**Estimated Total Annual Burden Hours:** 540.

*CBP Form 3347A*

**Estimated Number of Respondents:** 50.

**Estimated Number of Responses per Respondent:** 6.

**Estimated Total Annual Responses:** 300.

**Estimated Time per Response:** 6 minutes.

**Estimated Total Annual Burden Hours:** 30.

Dated: August 27, 2019.

SETH D. RENKEMA,  
*Branch Chief,*  
*Economic Impact Analysis Branch,*  
*U.S. Customs and Border Protection.*