

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR PARTS 111, 113, 141, 142 AND 143

CBP DEC. 09 – 47

USCBP-2006-0001

RIN 1505-AB20

Remote Location Filing

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

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with changes, the proposed amendments to title 19 of the Code of Federal Regulations (19 CFR) regarding Remote Location Filing (RLF). RLF is a planned component of the National Customs Automation Program (NCAP), authorized by section 414 of the Tariff Act of 1930, as added by section 631 within the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. RLF allows a participating NCAP filer to electronically file with CBP those consumption entries and related information that CBP can process in a completely electronic data interchange system from a location other than where the goods will arrive in the United States.

EFFECTIVE DATE: January 29, 2010

FOR FURTHER INFORMATION CONTACT: For systems or automation issues: Tony Casucci, Office of Information Technology, at (703) 650-3053. For operational or policy issues: Cynthia Whittenburg, Trade Policy and Programs, Office of International Trade, at (202) 863-6512 or via email at *remote.filing@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 2007, CBP published in the **Federal Register** (72 FR 13714) a proposal to implement Remote Location Filing (RLF) regulations in a new subpart E to part 143 within title 19 of the Code of Federal Regulations (19 CFR part 143, subpart E).

RLF, which currently operates as a National Customs Automation Program (NCAP) prototype test pursuant to section 414 of the Tariff Act of 1930, as added by section 631 within the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act, allows a RLF filer to electronically file with U.S. Customs and Border Protection (CBP) those consumption entries and related information that CBP can process in a completely electronic data interchange system from a location other than where the goods will arrive in the United States.

As noted in 72 FR 13714, the RLF prototype will terminate upon the effective date of this final rule. RLF prototype participants may continue to participate in the NCAP test program until this date.

CBP solicited comments on the proposed rulemaking.

Discussion of Comments

Fourteen commenters responded to the solicitation of public comment in the proposed rule. A description of the comments received, together with CBP's analyses, is set forth below.

Comment:

Proposed § 143.44(c) describes RLF automation requirements as encompassing only those entries and entry summaries that CBP processes completely in an electronic data interchange system. Three commenters requested that, in the final rule, CBP either specifically list the RLF-eligible entry types or cite to a source for such information.

CBP Response:

Currently, only electronically transmitted consumption entries — entry types 01 and 11 — may be filed using RLF. CBP is presently working to expand the entry types that may be processed via RLF. It is anticipated that upon the total integration of the major cargo and entry summary functionalities into Automated Commercial Environment (ACE), the expansion of RLF will be fully realized and will incorporate most entry types. As the entry types currently permitted under RLF are expanded in the future, CBP will not list them in the regulatory text; rather, CBP will include a reference in the regulatory

text, at § 143.44(c), to the web site located at *www.cbp.gov/xp/cgov/trade/trade_programs/remote_location_filing/* that provides a current listing of permissible RLF entry types.

Comment:

Four commenters requested that RLF permit the filing of all entry types (including anti-dumping, countervailing duty, and quota entries), and not be limited to type 01 and 11 consumption entries. One of the commenters also suggested that CBP create a special class of National Permit to allow a broker to file any type of entry in RLF.

CBP Response:

As noted in the response to the previous comment, it is anticipated that most entry types will be permitted under RLF at such time as the major cargo and entry summary functionalities are totally integrated into ACE. For this reason, the creation of a special class of National Permit is unnecessary.

Comment:

One commenter requested that all brokers meeting the criteria set forth in proposed § 143.43 should have their filer codes centrally “turned on” automatically in the Automated Commercial System (ACS) for all eligible RLF ports instead of having their Automated Broker Interface (ABI) Client Representatives enter them as needed.

CBP Response:

The current ACS environment does not provide this capability. Coordination with the ABI Client Representative is required to enable a broker to file remotely at a specific port.

Comment:

Two commenters requested additional clarification regarding the specific criteria used by CBP in establishing RLF-operational locations.

CBP Response:

CBP continually reviews and makes determinations concerning the addition of new ports to the list of RLF-approved processing locations. A prospective port must, at a minimum, have appropriate electronic entry processing capabilities. In determining whether to make a port RLF-operational, CBP may take into consideration factors such as trade interest and whether CBP personnel have been trained in RLF procedures at a particular location. Filers are encouraged to contact

the CBP RLF Program Manager at *remote.filing@dhs.gov* to suggest possible port additions.

Comment:

Four commenters advocated that RLF be permanently adopted as a final rule.

CBP Response:

CBP concurs.

Comment:

Three commenters requested that CBP adopt procedures that would provide the trade with a 90-day advance notice of new RLF-operational ports. The commenters noted that Express Consignment Carrier Facility (ECCF) operators require advance notice to modify automated systems to accept RLF entries and, although the proposed rule notice stated that new RLF locations will be listed in the Automated Broker Interface (ABI) administrative messaging system, the document did not state that advance notice will be provided. The commenters also note that messages sent via ABI will not reach parties such as carriers and ECCF operators who are not part of ABI messaging.

CBP Response:

CBP will make every effort to provide advance notice to the trade of new RLF-operational ports and will list new and pending RLF-operational ports on its web page so that parties who do not participate in the ABI administrative messaging system will be informed in this regard. The agency, however, views adopting a 90-day advance notice regulatory requirement as unnecessarily restrictive as the time it takes to train CBP personnel and ensure that the port is fully RLF operational varies from port to port. As noted above, filers are encouraged to contact the CBP RLF Program Manager at *remote.filing@dhs.gov* for information regarding possible port additions.

Comment:

Three commenters requested that CBP publish a list of current RLF operational ports in a manner that is clearly labeled on the CBP website and includes the date of last update.

CBP Response:

A complete and current list of existing RLF operational ports is set forth at the CBP web site located at *www.cbp.gov/xp/cgov/trade/trade_programs/remote_location_filing/*. A link entitled “RLF Operational Locations” directs viewers to the list, which also contains the date of last update. A reference to this web site is set forth in § 143.42(b).

Comment:

One commenter stated that the need for adequate staffing at RLF-operational ports is essential and noted a lack of uniform training at these sites.

CBP Response:

CBP is in the process of updating internal RLF standard operating procedures and training materials which will help achieve a higher level of proficiency and uniformity in RLF processing skills at RLF-operational ports.

Comment:

One commenter noted that under the terms of the RLF prototype, CBP accepted electronic filings of certain “other government agency” (OGA) information and certifications such as Toxic Substances Control Act (TSCA) certificates. The commenter urges CBP to expand RLF in this capacity.

CBP Response:

CBP continues to work with OGAs to fulfill documentation requirements electronically through the International Trade Data System (ITDS). Also, as noted above, when the major cargo and entry summary functionalities are totally integrated into ACE, it is anticipated that the expansion of RLF will be fully realized and most OGA information and filings will be able to be filed electronically.

Comment:

One commenter suggested that RLF should be expanded to include the Line Release process, prescribed in 19 CFR part 142, subpart D, which exists to facilitate the clearance of repetitive, low-risk transactions.

CBP Response:

Line Release provides for advance cargo screening and expedited release at land border ports. The current ACS environment does not

provide the capability for RLF to include Line Release. However, as entry processing migrates to ACE and CBP's system capabilities evolve, CBP will explore opportunities to achieve various process objectives based on the expanded automation capabilities.

Comment:

One commenter stated that RLF regulations are not necessary because the RLF prototype has been functioning for 13 years and ACE will make RLF redundant. The commenter suggests that RLF should continue as a NCAP prototype until such time as the functionalities of ACE are totally integrated.

CBP Response:

Promulgating RLF as a regulatory program will clarify and harmonize RLF requirements and provide the operational groundwork for ACE. ACE will not replace RLF; rather, ACE will be the electronic means necessary to expand RLF.

Comment:

One commenter, citing the proposed amendment to 19 CFR 141.61(a)(2) which would allow electronic entry and entry summary documentation to be filed "by the importer of record or his duly authorized agent, one of whom must be a resident of the United States for the purposes of receiving service of process," requested that CBP verify that it is not amending part 141 to allow customs brokers (or any other future authorized agent for an importer) to prepare and file customs entries, entry summaries and/or other "customs business" documents from outside the United States on the importer's behalf.

CBP Response:

The amendments to 19 CFR 141.61(a)(2) are intended to provide regulatory guidance for RLF regarding the manner by which electronic entry and entry summary documentation are to be prepared. This regulatory package does not address the issue of whether entries can be filed from outside the United States.

Comment:

One commenter suggested changes to proposed 19 CFR 141.61(a)(2) which concerns the preparation of electronic entry and entry summary documentation. The commenter notes that the certification of the entry filing is "customs business," as defined in 19 U.S.C. 1641(a) and 19 CFR 111.1, and the person responsible for preparing the electronic filing, not simply the transmitter of the filing, must be the

importer self-filer or a licensed U.S. customs broker. Accordingly, the commenter suggests deleting the phrase in proposed § 141.61(a)(2) which states, "...by the importer of record or his duly authorized agent, one of whom must be resident in the United States for purposes of receiving service of process ..." and adding in its place the language, "... by the importer of record or the importer's duly authorized customs broker".

CBP Response:

CBP agrees with the commenter's suggested language and proposed § 141.61(a)(2), as set forth in 72 FR 13714, is amended in this document to state that the entry and entry summary documentation must be certified by the importer of record or the importer's duly authorized "customs broker." This provision is further amended to retain the concept of the importer's "duly authorized agent" in a service of process context.

Comment:

One commenter noted that RLF pertains only to customs brokers and that importers who are self-filers have no permit restrictions and may file entries of all kinds at all ports in the U.S. In order to maintain the current level playing field, brokers must continue to have the option of offering their clients the same capabilities. To that end, the commenter proposes that a special class of national permit should be created that would allow brokers to file at all ports with no restrictions as to entry types. The commenter posits that creating a new class of permit would provide brokers with the same filing options as self-filing importers.

CBP Response:

The legislative intent of the Customs Modernization Act (Public Law 103-182, 107 Stat. 2170 (December 8, 1993), was to allow nationally permitted brokerage firms to file electronically at all ports of entry, and CBP is working toward that objective. Additionally, and as noted above, when the major cargo and entry summary functionalities are totally integrated into ACE, the expansion of RLF will be fully realized, and it is anticipated that RLF will be able to encompass most, if not all, entry types.

Comment:

One commenter inquired whether a broker would be allowed to make entry via RLF even when the broker has an office in the port of entry.

CBP Response:

A broker may use CBP's electronic invoice capabilities to facilitate an entry filing when the broker has an office in the port of entry.

Comment:

Several commenters noted that express consignment carrier and courier hub facilities (ECCFs) are privately constructed and funded facilities at which ECCF operators are required to pay reimbursement fees to CBP (see § 24.23(b)(4)) for services provided by the agency at these facilities. As ECCFs are increasingly used by conventional brokers who do not pay reimbursement fees, the commenters suggested that CBP should impose filer code restrictions and ECCF operators should be able to choose which of their port codes will be RLF-eligible and which brokers will be permitted to file RLF entries at the ECCFs.

CBP Response:

With regard to the commenters' request for filer code restrictions at ECCFs, CBP notes that RLF operational ports, including ECCFs, are open to all filers and importers who fulfill the RLF eligibility criteria.

Comment:

Several commenters requested that ECCF operators be notified as part of the approval and set-up process to prevent the filing of duplicate entries resulting from situations where an importer retains the services of an outside customs broker to file an entry instead of using the ECCF's designated "in-house" broker who typically arranges customs clearance at the facility.

CBP Response:

As this issue is substantively outside the scope of the proposed amendments to the CBP regulations set forth in 72 FR 13714, it cannot be addressed in this final rule. CBP notes, however, that as importers are obligated to use reasonable care in making an entry, the U.S. purchaser and the foreign shipper are obligated to coordinate with each other as to which of them will be responsible for entering the foreign merchandise covered by their transaction. Brokers are obligated to exercise reasonable supervision over the customs business they perform and are obligated to ask whether an entry is being made on behalf of the foreign shipper or the U.S. purchaser. If the parties to the transaction meet their above-described legal obligations, the issue of duplicate entries being made on the same merchandise should not occur. However, where duplicate entries are filed,

filers may remedy this through CBP's established entry cancellation procedures. For a further discussion of this issue, the trade is advised to contact the Trade Facilitation and Administration Division, Office of International Trade, Customs and Border Protection, at (202) 863-6000.

Comment:

Several commenters note that as an ECCF operator engages in a contractual agreement with a shipper through the terms and conditions of the air waybill, the ECCF operator is contractually obligated to abide by the instructions from the shipper. These terms and conditions include the authority to make clearance arrangements at destination and offer an option under which the shipper can specify that the consignee will make clearance arrangements. The commenters expressed concern that the proposed RLF regulations make no mention of this contractual obligation and thus create the possibility of forced contractual breach by requiring the ECCF operator to accept the entry under arrangements by the consignee.

CBP Response:

These comments address a substantive issue that is beyond the scope of the proposed RLF rule and therefore will not be considered in the context of this final rule.

Comment:

Several commenters described the PAIRED program as distinct from RLF and suggested that if PAIRED were to be eliminated, as proposed, valuable experience and established relationships between the trade, participating government agencies and CBP will be lost. The commenters noted that PAIRED port entries were designed to facilitate legitimate low risk/repetitive trade throughout the United States and therefore play a significant part in the economic well-being of our nation and the importing companies that use the PAIRED program. The commenters further noted that although Congress stated that the PAIRED program would be eliminated upon implementation of RLF, this presupposed that RLF would provide the same benefits and unique aspects of PAIRED. In this regard, it is noted that AD/CVD entries, quota entries, single bond entries, and paper entry filings required by certain other government agencies are permitted under PAIRED, but not under RLF at this time.

CBP Response:

CBP agrees that the PAIRED program is distinct from RLF. RLF is processed in a completely electronic environment while PAIRED, in

most cases, still relies on paper filings. The PAIRED program was implemented in 1987 as an alternative process for importers to use the existing “telecommunications facilities” that were available at that time to expedite the submission, review, and final disposition of entry documentation. PAIRED was implemented as an attempt to reduce the costs associated with maintaining the transportation in-bond system. In 1987, CBP did not possess the technological resources for electronic filing, nor did the agency possess the statutory authority to permit brokers to file entries to districts other than those for which they held district permits.

Congress directed the discontinuance of PAIRED entries upon implementation of RLF. *See* House Report No. 103–361(I), page 127. CBP is of the view that elimination of the PAIRED program fulfills Congressional intent by increasing electronic filing (a major impetus of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2170 (December 8, 1993)). The argument that RLF was intended to provide the same benefits as PAIRED is unsubstantiated and, in any event, will be rendered moot in the foreseeable future as ACE modernization development will deliver major release and entry summary processing capabilities in 2009.

Comment:

Several commenters request that elimination of the PAIRED program should be phased in until RLF is implemented for all entry types.

CBP Response:

CBP does not view an interim continuation of the PAIRED program as conducive to either CBP’s homeland security objectives or its customs modernization initiatives. As noted above, RLF was established under the Customs Modernization Act and provides for the electronic submission of required entry and entry summary data from any location regardless of where the merchandise arrives in the United States or where it is examined. Under RLF, physical examinations are not restricted to either the port of filing or the port of arrival (unlike PAIRED). Examination can also take place at the port nearest the cargo’s final destination. RLF supports comprehensive account based processing by allowing filers to electronically manage and control filing of customs cargo data. RLF also supports the accurate electronic tracking of cargo arrival and required electronic review. The PAIRED program does not support these important security objectives and runs counter to the agency’s modernization efforts.

Conclusion

After analysis of the comments and further review of the matter, CBP has determined to adopt as final, with the changes mentioned in the comment discussion, the proposed rule published in the **Federal Register** (72 FR 13714) on March 23, 2007.

This final rule also effects an additional non-substantive change to §§ 143.43(a), 143.44(a) and 143.44(b) to clarify that the importer of record, in addition to a customs broker, may participate in RLF.

The Regulatory Flexibility Act and Executive Order 12866

Because these amendments implement a voluntary program provided for by statute, and have the effect of streamlining the entry process and reducing the overall regulatory burden on the general public, it is certified pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* that these amendments will not have a significant economic impact on a substantial number of small entities. Further, these amendments do not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

Paperwork Reduction Act

As there are no new collections of information proposed in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

Signing Authority

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

List of Subjects

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing, Reporting and recordkeeping requirements.

19 CFR Part 113

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Invoices, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 142

Customs duties and inspection, Forms, Reporting and recordkeeping requirements.

19 CFR Part 143

Automated Broker Interface (ABI), Computer technology (Electronic entry filing), Customs duties and inspection, Entry of merchandise, Invoice requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated in the preamble, parts 111, 113, 141, 142 and 143 of title 19 of the CFR (19 CFR parts 111, 113, 141, 142 and 143) are amended as set forth below.

PART 111 — CUSTOMS BROKERS

1. The general authority citation for part 111 continues to read as follows:

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

2. Section 111.2(b)(2)(i)(C) is revised to read as follows:

§ 111.2 License and district permit required.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) *Electronic filing.* A broker may electronically file entries for merchandise from a remote location, pursuant to the terms set forth in subpart E to part 143 of this chapter, and may electronically transact other customs business even though the entry is filed, or other customs business is transacted, within a district for which the broker does not have a district permit; and

* * * * *

PART 113 — CUSTOMS BONDS

3. The general authority citation for part 113 continues to read as follows:

AUTHORITY: 19 U.S.C. 66, 1623, 1624.

* * * * *

§ 113.62 [Amended]

4. In § 113.62, paragraph (k)(1) is amended by removing the reference “, subpart D,” and by removing the words “that subpart” and adding in their place the words, “part 143”.

PART 141 — ENTRY OF MERCHANDISE

5. The general authority citation for part 141 is revised, and the specific authority citations for subparts F and G and §§ 141.68 and 141.90 continue to read as follows:

AUTHORITY: 19 U.S.C. 66, 1414, 1448, 1484, 1624.

Subpart F also issued under 19 U.S.C. 1481;

Subpart G also issued under 19 U.S.C. 1505;

* * * * *

Section 141.68 also issued under 19 U.S.C. 1315;

* * * * *

Section 141.90 also issued under 19 U.S.C. 1487;

* * * * *

6. In § 141.18:

- a. The introductory sentence is amended by removing the word “Customs” and adding in its place the word “customs”, and by removing the word “shall” and adding in its place the word “may”;
- b. Paragraph (a) is revised; and
- c. Paragraph (b) is amended by removing the word “Customs” and adding in its place the term “CBP”.

The revision reads as follows:

§ 141.18 Entry by nonresident corporation.

* * * * *

(a) Has a resident agent in the State where the port of entry is located who is authorized to accept service of process against that corporation or, in the case of an entry filed from a remote location pursuant to subpart E of part 143 of this chapter, has a resident agent

authorized to accept service of process against that corporation either in the State where the port of entry is located or in the State from which the remote location filing originates; and

* * * * *

7. In § 141.61:

- a. Paragraphs (a) and (b) are revised;
- b. Paragraph (c) is amended, in the first sentence, by removing the word “shall” and adding in its place the word “must”, and; in the second sentence, by removing the word “shall” and adding in its place the word “will”;
- c. Paragraph (d) is amended by removing the word “shall” each place that it appears and adding the word “must”, and by removing the words “Customs Form” each place they appear and adding the words “CBP Form”;
- d. Paragraph (e) is amended:
 - i. In paragraphs (e)(1) through (e)(3), by removing the word “shall” each place that it appears and adding the word “must”, and by removing the words “Customs Form” each place they appear and adding the words “CBP Form”;
 - ii. In paragraph (e)(4), by removing the word “shall” and adding in its place the word “will” and by removing the word “Customs” and adding in its place the term “CBP”; and
 - iii. In paragraph (e)(5), by removing the word “shall” and adding in its place the word “will”; and
- e. Paragraph (f) is amended:
 - i. In paragraph (f)(1), by removing the word “shall” and adding in its place the word “must”; in paragraph (f)(1)(iv), by removing, in the second sentence, the words “shall represent” and adding in their place the words “must represent”; and, in the third sentence, by removing the word “shall” and adding in its place the word “must” and by removing the word “Customs” each place that it appears and adding the term “CBP”;
 - ii. In paragraph (f)(2)(i), by removing the word “shall” each place that it appears and adding the word “must” and by removing the word “Customs” and adding in its place the term “CBP”;
 - iii. In paragraph (f)(2)(ii), by removing, in the first sentence, the word “shall” and adding in its place the word “must”,

by removing in the second sentence the words “shall represent” and adding in their place the words “must represent”; and, in the third sentence, by removing the word “shall” and adding in its place the word “must”; and, in paragraphs (f)(2)(iii) and (f)(2)(iv), by removing the word “shall” each place that it appears and adding the word “must”.

The revision reads as follows:

§ 141.61 Completion of entry and entry summary documentation.

(a) *Preparation* — (1) *Paper entry and entry summary documentation.* Except when entry and entry summary documentation is filed with CBP electronically pursuant to the provisions of part 143 of this chapter:

- (i) Such documentation must be prepared on a typewriter (keyboard), or with ink, indelible pencil, or other permanent medium, and all copies must be legible;
- (ii) The entry summary must be signed by the importer (see § 101.1 of this chapter); and
- (iii) Entries, entry summaries, and accompanying documentation must be on the appropriate forms specified by the regulations and must clearly set forth all required information.

(2) *Electronic entry and entry summary documentation.* Entry and entry summary documentation that is filed electronically pursuant to part 143 of this chapter must contain the information required by this section and must be certified (see §§ 143.35 and 143.44 of this chapter) by the importer of record or his duly authorized customs broker as being true and correct to the best of his knowledge. The importer of record, customs broker, or a duly authorized agent must be resident in the United States for purposes of receiving service of process. A certified electronic transmission is binding in the same manner and to the same extent as a signed document.

(b) *Marks and numbers previously provided.* An importer may omit from entry summary (CBP Form 7501) the marks and numbers previously provided for packages released or withdrawn.

* * * * *

§ 141.63 [Amended]

8. In § 141.63:

- a. Paragraphs (a)(2) and (b) are amended by removing the word “shall” each place that it appears and adding the word “will”; and
- b. Paragraph (c) is removed.

§ 141.68 [Amended]

9. In § 141.68:

- a. Paragraphs (a) through (e), (g), and (h) are amended by removing the word “shall” each place that it appears and adding the word “will”; and
- b. Paragraphs (a), (d), and (f) through (h) are amended by removing the word “Customs” each place that it appears and adding the term “CBP”.

10. In § 141.86:

- a. Paragraphs (a) through (e) are amended by removing the word “shall” each place that it appears and adding the word “must”;
- b. Paragraph (f) is amended by removing the word “shall” and adding in its place the word “must”, and by removing the word “Customs” and adding in its place the term “CBP”;
- c. Paragraph (g) is amended by removing the word “shall” and adding in its place the word “must”;
- d. Paragraph (h) is revised; and
- e. Paragraph (j) is amended by removing the word “shall” and adding in its place the word “must”.

The revisions read as follows:

§ 141.86 Contents of invoices and general requirements.

* * * * *

(h) *Numbering of invoices and pages.* (1) *Invoices.* Except when electronic invoice data are transmitted to CBP under the provisions of part 143 of this chapter, when more than one invoice is included in the same entry, each invoice with its attachments must be numbered consecutively by the importer on the bottom of the face of each page, beginning with No. 1.

(2) *Pages.* Except when electronic invoice data are transmitted to CBP under the provisions of part 143 of this chapter, if the invoice or invoices filed with one entry consist of more than two pages, each page must be numbered consecutively by the importer on the bottom of the face of each page, with the page numbering beginning with No. 1 for the first page of the first

invoice and continuing in a single series of numbers through all the invoices and attachments included in one entry.

(3) *Both invoices and pages.* Except when electronic invoice data are transmitted to CBP under the provisions of part 143 of this chapter, both the invoice number and the page number must be shown at the bottom of each page when applicable. For example, an entry covering one invoice of one page and a second invoice of two pages must be paginated as follows:

Inv. 1, p. 1.

Inv. 2, p. 2.

Inv. 2, p. 3

* * * * *

11. In § 141.90:

- a. Paragraph (b) is revised;
- b. Paragraph (c) is amended by removing the word “shall” each place that it appears and adding the word “must” in its place; and
- c. Paragraph (d) is revised.

The revisions read as follows:

§ 141.90 Notation of tariff classification and value on invoice.

* * * * *

(b) *Classification and rate of duty.* The importer or customs broker must include on the invoice or with the invoice data the appropriate subheading under the provisions of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and the rate of duty for the merchandise being entered. Except when invoice line data are linked to an entry summary line and transmitted to CBP electronically under the provisions of part 143, that information must be noted by the importer or customs broker in the left-hand portion of the invoice, next to the articles to which they apply.

* * * * *

(d) *Importer’s notations in blue or black ink.* Except when invoice line data are linked to an entry summary line and transmitted to CBP electronically under the provisions of part 143, all notations made on the invoice by the importer or customs broker must be in blue or black ink.

PART 142 — ENTRY PROCESS

12. The authority citation for part 142 continues to read as follows:

AUTHORITY: 19 U.S.C. 66, 1448, 1484, 1624.

13. In § 142.3:

- a. Paragraph (a) is amended by:
 - i. removing in the introductory sentence the word “shall” and adding in its place the word “must”;
 - ii. by removing in paragraph (a)(1) the word “Customs” each place that it appears and adding the term “CBP” and by removing the word “shall” and adding in its place the word “must”;
 - iii. by removing in paragraph (a)(5) the word “Customs” and adding in its place the term “CBP”;
 - iv. by removing in paragraph (a)(6) the word “shall” and adding in its place the word “must” and by removing the term “CF” and adding in its place the words “CBP Form”;
- b. Paragraph (b) is revised; and
- c. A new paragraph (d) is added.

The revision and addition read as follows:

§ 142.3 Entry documentation required.

* * * * *

(b) *Entry summary filed at time of entry.* When the entry summary is filed at time of entry in accordance with § 142.12(a)(1) or § 142.13:

(1) CBP Form 3461 or 7533 will not be required; and

(2) CBP Form 7501 or CBP Form 3311 (as appropriate, *see* § 142.11) may serve as both the entry and the entry summary documentation if the additional documentation set forth in paragraphs (a)(2), (3), (4) and (5) of this section and § 142.16(b) is filed.

* * * * *

(d) *Electronic Format.* The entry documentation identified in this section may be submitted to CBP in either a paper or, where appropriate, an electronic format.

PART 143 — SPECIAL ENTRY PROCEDURES

14. The authority citation for part 143 is revised to read as follows:

AUTHORITY: 19 U.S.C. 66, 1414, 1481, 1484, 1498, 1624, 1641.

15. Section 143.0 is revised to read as follows:

§ 143.0 Scope.

This part sets forth the requirements and procedures for participation in the Automated Broker Interface (ABI), for the clearance of imported merchandise under appraisal and informal entries, and under electronic entry filing and under Remote Location Filing (RLF). All requirements and procedures set forth in this part are in addition to the general requirements and procedures for all entries set forth in part 141 of this chapter. More specific requirements and procedures are set forth elsewhere in this chapter; for example, part 145 concerns importations by mail and part 10 concerns merchandise conditionally free of duty or subject to a reduced rate.

16. In § 143.32, the introductory text and paragraphs (a), (b), (d) through (k), and the first sentence of paragraph (o) are revised to read as follows:

§ 143.32 Definitions.

The following are definitions for purposes of subparts D and E of this part:

(a) *ABI*. “ABI” means the Automated Broker Interface and refers to a module of ACS that allows entry filers to transmit immediate delivery, entry and entry summary data electronically to CBP through ACS and to receive transmissions from ACS.

(b) *ACS*. “ACS” means the Automated Commercial System and refers to CBP’s integrated comprehensive tracking system for the acquisition, processing and distribution of import data.

* * * * *

(d) *Broker*. “Broker” means a customs broker licensed under part 111 of this chapter.

(e) *Certification*. “Certification” means the electronic equivalent of a signature for data transmitted through ABI. This electronic (facsimile) signature must be transmitted as part of the immediate delivery, entry or entry summary data. Such data are referred to as “certified”.

(f) *Data*. “Data” when used in conjunction with immediate delivery, entry and/or entry summary means the information required to be submitted with the immediate delivery, entry and/or entry summary, respectively, in accordance with the CATAIR (CBP Publication 552, Customs and Trade Automated Interface Requirements) and/or CBP Headquarters directives. It does not mean the actual paper documents, but includes all of the information required to be in such documents.

(g) *Documentation*. “Documentation” when used in conjunction with immediate delivery, entry and/or entry summary means the documents set forth in § 142.3 of this chapter, required to be submitted as part of an application for immediate delivery, entry and/or entry summary, but does not include the CBP Forms 7501, 3461 (or alternative forms).

(h) *EDIFACT*. “EDIFACT” means the Electronic Data Interchange for Administration, Commerce and Transport that provides an electronic capability to transmit detailed CBP Forms 7501 and 3461, and invoice data.

(i) Electronic entry. “Electronic entry” means the electronic transmission to CBP of:

(1) Entry information required for the entry of merchandise; and

(2) Entry summary information required for the classification and appraisement of the merchandise, the verification of statistical information, and the determination of compliance with applicable law.

(j) *Electronic immediate delivery*. “Electronic immediate delivery” means the electronic transmission of CBP Forms 3461 or 3461 alternate (CBP Form 3461 ALT) data utilizing ACS in order to obtain the release of goods under immediate delivery.

(k) *Electronic Invoice Program (EIP)*. “EIP” refers to modules of the Automated Broker Interface (ABI) that allow entry filers to transmit detailed invoice data and includes Automated Invoice Interface (AII) and any other electronic invoice authorized by CBP.

* * * * *

(o) *Selectivity criteria*. “Selectivity criteria” means the categories of information that guide CBP’s judgment in evaluating and assessing the risk of an immediate delivery, entry, or entry summary transaction. * * *

* * * * *

17. Part 143 is amended by adding a new subpart E, consisting of §§ 143.41 through 143.45, to read as follows:

Subpart E — Remote Location Filing

Sec.

143.41 Applicability.

143.42 Definitions.

143.43 RLF eligibility criteria.

143.44 RLF procedure.

143.45 Filing of additional entry information.

Subpart E — Remote Location Filing

§ 143.41 Applicability.

This subpart sets forth the general requirements and procedures for Remote Location Filing (RLF). RLF entries are subject to the documentation, document retention and document retrieval requirements of this chapter as well as the general entry requirements of parts 141, 142 and 143 of this chapter. Participation in the RLF program is voluntary and at the option of the filer.

§ 143.42 Definitions.

The following definitions, in addition to the definitions set forth in § 143.32 of this part, apply for purposes of this subpart E:

(a) *Remote Location Filing (RLF)* — “RLF” is an elective method of making entry by which a customs broker with a national permit electronically transmits all data information associated with an entry that CBP can process in a completely electronic data interchange system to a RLF-operational CBP location from a remote location other than where the goods are being entered. (Importers filing on their own behalf may file electronically in any port, subject to ABI filing requirements.)

(b) *RLF-operational CBP location*— “RLF-operational CBP location” means a CBP location within the customs territory of the United States that is staffed with CBP personnel who have been trained in RLF procedures and who have operational experience with the Electronic Invoice Program (EIP). EIP is defined in § 143.32 of this chapter. A list of all RLF-operational locations is available for viewing on the CBP Internet web site located at www.cbp.gov/xp/cgov/trade/trade_programs/remote_location_filing/.

§ 143.43 RLF eligibility criteria.

(a) *Automation criteria.* To be eligible for RLF, a licensed customs broker or importer of record must be:

- (1) Operational on the ABI (see 19 CFR part 143, subpart A);
- (2) Operational on the EIP prior to applying for RLF; and
- (3) Operational on the ACH (or any other CBP-approved method of electronic payment), for purposes of directing the electronic

payment of duties, taxes and fees (*see* 19 CFR 24.25), 30 days before transmitting a RLF entry.

(b) *Broker must have national permit.* To be eligible for RLF, a licensed customs broker must hold a valid national permit (*see* 19 CFR 111.19(f)).

(c) *Continuous bond.* A RLF entry must be secured with a continuous bond.

§ 143.44 RLF procedure.

(a) *Electronic transmission of invoice data.* For RLF transactions, a customs broker or importer of record must transmit electronically, using EIP, any invoice data required by CBP.

(b) *Electronic transmission of payment.* For RLF transactions, a customs broker or importer of record must direct the electronic payment of duties, taxes and fees through the ACH (*see* 19 CFR 24.25) or any other method of electronic payment authorized by CBP.

(c) *Automation requirements.* Only those entries and entry summaries that CBP processes completely in an electronic data interchange system will be accepted for RLF. For a listing of entry types that may be filed via RLF, go to www.cbp.gov/xp/cgov/trade/trade_programs/remote_location_filing/.

(d) *Combined electronic entry and entry summary.* For RLF transactions using a combined electronic entry and entry summary, a customs broker must submit to CBP, through ABI or any other electronic interface authorized by CBP, a complete and error-free electronic data transmission constituting the entry summary that serves as both the entry and entry summary.

(e) *No line release or immediate delivery entries permitted under RLF.* Line release (*see* 19 CFR, Part 142, Subpart D) or immediate delivery procedures may not be combined with RLF transactions.

(f) *Data acceptance and release of merchandise.* Data that are complete and error free will be accepted by CBP. If electronic invoice or additional electronic documentation is required, CBP will so notify the RLF filer. If no documentation is required to be filed, CBP will so notify the RLF filer. If CBP accepts the RLF entry (including invoice data) under §§ 143.34 through 143.36 of this part, the RLF entry will be deemed to satisfy all filing requirements under this part and the merchandise may be released.

(g) *Liquidation.* The entry summary will be scheduled for liquidation once payment is made under statement processing (*see* 19 CFR 24.25).

§ 143.45 Filing of additional entry information.

When filing from a remote location, a RLF filer must electronically file all additional information required by CBP to be presented with the entry and entry summary information (including facsimile transmissions) that CBP can accept electronically. If CBP cannot accept additional information electronically, the RLF filer must file the additional information in a paper format at the CBP port of entry where the goods arrived.

Dated: December 22, 2009

JAYSON P. AHERN
Acting Commissioner
U.S. Customs and Border Protection

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

[Published in the Federal Register, December 30, 2009 (74 FR 69015)]



DEPARTMENT OF THE TREASURY

19 CFR PARTS 101, 113 AND 133

Docket No. USCBP-2006-0013

RIN 1505-AB54

Customs and Border Protection's Bond Program

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to title 19 of the Code of Federal Regulations to reflect the centralization of the continuous bond program at Customs and Border Protection's (CBP's) Revenue Division, Office of Finance. Pursuant to this centralization, continuous bonds must be filed at the Revenue Division via mail, fax, or in an electronic format, and the Revenue Division will assume the bond functions previously performed at the port level. The authority to approve single transaction bonds will remain with port directors. The changes proposed in this document support CBP's bond program by ensuring an efficient and uniform approach to the approval, maintenance, and periodic review of continuous bonds. Additionally, the proposed changes update provisions to accommodate the use of information technology and modern business practices.

DATES: Comments must be received on or before March 8, 2010.

ADDRESSES: You may submit comments, identified by Docket No. USCBP-2006-0013, by *one* of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via Docket No. USCBP-2006-0013.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Customs and Border Protection, 799 9th St., N.W. (Mint Annex), Washington, D.C. 20229-1179.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Customs and Border Protection, 799 9th Street, N.W., 5th Floor, Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Chief, Debt Management Branch, Revenue Division, Customs and Border Protection, Tel. (317) 298-1307.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

This document proposes amendments to title 19 of the Code of Federal Regulations (19 CFR) to reflect the centralization of the continuous bond program at CBP's Revenue Division (RD), Office of Finance, in Indianapolis, Indiana. Pursuant to this centralization, continuous bonds must be filed, reviewed and, if approved, maintained at the RD. It is proposed that the documentation for these types of bonds, including CBP Form 301, applications, riders, terminations, power of attorney forms, and Importer ID Input Records (CBP Form 5106), must be filed at the RD via mail, fax, or in an electronic format as prescribed by CBP. The RD will assume the bond functions previously performed at the port level, with the noted exception that the authority to approve single transaction bonds will remain with port directors.

It is noted that most continuous basic importation bonds are no longer processed and retained on file at the ports, and the majority of bond sufficiency matters concerning these bonds are currently processed at the RD. In 2003, CBP port directors delegated the authority to review and process these types of bonds to the RD. Consequently, under existing procedures, any person who is required to post a continuous basic importation bond to secure a CBP transaction or multiple transactions has the option of filing the bond directly with the port director (as per 19 CFR 113.11), or indirectly to the RD. In fact, continuous basic importation bonds that are submitted directly to the port are subsequently referred to the RD by the port director. Also in 2003, the Director of the International Trade Compliance Division authorized, per 19 CFR 113.15, port directors to allow the retention of approved continuous bonds at the RD.

Many of the changes to 19 CFR part 113 proposed in this document are intended to facilitate the use of electronic submission of continuous bond documentation. The requirements for the electronic submission of bond documentation will be available on the CBP web site, *www.cbp.gov*. The web site will feature a direct link to CBP bond program directives.

The changes proposed in this document implement recommendations set forth in a review of the continuous bond program commissioned by CBP. See "Grant Thornton Review of Customs Continuous Transaction (Entry) Bonds," dated April 3, 2003. The study found that centralization of the continuous bond program would strengthen the effectiveness of the program by enhancing efficiency and uniformity. Arrangements for public inspection of the document may be made by calling Joseph Clark at (202) 572-8768.

This document also proposes non-substantive amendments to 19 CFR to reflect the nomenclature changes made necessary by the transfer of the legacy U.S. Customs Service of the Department of the Treasury to the Department of Homeland Security (DHS) and DHS' subsequent renaming of the agency as U.S. Customs and Border Protection on March 31, 2007 (*see* 72 FR 20131, dated April 23, 2007). As a consequence of these changes, this document proposes certain non-substantive nomenclature changes to reflect the realities just described, and the issuance of new definitions in the regulations whereby the term "Customs" means "Customs and Border Protection," the terms "Commissioner" and "Commissioner of Customs" mean "Commissioner of Customs and Border Protection," the acronym "CBP" means "Customs and Border Protection," and the acronym "RD" means "Revenue Division."

EXPLANATION OF AMENDMENTS

It is proposed to amend title 19 of the CFR to reflect the consolidation of the continuous bond program at the Revenue Division (RD), the use of electronic filing for the submission of continuous bonds and related documentation, and the transfer of Customs and Border Protection (CBP) to the Department of Homeland Security (DHS). A more detailed explanation of the proposed amendments, other than those involving technical corrections or minor wording and editorial changes, is set forth below.

§ 101.1 Definitions.

Section 101.1 of title 19 of the CFR (19 CFR 101.1) sets forth the meaning of certain terms as used throughout Chapter 1 of title 19. To reflect certain nomenclature changes made necessary by the transfer of the U.S. Customs Service from the Department of the Treasury to DHS and the subsequent renaming of the agency as the U.S. Customs and Border Protection (CBP), it is proposed to add new definitions to § 101.1 whereby:

- The terms "Customs" and "Customs Service" mean "Customs and Border Protection"
- The terms "Customs Regulations" and "CBP Regulations" mean "title 19 of the Code of Federal Regulations (19 CFR)"
- The terms "Commissioner" and "Commissioner of Customs" mean "Commissioner of Customs and Border Protection"
- The acronym "CBP" means "Customs and Border Protection"

- The acronym “RD” means “Revenue Division, Office of Finance, Customs and Border Protection.”

§ 113.1 *Authority to require security or execution of bond.*

Section 113.1 of title 19 of the CFR (19 CFR 113.1) provides that where a bond or other security is not specifically required by law, the Commissioner of Customs, pursuant to Treasury Department Order No. 165 Revised, as amended (T.D. 53654, 19 FR 7241, November 6, 1954), may by regulation or specific instruction require, or authorize the port director to require, such bonds or other security as may be considered necessary to protect the revenue or to assure compliance with the law.

It is proposed to amend § 113.1 to reflect:

- The transfer of authority over certain functions from the Secretary of the Treasury to the Secretary of Homeland Security effected by the Homeland Security Act of 2002;
- The delegation of the authority to approve certain customs revenue functions from the Secretary of the Treasury Department to the Secretary of Homeland Security pursuant to Treasury Department Order No. 100–16, dated May 15, 2003, Appendix to part 0 of title 19 of the CFR (19 CFR part 0); and
- The subsequent delegation of authority from the Secretary of Homeland Security to the Commissioner of CBP pursuant to DHS Delegation Order 7010.3, dated May, 2006.

Accordingly, it is proposed to remove from § 113.1 the references to Treasury Department Order No. 165 and T.D. 53654 and replace them with citations to the DHS Delegation Order. Also, language regarding the authority of the Commissioner to require bonds or other security by regulation is proposed to be removed from this section as unnecessary because any regulation requiring a bond will clearly state the authority under which the requirement is imposed. Lastly, it is proposed to amend this section by adding “Director, Revenue Division” as among those the Commissioner of CBP may authorize to require bonds or other security to reflect that continuous bonds will now be processed at the RD.

§ 113.11 *Bond approval*; § 113.12 *Bond application.*

Section 113.11 of title 19 of the CFR (19 CFR 113.11) provides, in pertinent part, that bonds must be submitted on CBP Form 301 to the appropriate port director where they will undergo review for suffi-

ciency. Section 113.12 of title 19 (19 CFR 113.12) sets forth the required elements of an application for both single transaction and continuous bonds.

This document proposes reversing the order of these provisions so that the section pertaining to bond applications (existing § 113.12) will appear first in the regulations at § 113.11, and the section pertaining to bond approval (existing § 113.11) will appear at § 113.12. It is also proposed to revise these provisions to more accurately reflect the sequence of events and current procedures that comprise the bond application and approval process.

To that end, it is proposed to amend newly designated § 113.11 (existing § 113.12) to more specifically identify the information required in a bond application, and to state that continuous bond applications must be submitted to the RD via mail, fax, or in an electronic format as prescribed by CBP. This section will provide that mail, fax, and electronic (email) submissions must be sent to the addresses/fax number listed on the CBP web site located at *www.cbp.gov*.

It is also proposed to amend the certification requirements set forth in newly designated § 113.11(e) (existing § 113.12(c)), to provide for and facilitate electronic filing on the bond application. As noted above, this document proposes amendments to the continuous bond application process that would permit certain documentation to be submitted to the RD in an electronic format. Such electronic submissions will not contain a written signature or seal, as is required by various bond provisions throughout part 113. It is therefore proposed to add alternative certification language that states that bonds submitted electronically are legally binding to the same extent as if signed and under seal. Accordingly, it is proposed to divide newly designated § 113.11(e) (existing § 113.12(c)) into separate subparagraphs. Paragraph (e)(1) will set forth the existing certification language applicable to paper bond submissions and require that a bond be affixed with a corporate seal if required by § 113.33. New paragraph (e)(2) will state that electronic bond documentation containing the requisite certification language will be legally binding to the same extent as if signed and submitted under seal. New paragraph (e)(3) will state that CBP is entitled to presume, without verification, that submitted bond applications and related documentation, which include the bond, are properly executed, complete, accurate, and in full compliance with all applicable laws.

The changes proposed to newly designated § 113.12 involve separating the approval procedures applicable to single transaction and continuous bonds. It is proposed to add language stating that when

CBP approves a bond, it will notify filers, sureties and principals by sending them a CBP-assigned bond number. It is also proposed to add a new paragraph (c) that states that CBP may refuse to accept any new obligations under a previously approved bond that requires modification, or where there has been a failure to comply with § 113.11(d) (failure to provide application updates) or § 113.24(d) (failure to provide rider).

Lastly, in order to accurately reflect the agency's name, it is proposed to change the name "Customs Form 301" where it appears in this section and elsewhere in part 113, to "CBP Form 301."

§ 113.13 Amount of bond.

Section 113.13 of title 19 of the CFR (19 CFR 113.13) sets forth the guidelines for determining bond amounts. Specifically, this section addresses minimum bond amounts, guidelines for determining the sufficiency of bond amounts, and the procedures by which CBP will periodically review bond sufficiency and request additional security.

As noted above, most continuous basic importation bonds are no longer reviewed and approved at the port level. The vast majority of bond sufficiency matters concerning continuous bonds are processed at the RD. To reflect this centralization, it is proposed to amend § 113.13 (b), (c), and (d) by replacing the references to "port director" and "drawback office" with a more generalized reference to "CBP." Also, it is proposed to remove the language in paragraph (c) that permits a principal 30 days from the date of notification to remedy a deficiency. If a deficiency is identified, CBP believes that in some instances 30 days is too long to permit the condition to continue. Accordingly, in recognition of the importance of bond sufficiency and to ensure compliance with all applicable laws and regulations in a more timely fashion, it is proposed to amend this provision to state that if a deficiency is identified, CBP may require additional securities for any and all of the principal's transactions until the deficiency is remedied. Similarly, it is proposed to amend paragraph (d) to state that CBP may immediately require additional security.

§ 113.14 Approved form of bond inadequate.

Section 113.14 of title 19 of the CFR (19 CFR 113.14) states that if none of the conditions contained in subpart G of part 113 is applicable to a transaction sought to be secured, the port director may draft conditions to cover the transaction and the bond may be executed upon approval by the Director, Border Security and Trade Compliance Division at CBP Headquarters.

As a result of the centralization of the bond program, continuous bonds will no longer be approved at the port level. The issuance of

single transaction bonds, however, will remain under the authority of port directors. It is therefore proposed to amend § 113.14 to reflect that either the Director, Revenue Division or the port director, as appropriate, will draft conditions to secure a transaction when the conditions contained in subpart G of part 113 do not apply. It also proposed to remove the reference to “Director, Border Security and Trade Compliance Division” and provide, instead, that additional bond conditions to secure a transaction, where the conditions contained in subpart G of part 113 do not adequately secure the transaction, must be approved by the Executive Director, Regulations and Rulings, Office of International Trade.

§ 113.15 Retention of approved bonds.

Section 113.15 of title 19 of the CFR (19 CFR 113.15) provides, in pertinent part, that all bonds approved by the port director, except the bond containing the agreement to pay court costs (condemned goods), shall remain on file in the port office unless the port director is directed in writing as to other disposition.

It is proposed to amend this section to provide that approved continuous bonds will be retained on file at the RD or approved CBP back-up sites and approved single transaction bonds will remain on file at the port office.

§ 113.21 Information required on the bond.

Section 113.21 of title 19 of the CFR (19 CFR 113.21) prescribes the information required on the bond.

This document revises paragraph (e) by removing the requirement that lines must be drawn through all blank spaces and blocks on the bond and adds language stating that CBP is entitled to presume, without verification, that submitted bond applications and related documentation, which include the bond, are properly executed, complete, accurate, and in full compliance with all applicable laws.

§ 113.22 Witnesses required.

Section 113.22 of title 19 of the CFR (19 CFR 113.22) sets forth the witness requirements applicable to bonds. The witness requirement originated during a time when bonds were approved at the district level. If a party unknown to the Customs district office sought to execute a bond, witnesses were required to verify the party's identity. It is proposed to remove this section. CBP recognizes that the witness requirement is unnecessary inasmuch as a party who makes entry under a bond is obligated by that bond.

§ 113.23 Changes made on the bond.

Section 113.23 of title 19 of the CFR (19 CFR 113.23) describes the types of changes that may be made to a bond and the process by which to effect such changes. Paragraph (c) describes the type of changes that are permitted to a bond after it is signed, but prior to approval by CBP. Paragraph (d) provides that, except in limited circumstances, the port director will not permit changes to a bond after it has been approved and if changes are desired, a new bond is required.

This document proposes to amend § 113.23(c) to provide that CBP will not permit substantive changes to be made to a bond after it has been signed. In such circumstances the existing bond will be cancelled and a new bond must be executed. To reflect the centralization of the continuous bond program at the RD, this document also proposes to amend paragraph (d) by replacing the reference to “port director” with a more general reference to “CBP.”

§ 113.24 Riders.

Section 113.24 of title 19 of the CFR (19 CFR 113.24) sets forth the terms pertaining to when riders may be attached to a bond and prescribes their appropriate formats. Paragraph (a) describes the types of riders that port directors may accept. Paragraph (b) describes where riders must be filed. Paragraph (c) requires that riders be attached to their related bond. Paragraph (d) prescribes the format of the rider and requires that riders be signed, sealed, witnessed and executed.

Although the riders listed in §113.24(a) are the most common types of riders, they are not intended to represent an exhaustive list. For this reason, it is proposed to revise the first sentence of paragraph (a) so as to make clear that the list of enumerated riders is not comprehensive. Also, as a result of the centralization of the continuous bond program, it is proposed to state, in paragraph (b), that riders must be filed at the RD. Due to the fact that riders may be in an electronic format, it is proposed to amend paragraph (c) to state that riders submitted in this manner must contain a reference to the related bond’s CBP-issued bond number. As this rulemaking proposes to remove the witness requirement set forth in § 113.22 from the regulations, it is similarly proposed to remove this requirement from paragraph (d) and to require that riders submitted in an electronic format contain the certification language set forth in newly designated § 113.11(e)(2). Lastly, to encourage the submission of complete and correct bonds, it is proposed to add a new paragraph that states that CBP may refuse to accept new conditions under a previously approved bond where there has been a failure to provide CBP with a required rider.

§ 113.25 Seals.

Section 113.25 of title 19 of the CFR (19 CFR 113.25) sets forth the requirements for bonds under seal. This section provides that seals must be affixed adjoining the signatures of the principal and surety and that bonds under seal must meet the requirements of the law of the state in which the bond was executed.

As this document proposes to permit bonds to be submitted to the RD electronically, the seal requirements set forth in § 113.25 require modification to accommodate electronic filing. It is proposed to separately describe the certification requirements applicable to paper bond submissions, and those applicable to bonds submitted in an electronic format. To that end, it is proposed that continuous bonds submitted electronically do not have to be affixed with a seal; however, where the law of the state in which the bond is executed requires a seal, the party executing the bond must include electronic certification language (set forth in newly designated § 113.11(e)(2) of this chapter, discussed *supra*), whereby the applicant certifies that he or she is acting under authority of the corporation and the certification constitutes legally binding evidence of the corporate seal. Additionally, it is proposed to require that where the law of the state in which the bond is executed requires a seal, the party executing the electronic bond must retain a copy of the paper seal and make such seal available to CBP for inspection upon request. This section also includes language stating that CBP is entitled to presume, without verification, that submitted bond applications and related documentation, which include the bond, are properly executed, complete, accurate, and in full compliance with all applicable laws.

§ 113.26 Effective dates of bonds and riders.

Section 113.26 of title 19 of the CFR (19 CFR 113.26) prescribes the effective dates of bonds and riders for both single transaction and continuous bonds. Paragraph (a) of this section provides that bonds and riders may be filed up to 30 days before the effective date in order to provide CBP with adequate time for administrative review and processing. Paragraph (e) states that a rider to delete trade names and unincorporated divisions of a corporate principal will be effective on the date identified in the rider if the date is at least 10 business days after the date the port receives the rider.

In an effort to permit both bond filers and CBP additional time for the filing and processing of bonds in advance of their effective date, it is proposed to extend the 30-day time period to 60 days. It is also

proposed to require that the effective date of a rider is the date stated, so long as that date is at least 15 business days from the date CBP receives the rider.

§ 113.27 Effective dates of termination of bond.

Section 113.27 of title 19 of the CFR (19 CFR 113.27) sets forth the effective dates of bond terminations made by the principal or surety, and describes the effect of such termination.

It is proposed to make changes to paragraph (a), which provides for bond termination by the principal, and to paragraph (b), which provides for bond termination by the surety, to ensure that the terms of these provisions conform to one another. To that end, it is proposed to amend paragraph (a) to require that a principal's request to terminate a continuous bond be sent to the RD and that the termination will take effect on the date requested if that date is at least 15 business days from the date the termination request was received by the RD. Otherwise, the termination will be effective on the close of business 15 business days from the date the termination request was received by the RD. It is proposed to amend paragraph (b) to require that a surety's notice of bond termination be sent to the RD, as well as to the principal. The surety's obligation under a bond will terminate on the date requested by the surety in the written notice of termination so long as that date is at least 15 business days from the date a request meeting all requirements was received by CBP. It is proposed to add language to both paragraphs (a) and (b) stating that once the RD has received a bond termination request, the termination cannot be withdrawn. Lastly, it is proposed to add language to paragraph (c) that provides that when a principal intends to continue to engage in the same activity as that secured by a bond to be terminated pursuant to this section, and the principal has submitted a replacement bond to secure that continued activity, no termination requested by a principal or surety will take effect until CBP has reviewed and approved the replacement bond.

§ 113.32 Partnerships as principals.

Section 113.32 describes the various partnership requirements and liabilities as they pertain to bonds.

It is proposed to revise paragraph (a) of this section by removing the bond requirements that pertain specifically to limited partnerships. As CBP's importer records in the automated systems make no distinction between limited partnerships and other partnerships, it is not necessary to collect this information from limited partnerships. It

is also proposed to replace the more specific reference to “port director or drawback office” in paragraph (a) with a more general reference to “CBP.”

§ 113.33 Corporations as principals.

Section 113.33 of title 19 of the CFR (19 CFR 113.33) sets forth the requirements pertaining to corporations that execute a bond as principal. This section also describes when a power of attorney is necessary for either a corporate officer or attorney, and states that the provisions of this section apply to a corporate subsidiary that joins its parent corporation by signing the bond as co-principal.

As the proposals in this document would permit continuous bonds to be submitted to the RD in an electronic format, this document proposes to amend § 113.33 to reflect the use of this technology. It is also proposed to clarify within this section that a Limited Liability Corporation (LLC) is included within the concept of corporation.

In paragraph (a), it is proposed to remove the signature requirement as this requirement is discussed in paragraph (b). In paragraph (b), it is proposed to add language stating that where the bond of a corporate principal is submitted in an electronic format, the bond must contain the certification language set forth in newly designated § 113.11(e)(2) and the party executing the bond may be required to retain a copy of the seal, as per § 113.25 as it is proposed to be amended. Also, it is proposed to add language stating that CBP is entitled to presume, without verification, that submitted bond applications and related documentation, which include the bond, are properly executed, complete, accurate, and in full compliance with all applicable laws. It is proposed to amend paragraph (c) by removing the language that states that a power of attorney will not be required if the person signing the bond on behalf of the corporation is known to the port director or drawback office to be the president, vice-president, treasurer, or secretary of the corporation. Due to the fact that most bonds will now be sent to a centralized location at the RD, personal knowledge of an individual’s position within a company is an unrealistic concept upon which to base the need for a power of attorney. It is also proposed to add in paragraph (c) that CBP is entitled to presume, without verification, that submitted bond applications and related documentation, which include the bond, are properly executed, complete, accurate, and in full compliance with all applicable laws. Lastly, it is proposed to amend paragraph (d) by replacing the reference to “port director” with “RD.”

§ 113.35 Individual sureties.

Section 113.35 of title 19 of the CFR (19 CFR 113.35) prescribes the criteria applicable to individuals who sign as sureties on a bond.

The types of changes proposed to this section are the same as those discussed above (*i.e.*, references to “port director” and “Customs” are replaced with references to “CBP”). Regarding the surety qualifications set forth in § 113.35(b), it is proposed to remove the requirement in paragraph (b)(2) that states that a married woman may be accepted as a surety, unless the state in which the bond is executed prohibits her from acting in that capacity. Similarly, it is proposed to remove the reference to married women in paragraph (b)(3). CBP will permit individuals who are legally authorized to act as sureties to do so. Also, it is proposed to amend paragraph (b)(4) which currently provides that each individual surety must have property available as security within the limits of the port where the contract of suretyship is to be approved. The local property requirement is no longer relevant and it is therefore proposed to amend the regulations to provide that individuals who sign as sureties on any type of bond must possess property within the customs territory of the United States. Lastly, it is proposed to amend paragraph (d) to remove the reference to “special agent-in-charge” and replace it with a reference to “Immigration and Customs Enforcement (ICE).” This change is necessary to reflect the fact that the former Customs Service special agents-in-charge are now part of ICE as a result of the transfer of the U.S. Customs Service to DHS and the subsequent division of the Customs Service into CBP and ICE.

§ 113.37 *Corporate sureties.*

Section 113.37 of title 19 of the CFR (19 CFR 113.37) sets forth the rules pertaining to corporations executing a bond as surety.

This document proposes to amend paragraph (e) to state that where a corporate surety submits a continuous bond to the RD in an electronic format the bond must contain the certification language prescribed by newly designated § 113.11(e)(2) and the party executing the bond must retain a copy of the seal in accordance with § 113.25(b). It is proposed to add to paragraph (e) that CBP is entitled to presume, without verification, that submitted bond applications and related documentation, which include the bond, are properly executed, complete, accurate, and in full compliance with all applicable laws.

In § 113.37(f), it is proposed to amend the last paragraph in the “Corporate Sureties Agreement for Limitation of Liability,” in the signature block, to require that an authorized CBP officer, and not specifically the Port Director or Director of the Drawback Office, sign the Agreement.

Section 113.37(g) prescribes how corporations may execute powers of attorney to act on their behalf. Paragraphs (g)(1)(iii) and (g)(5)(iii) within this section pertain to the identification of specific ports on the CBP Form 5297 where an agent or attorney is authorized to act. As centralization of the bond program requires that all continuous bonds and the accompanying CBP Form 5297 be filed and processed at the RD, the identification of specific ports in this regard is no longer necessary, and it is proposed to remove these provisions from the regulations.

Sections 113.37(g)(1)(v) and (vi) provide that the corporate surety power of attorney must contain the signatures of two principal officers of the corporation and be under seal. If the CBP Form 5297 is submitted to the RD in an electronic format, it is proposed to require that the document contain the certification language prescribed in newly designated § 113.11(e)(2) and the corporate surety retain a copy of the seal as per § 113.25(b).

As noted above, as a result of the centralization of the bond program, it is proposed to amend § 113.37(g)(2) to provide that a corporate surety power of attorney executed on a CBP Form 5297 in conjunction with a continuous bond must be filed at the RD via mail, fax, or in an electronic format. The RD will retain a copy of the CBP Form 5297 and return a RD-validated copy to the grantee.

Section 113.37(g)(3) provides that if a grantee desires to use a power of attorney at a port covered by the power of attorney, other than the port where the power of attorney was filed, but before the first computer printout reflecting this power of attorney is received, the CBP Form 5297 must be filed in triplicate (original and two copies), rather than duplicate. As notice of approval of a power of attorney is electronically transmitted to the ports, it is proposed to remove this provision from the regulations.

It is proposed to add a new paragraph (g)(5) to § 113.37 that provides that CBP is entitled to presume, without verification, that submitted bond applications and related documentation, which include the bond, are properly executed, complete, accurate, and in full compliance with all applicable laws.

§ 113.38 Delinquent sureties.

Section 113.38 of title 19 of the CFR (19 CFR 113.38) prescribes the extent to which a principal or surety on a CBP bond which is in default will be accepted on another CBP bond.

It is proposed to amend § 113.38(c)(1) to state that an internal advice request made pursuant to § 177.11 should be directed to the Executive Director, Regulations and Rulings, Office of International Trade. It is proposed to amend paragraph (c)(2) to reflect the central-

ization of the continuous bond program at the RD by adding that the Director, Revenue Division, in addition to the Commissioner, may instruct CBP officers to not accept a bond secured by a corporate surety for the reasons specified. It is also proposed to require in § 113.38(c)(4) that a copy of the notice of CBP's refusal to accept a surety's bonds, if not originating from the RD, must be sent to the Director, Revenue Division.

§ 113.39 Procedure to remove a surety from Treasury Department Circular 570.

Section 113.39 of title 19 of the CFR (19 CFR 113.39) sets forth the procedures by which CBP may seek to remove a surety company from Treasury Department Circular 570, which sets forth the list of approved surety companies.

The changes proposed in this document would amend this section by removing references to port director and Fines, Penalties, and Forfeitures Officers and replacing them with a more general reference to "appropriate CBP officer." This change is to reflect the fact that CBP personnel from the RD may also initiate the surety removal process.

§ 113.40 Acceptance of cash deposits or obligations of the United States in lieu of sureties on bonds.

Section 113.40 of title 19 of the CFR (19 CFR 113.40) prescribes the terms by which cash deposits or other types of U.S. obligations (*i.e.*, certificates of indebtedness, Treasury notes, Treasury bills) may be accepted by CBP in lieu of sureties on bonds.

To reflect the delegation of authority discussed earlier in this document, it is proposed to amend paragraph (a) of this section to include the Secretary of Homeland Security as among those who may authorize the enforcement of bond laws and regulations. To reflect the centralization of the continuous bond program at the RD, it is also proposed to amend this paragraph by stating that the Director, Revenue Division, and not the Port Director, is authorized to accept cash deposits in lieu of sureties on bonds. It is also proposed to add clarifying language that provides that cash deposits or other types of U.S. obligations accepted by CBP in lieu of sureties on bonds must be in an amount equal to the face amount of the bond that would be required if CBP were to elect to accept a bond. It is also proposed to amend the language to make clear that the option to deposit cash or U.S. obligations is at the option of the importer.

Paragraph (b) is amended to reflect that the Director, Revenue Division, and not the port director, is authorized to sell U.S. obligations in case of any default in the performance of any of the conditions of the bond.

In § 113.40(c), it is proposed to amend the heading and text to reflect that the provision pertains to United States obligations, as well as cash deposited in lieu of sureties on the bond.

Lastly, it is proposed to add new paragraphs (d) through (g) to clarify CBP's requirements with regards to these alternatives to surety bonds.

§ 113.43 Extension of time period.

Section 113.43 of title 19 of the CFR (19 CFR 113.43) provides that the port director, in certain circumstances, may extend the 120 day time period within which a document for which a bond or stipulation is given must be produced (*see* 19 CFR 113.42). The port director may extend this period for an additional period of 2 months.

To lend more specificity to the time frames cited in this provision, it is proposed to state in paragraph (a) that the port director may extend the time period to produce documents for a period "not to exceed 60 days." It is also proposed to use the more specific 60-day time frame in paragraph (b) that provides for late applications for bond extensions.

§ 113.62 Basic importation and entry bond conditions.

Section 113.62 of title 19 of the CFR (19 CFR 113.62) prescribes the conditions applicable to basic importation and entry bonds.

The proposed changes to this section are predominantly editorial in nature, with the exception of a change proposed to paragraph (a) which clarifies that the bond covers payments of duties, taxes and other charges made via periodic monthly statement, and to paragraph (a)(3) which would remove the reference to port director and replace it with a reference to "CBP" to reflect the fact that pursuant to the consolidation of the bond program at the RD, most bonds will no longer be filed with the port director.

§ 113.64 International carrier bond conditions.

Section 113.64 of title 19 of the CFR (19 CFR 113.64) pertains to international carrier bond conditions. Paragraph (a) describes a principal's and surety's agreement to pay penalties, duties, taxes, and other charges. The last sentence of paragraph (a) prescribes the penalties (liquidated damages) applicable to principals who fail to timely pay passenger processing fees to CBP.

In an effort to more clearly describe when an obligor will be subject to liquidated damages for failure to timely pay certain fees, it is proposed to restructure this section so as to create a new paragraph (b) that specifically addresses situations where an obligor must pay liquidated damages for failure to timely submit passenger user fees, railroad car processing fees, and express courier consignment fees. It is also proposed to clarify that this section applies not only to collected fees, but to fees that were required to be collected but not timely remitted to CBP.

§§ 133.21, 133.25, 133.42 — *Bonds related to allegations of counterfeit trademarks.*

Sections 133.21, 133.25 and 133.42 concern bonds relating to allegations of counterfeit trademarks. It is proposed to amend these provisions to allow these bonds to be continuous bonds.

EXECUTIVE ORDER 12866

Executive Order 12866 requires Federal agencies to conduct economic analyses of significant regulatory actions as a means to improve regulatory decision making. Significant regulatory actions include those that may: “(1) [h]ave an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) [c]reate a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) [m]aterially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) [r]aise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.” These proposed amendments do not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

REGULATORY FLEXIBILITY ACT

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires Federal agencies to examine the impact a rule would have on small entities. A small entity may be: a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

The entities affected by this proposed rule are importers and various other parties who file continuous bonds with CBP as required by

CBP regulations. “Importers” are not defined as a “major industry” by the Small Business Administration (SBA) and do not have a unique North American Industry Classification System (NAICS) code; rather, virtually all industries classified by SBA include entities that import goods and services into the United States. Thus, entities affected by this proposed rule would likely consist of the broad range of large, medium, and small businesses operating under the customs laws and other laws that CBP administers and enforces. These entities include, but are not limited to, importers, brokers, and freight forwarders, as well as other businesses that conduct various activities under continuous bonds.

The proposed amendments, if adopted as final, would align regulations with current common practice and improve efficiency by explicitly requiring importers to file continuous bonds at the Revenue Division via mail, fax, or in an electronic format. The changes proposed in this document support CBP’s bond program by ensuring an efficient and uniform approach to the approval, maintenance, and periodic review of continuous bonds. Additionally, the proposed changes update provisions to accommodate the use of information technology and modern business practices by removing requirements for signatures and seals on electronic submissions.

Because these amendments to the regulations affect such a wide-ranging group of entities involved in the importation of goods to the United States, the number of entities subject to this proposed rule would be considered “substantial.” It is not anticipated that there will be additional costs associated with filing continuous bonds with the Revenue Division instead of the local port, and many importers already file continuous bonds directly with the Revenue Division. Additionally, these changes to the regulations would confer a benefit to the entities as a result of the removal of the requirement for signatures and seals on electronic submissions. The effects of these amendments, however, would not rise to the level of being a considered a “significant” economic impact. We welcome comments on this conclusion. If we do not receive any comments contradicting our findings, we may certify that this rule will not have a significant economic impact on a substantial number of small entities at the final rule stage.

PAPERWORK REDUCTION ACT

The collection of information contained in this proposed rulemaking was previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Pa-

perwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1651–0050. There are no new collections of information proposed in this document.

SIGNING AUTHORITY

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

LIST OF SUBJECTS

19 CFR Part 101

Administrative practice and procedure, Customs duties and inspections, Organization and functions (Government agencies).

19 CFR Part 113

Bonds, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 133

Bonds, Copyrights, Counterfeit goods, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures.

PROPOSED AMENDMENTS TO THE REGULATIONS

For the reasons stated above, it is proposed to amend parts 101 and 113 of title 19 of the Code of Federal Regulations (19 CFR parts 101 and 113) as follows:

PART 101 — GENERAL PROVISIONS

1. The general authority citation for part 101 is revised to read as follows:

AUTHORITY: 5 U.S.C. 301; 6 U.S.C. 101, *et. seq.*; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * * *

2. Section 101.1 is amended by adding five new definitions, in alphabetical order, to read as follows:

§ 101.1 Definitions.

* * * * *

CBP. The term “CBP” means Customs and Border Protection.

Commissioner or Commissioner of Customs. The terms “Commissioner” or “Commissioner of Customs” mean Commissioner of Customs and Border Protection.

Customs or Customs Service. The terms “Customs” or “Customs Service” mean Customs and Border Protection.

Customs Regulations or CBP Regulations. The terms “Customs Regulations” or “CBP Regulations” mean Chapter 1 of title 19 of the Code of Federal Regulations (19 CFR Chapter 1).

* * * * *

RD. “RD” means Revenue Division, Office of Finance, Customs and Border Protection.

* * * * *

PART 113 — CBP BONDS

3. The general authority citation for part 113 is revised to read as follows:

AUTHORITY: 6 U.S.C. 101, *et. seq.*; 19 U.S.C. 66, 1623, 1624.

* * * * *

4. The part 113 heading is revised to read as set forth above.

§ 113.0 [Amended]

5. Section 113.0 is amended by removing the word “Customs” and adding in its place the term “CBP”.

6. Section 113.1 is revised to read as follows:

§ 113.1 Authority to require security or execution of bond.

Where a bond or other security is not specifically required by law or regulation, the Commissioner of CBP, pursuant to DHS Delegation Number 7010.3, or any successive order, may by specific instruction require, or authorize the Director, Revenue Division or the port director to require, such bonds or other security considered necessary for the protection of the revenue or to assure compliance with any pertinent law, regulation, or instruction.

7. In § 113.2:

- a. The heading text is amended by removing the word “Customs” and adding in its place the term “CBP”;
- b. The introductory text is amended by removing the word “Customs” and adding in its place the term “CBP”;
- c. Paragraph (c) is amended by removing the word “shall” and adding in its place the word “will”, and by adding the word “as” before the word “he”; and
- d. In paragraph (d), the first sentence is amended by removing the word “entry” and adding in its place the word “transac-

tion”; the second sentence is amended by removing the word “shall” and adding in its place the word “will”; and the third sentence is amended by removing the word “Customs” and adding in its place the term “CBP”.

8. Section 113.4 is amended by revising paragraph (a) and amending paragraph (b) by removing the words “Customs laws or regulations” and adding in their place the words “customs laws or CBP regulations”.

The revision of § 113.4(a) reads as follows:

§ 113.4 Bonds and carnets.

(a) *Bonds.* All bonds required to be given under the customs laws or CBP regulations will be known as CBP bonds.

* * * * *

9. Section 113.11 is revised to read as follows:

§ 113.11 Bond application.

Each person who is required by law, regulation, or specific instruction to post a bond to secure a single or continuous (multiple) CBP transaction must submit a bond application in addition to the CBP Form 301, as follows:

(a) *Single transaction bond application.* A port director may require a person who will be engaged in a single customs transaction to file a written bond application. The application for a single transaction bond may be in the form of a letter. The application must contain the information set forth in paragraph (c) of this section, where applicable, and must be filed at the port where the transaction will occur. When the proper bond in a sufficient amount is filed with the entry summary or with the entry, or when the entry summary is filed at the time of entry, an application will not be required.

(b) *Continuous bond application.* To secure continuous (multiple) transactions, a bond application containing the applicable information set forth in paragraph (c) of this section must be submitted to the CBP Revenue Division (RD). The application may be in the form of a letter, and must be submitted to the RD via mail, fax, or in an electronic format (as prescribed by CBP) to the addresses/fax number listed on the CBP Internet web site located at *www.cbp.gov* (see direct link to CBP bond program directives).

(c) *Required bond application information.* (1) Applications for both the single and continuous transaction bonds described in paragraphs (a) and (b) of this section must contain the following information numerically identified in the following order:

- (i) Importer name;

- (ii) Importer number;
- (iii) Importer's physical address;
- (iv) Name, number, and address of any co-principals or unincorporated divisions/trade names that will use this bond (if applicable);
- (v) Description of the nature of the relationship between principal, co-principals, or unincorporated divisions/trade names that will use this bond (if applicable);
- (vi) A listing of any other importer numbers or bond numbers associated with the principal and all co-principals or unincorporated divisions/trade names;
- (vii) A description of the merchandise to be entered, including country of origin designations and applicable Harmonized Tariff Schedule of the United States (HTSUS) numbers;
- (viii) A description of the merchandise to be imported during the subsequent 12 months (if applicable), including country of origin designations and applicable HTSUS numbers. This will include imports of all the business entities that will be listed on the bond. If it is anticipated that the nature of the merchandise to be imported will change in any material respect during the subsequent 12 months, the change must be identified;
- (ix) For continuous bonds, the total entered value and total amount of all duties, taxes, and fees paid to CBP for the previous 12 months, plus the total estimated entered value and total estimated amount of all duties, taxes, and fees that will be paid to CBP during the subsequent 12 months. The total amount of duties, taxes and fees is the amount that would have been required to be deposited had the merchandise been entered for consumption even though some or all of the merchandise may have been entered under bond. If no imports were made during the 12 months prior to the application, the application letter should indicate "zero" and provide a statement of all duties, taxes, and fees it is estimated will accrue on all importations during the subsequent 12 months. If it is anticipated that the value of the merchandise to be imported will change in any material respect during the subsequent 12 months, the change must be identified. These estimations will include the import activity of all business entities that will be listed on the bond;

- (x) The type of bond applied for, including the proposed bond amount, activity code, and effective date;
- (xi) The printed name, title, phone, and fax numbers of a company officer or attorney-in-fact signing on behalf of principal;
- (xii) A certification statement (see paragraph (e) of this section); and
- (xiii) Signature of applicant and date. Electronic applications that contain the certification statement prescribed in paragraph (e)(2) of this section will be considered legally binding to the same extent as if signed and submitted under seal.

(2) In addition to the data elements set forth in paragraph (c)(1) of this section, CBP may require the bond applicant to submit additional information as is deemed necessary for CBP to evaluate the application. Such information may be commodity-specific or company-specific.

(d) *Application updates.* If CBP approves a bond based upon the application, the principal on the bond must submit a new application to the issuing office (to the CBP Revenue Division in the case of continuous bonds) containing an update of the information required by paragraph (c) of this section whenever there is a material change in such information.

(e) *Signature and Certification.* (1) *Paper bonds.* Paper bonds must be signed by the applicant, affixed with the corporate seal where required (see § 113.33), and contain the following certification:

I, _____, certify that the factual information contained in this submission is true and accurate, that the corporate seal (if applicable) complies with § 113.25 of this chapter, and any information provided that is based upon estimates is based upon the best information available on the date of this document.

(2) *Bonds submitted in an electronic format.* Bond applications submitted in an electronic format must contain the following certification and are legally binding to the same extent as if signed and submitted under seal:

I, _____, certify that the factual information contained in this submission is true and accurate and any information provided which is based upon estimates is based upon the best information available on the date of this document. I also certify that I am acting under authority of _____ corpora-

tion and this certification constitutes evidence of the corporate seal and complies with § 113.25 of this chapter.

(3) *Presumption of proper execution.* CBP is entitled to presume, without verification, that submitted bond applications and related documentation, which include the bond, are properly executed, complete, accurate, and in full compliance with all applicable laws.

10. Section 113.12 is revised to read as follows:

§ 113.12 Bond approval.

(a) *Single transaction bonds.* The director of the CBP port where a single transaction bond is filed will approve a bond that is in proper form and that provides adequate security for the transaction. CBP is entitled to presume, without verification, that submitted bond applications and related documentation, which include the bond, are properly executed, complete, accurate, and in full compliance with all applicable laws.

(b) *Continuous bonds.* Continuous bonds must be filed with the Revenue Division (RD). The RD bond team will determine whether the continuous bond is in proper form and provides adequate security. CBP is entitled to presume, without verification, that submitted bond applications and related documentation, which include the bond, are properly executed, complete, accurate, and in full compliance with all applicable laws. If approved, the RD will notify the filer, surety, and principal by issuing a CBP-assigned bond number. Only one continuous bond for a particular activity will be authorized for each principal.

(c) *Previously approved bond.* CBP may refuse to accept any new obligations under a previously approved bond that requires modification, including where the principal or surety has failed to comply with § 113.11(d) or § 113.24(d), or where the principal has failed to deposit the required financial instruments as described in § 113.40(a) for cash-in-lieu of surety bonds.

11. In § 113.13:

a. The first sentence in paragraph (a) is amended by removing the words “Customs bond shall” and adding in their place the words “CBP bond must”, and the second and third sentences in paragraph (a) are amended by removing the word “shall” each place that it appears and adding the word “will”;

b. The introductory text of paragraph (b) is amended by removing the words “the port director or drawback office in the case of a bond relating to repayment of erroneous drawback payment (*see* § 113.11) should at least” and adding in their place the words “CBP will”;

paragraph (b)(2) is revised; and paragraph (b)(4) is amended by removing the word “Customs” and adding in its place the term “CBP”;

c. Paragraph (c) is revised; and

d. Paragraph (d) is amended by removing the words “a port director or drawback office” and adding in their place the term “CBP”; by removing the word “Customs” and adding in its place the words “all applicable”; and by removing the words “he shall” and adding in their place the words “CBP may immediately”.

The revision of § 113.13(b)(2) and (c) reads as follows:

§ 113.13 Amount of bond.

* * * * *

(b) * * *

(2) The prior record of the principal in complying with CBP demands for redelivery, the obligation to hold unexamined merchandise intact, and other requirements relating to enforcement and administration of customs and other laws and CBP regulations;

* * * * *

(c) *Periodic review of bond sufficiency.* CBP will periodically review each bond on file to determine whether the bond is adequate to protect the revenue and ensure compliance with applicable law and regulations. If CBP determines that a bond is inadequate, the principal will be promptly notified in writing. Additional securities for any and all of the principal’s transactions may be required until the deficiency is remedied.

* * * * *

12. Section 113.14 is revised to read as follows:

§ 113.14 Approved form of bond inadequate.

If CBP determines that none of the conditions contained in subpart G of this part is applicable to a transaction sought to be secured, the Director, Revenue Division or, in the case of a single transaction bond, the port director, will draft conditions that cover the transaction. Before execution of the bond, the conditions must be submitted to Headquarters, Attention: Executive Director, Regulations and Rulings, Office of International Trade, for approval.

13. In § 113.15:

a. The first sentence is revised; and

b. The second and third sentences are amended by removing the word “shall” each place that it appears and adding the word “will”.

The revision reads as follows:

§ 113.15 Retention of approved bonds.

Except for bonds containing the agreement to pay court costs (condemned goods — *see* § 113.72), single transaction bonds that are approved by the port director will remain on file at the port office and approved continuous bonds (including bonds relating to repayment of erroneous drawback payments containing the conditions set forth in § 113.65) will remain on file at the RD. * * *

14. In § 113.21:

- a. Paragraph (a)(1) is revised;
- b. Paragraphs (b) and (c) are amended by removing the word “shall” each place that it appears and adding the word “must”;
- c. Paragraph (d) is amended by removing the word “shall” and adding in its place the word “may”; and
- d. Paragraph (e) is revised.

The revision of § 113.21(a)(1) and (e) reads as follows:

§ 113.21 Information required on the bond.

(a)(1) *Identification of principal, co-principal, and sureties.* The names of the principal, co-principal, and sureties, and their respective places of residence, must appear in the bond. In the case of a corporate principal, co-principal or surety, its legal designation and the address of its principal place of business must appear.

* * * * *

(e) *Presumption of proper execution.* CBP is entitled to presume, without verification, that submitted bond applications and related documentation, which include the bond, are properly executed, complete, accurate, and in full compliance with all applicable laws.

§ 113.22 [Removed and Reserved]

15. Section 113.22 is removed and reserved.

16. In § 113.23:

- a. The heading and text of paragraph (a)(2) are amended by removing the words “or erasures”;
- b. Paragraph (b) is amended by removing the word “erasures,” and by removing the word “shall” and adding in its place the word “must”; and
- c. Paragraphs (c) and (d) are revised.

The revisions of § 113.23(c) and (d) read as follows:

§ 113.23 Changes made on the bond.

* * * * *

(c) *After signing, prior to approval.* If minor alterations, other than modifications or interlineations (*i.e.*, changes that go to the substance of the bond), are made to the bond after it is signed, but prior to its approval by CBP, the consent of all the parties must be indicated on the bond. When a modification or interlineation is desired, the existing bond will be cancelled and a new bond will be executed.

(d) *After approval.* Except in cases where a change in the bond is expressly authorized by regulations or instructions from the Commissioner of CBP, CBP will not permit a change as defined in paragraph (a) of this section after the bond has been approved. When changes are desired, the existing bond will be cancelled and a new bond is required which, when approved, will supersede the cancelled bond.

17. Section 113.24 is revised to read as follows:

§ 113.24 Riders.

(a) *Types of riders.* The Revenue Division (RD) may accept bond riders, including the following types:

(1) *Name change of principal / trade name / unincorporated division.* A bond rider to change the name of a principal/trade name/unincorporated division on a bond may be used only when the change in name does not change the legal identity or status of the entity. If a new corporation is created as a result of a merger, reorganization or similar action, a bond rider cannot be used and a new bond will be required.

(2) *Address change.* A bond rider may be used to change the address on a bond.

(3) *Addition and deletion of trade names and unincorporated divisions of a corporate principal.* A bond rider may be used to add to or delete from a bond trade names and the names of unincorporated divisions of a corporate principal that do not have a separate and distinct legal status.

(b) *Where filed.* A bond rider must be filed at the RD.

(c) *Attachment of rider and, where applicable, CBP Form 5106 to bond.* All riders expressly authorized by the Commissioner of CBP must be filed with the related bond and must reference the related bond's CBP-issued bond number. Where applicable, a completed CBP Form 5106 must be submitted with the bond rider.

(d) *Failure to provide rider.* CBP may refuse to accept any new conditions under a previously approved bond where a rider that is expressly authorized by the Commissioner of CBP has not been submitted to CBP.

(e) *Format of rider.* A rider submitted to the RD on paper must be signed by both the principal (including all co-principals) and surety, sealed, executed, include a certificate as to corporate principal, if applicable, and otherwise comply with the requirements of this part. A rider submitted to the RD in an electronic format must contain the certification set forth in § 113.11(e)(2) and the filer must retain a copy of the seal as per § 113.25(b). CBP is entitled to presume, without verification, that submitted riders are properly executed, complete, accurate, and in full compliance with all applicable laws. A rider must contain one or more of the following formats, as applicable:

(1) *Name change of principal / trade name / unincorporated division.*

By this rider to CBP Form 301 (or other form as designated by regulation), _____ (bond number), executed on _____ (date), by _____ (former name), as principal _____ (importer number), the _____ (new name), hereby certifies that it is the same entity formerly known as _____ (former name), and the principal and surety agree that they are responsible for any act secured by this bond done under the aforementioned new name of the principal/trade name/unincorporated division. This rider is effective on _____ (date).

(2) *Address change.*

By this rider to CBP Form 301 (or other form as designated by regulation), _____ (bond number), executed on _____ (date), by _____ (name of principal/trade name/unincorporated division), as principal, _____ (importer number), and _____ (surety's name and code), as surety, which is effective on _____ (date), the principal, surety, or both, intend that the bond be amended to show _____ (new address) as their address. The principal, surety, or both, as may be appropriate, agree to be bound as though this bond has been executed with the new address shown.

(3) *Addition or deletion of trade names and unincorporated divisions of a corporate official — (i) Addition rider.*

By this rider to CBP Form 301 (or other form as designated by regulation), _____ (bond number), executed on _____ (date), by _____ (name of principal/co-principal/trade name/unincorporated division), as principal _____ (importer number), and _____ (surety's name and code), as surety, which is effective on _____

(date), the principal, co-principal and surety agree that the below listed names are unincorporated units of the principal or are trade or business names used by the principal in its business and that this bond covers its business and that this bond covers any act done in those names to the same extent as though done in the name of the principal. The principal and surety agree that any such act will be considered to be the act of the principal.

(ii) *Deletion rider.*

By this rider to CBP Form 301 (or other form as designated by regulation), _____ (bond number), executed on _____ (date), by _____ (name of principal/trade name/unincorporated division), as principal _____ (importer number), and _____ (surety's name and code), as surety, which is effective on _____ (date), the principal and surety agree that the below listed names of unincorporated units of the principal or trade or business names used by the principal in its business are deleted from the bond effective upon the date of approval of the rider by the appropriate CBP official.

18. Section 113.25 is revised to read as follows:

§ 113.25 Seals.

(a) *Paper bonds.* When a seal is required, the seal must be affixed adjoining the signatures of the principal and corporate surety, and the corporate seal must be affixed close to the signatures of persons signing on behalf of a corporation. Bonds must be under seal in accordance with the law of the state in which executed. When the charter or governing statute of a corporation requires its acts to be evidenced by its corporate seal, such seal is required.

(b) *Bonds submitted electronically.* Continuous bonds submitted in an electronic format do not have to be affixed with a seal; however, electronic bonds must include the certification language required by § 113.11(e)(2) which states that the applicant is acting under authority of the [named] corporation and the certification constitutes legally binding evidence of the corporate seal. Additionally, where either the law of the state in which the bond is executed or the CBP regulations require a seal, the party executing the electronic bond must retain a copy of the paper seal and make such seal available to CBP for inspection upon request.

(c) *Presumption of proper execution.* CBP is entitled to presume, without verification, that submitted bond applications and related documentation, which include the bond, are properly executed, complete, accurate, and in full compliance with all applicable laws.

19. In § 113.26:

- a. Paragraph (a) is amended by removing the word “Bonds” and adding in its place the words “Continuous bonds”; removing the number “30” and adding in its place “60”, and; removing the word “Customs” and adding in its place the term “CBP”;
- b. Paragraph (b) is amended by removing the words “Customs Bond, Customs” and adding in their place the term “CBP”;
- c. Paragraph (c) is amended by removing the words “Customs Bond, Customs” and adding in their place the term “CBP”; and
- d. Paragraph (e) is revised.

The revision to § 113.26(e) reads as follows:

§ 113.26 Effective dates of bonds and riders.

* * * * *

(e) *Rider to delete trade names and unincorporated divisions of a corporate principal.* A rider to delete trade names and unincorporated divisions of a corporate principal is effective on the effective date identified on the rider if the date is at least 15 days after the date CBP receives the rider. If the rider is not received 15 days before the identified effective date or no effective date is identified on the rider, it will be effective on the close of business of the fifteenth business day after it is received by CBP.

20. Section 113.27 is revised to read as follows:

§ 113.27 Effective dates of termination of bond.

(a) *Termination by principal/co-principal.* A written request by a principal or co-principal to terminate a continuous bond must be addressed to the Revenue Division (RD) and must state the date the termination will take effect. Once the RD has received a valid bond termination request, the termination cannot be withdrawn. The termination will take effect on the date requested if that date is at least 15 business days after the date the request is received by CBP. Where the requested date of termination is less than 15 business days from the date CBP received the request, or where no termination date has been requested, the termination will take effect on the close of business on the fifteenth business day after the request is received by CBP.

(b) *Termination by surety.* A surety may, with or without the consent of the principal, terminate a CBP bond on which it is obligated. Written notice of the termination must be sent to the principal and the RD and must state the date the termination will take effect. Once the RD has received a valid bond termination request, the termination cannot be withdrawn. The termination will take effect on the

date requested if that date is at least 15 business days after the date the notice is received by CBP. Where the requested date of termination is less than 15 business days from the date CBP received the notice, or where no termination date has been requested, the termination will take effect on the close of business on the fifteenth business day after the notice is received by CBP.

(c) *Effect of termination.* (1) After a bond is terminated, no new CBP transactions will be charged against the bond. A new bond in an appropriate amount on CBP Form 301 (or other form as designated by regulation), containing the appropriate bond conditions set forth in subpart G of this part, must be filed before further CBP activity may be transacted.

(2) Notwithstanding the above, when a principal intends to continue to engage in the same activity as that secured by a bond to be terminated pursuant to this section, and the principal has submitted a replacement bond to secure that continued activity, no termination requested by a principal or surety will take effect or be effective until CBP has reviewed and approved the replacement bond.

§ 113.32 [Amended]

21. In § 113.32:

- a. New introductory text is added to read as follows, “A partnership, including a limited partnership, means any business association recognized as such under the laws of the state where the association is organized.”;
- b. Paragraph (a) is removed;
- c. Existing paragraph (b) is redesignated as paragraph (a) and is amended by removing the word “shall” and adding in its place the word “must”; and
- d. Existing paragraph (c) is redesignated as paragraph (b) and is amended, in the first sentence, by removing the word “shall” and adding in its place the word “will”, and by removing the second sentence.

22. Section 113.33 is amended by:

- a. Revising the heading and paragraphs (a), (b), and (c);
- b. In paragraph (d), removing the words “port director” and adding in their place the term “RD”, and removing the word “shall” each place that it appears and adding the word “must”; and
- c. In paragraph (e), removing the words “shall be” and adding in their place the word “are”.

The revisions to § 113.33 read as follows:

§ 113.33 Corporations (including Limited Liability Corporations) as principals.

(a) *Name of corporation (including Limited Liability Corporation (LLC)) on bond.* The name of a corporation or LLC executing a CBP bond as a principal must be indicated on the bond.

(b) *Signature and seal of corporation (including Limited Liability Corporation (LLC)) on the bond.* Where the bond of a corporate or LLC principal is submitted to CBP on paper, it must be signed by an authorized officer or attorney of the corporation or LLC and the seal must be affixed immediately adjoining the signature of the person executing the bond, as provided for in § 113.25(a). Where the continuous bond of a corporate or LLC principal is submitted to the RD in an electronic format, the bond must contain the certification language set forth in § 113.11(e)(2) and, where applicable, the party executing the bond must retain a copy of the paper seal in accordance with § 113.25(b). CBP is entitled to presume, without verification, that submitted bond applications and related documentation, which include the bond, are properly executed, complete, accurate, and in full compliance with all applicable laws.

(c) *Bond executed by an officer of corporation (including Limited Liability Corporation (LLC)).* When a bond is executed by an officer of a corporation or LLC, the officer's signature constitutes prima facie evidence of that officer's authority to bind the corporation or LLC. CBP is entitled to presume, without verification, that submitted bond applications and related documentation, which include the bond, are properly executed, complete, accurate, and in full compliance with all applicable laws.

* * * * *

§ 113.34 [Amended]

23. Section 113.34 is amended by removing the word "shall" in the second sentence and adding in its place the word "may".

24. Section 113.35 is revised to read as follows:

§ 113.35 Individual sureties.

(a) *Number required.* If individuals sign as sureties, there must be two sureties on the bond unless CBP is satisfied that one surety is sufficient to protect the revenue and insure compliance with the law and regulations.

(b) *Qualifications to act as surety.* (1) *Residency and citizenship.* Each individual surety on a CBP bond must be both a resident and citizen of the United States.

(2) *Granting of power of attorney.* Any individual, unless prohibited by law, may grant a power of attorney to sign as surety on CBP bonds. Unless the power is unlimited, all persons to whom the power relates must be named.

(3) *Property requirements.* For both single transaction and continuous bonds, each individual surety must have property available as security within the customs territory of the United States. The current market value of the property less any encumbrance must be equal to or greater than the amount of the bond. If one individual surety is accepted, the individual surety must have property the value of which, less any encumbrance, is equal to or greater than twice the amount of the bond.

(c) *Oath and evidence of solvency.* Before being accepted as a surety, the individual must:

(1) Take an oath on CBP Form 3579, setting forth:

(i) The amount of assets over and above all debts and liabilities and such exemptions as may be allowed by law; and

(ii) The general description and location of one or more pieces of real estate owned within the customs territory of the United States, and the value thereof less any encumbrance.

(2) Produce such evidence of solvency and financial responsibility as CBP may require.

(d) *Determination of financial responsibility.* An individual surety will not be accepted on a bond until CBP is satisfied as to the financial responsibility of the individual. CBP may request Immigration and Customs Enforcement (ICE) to conduct an immediate investigation to verify a surety's financial responsibility.

(e) *Continuancy of financial responsibility.* In order to follow the continued solvency and financial responsibility of individual sureties, CBP will require a new oath and determine the financial responsibility of each individual surety as prescribed in paragraphs (c) and (d) of this section at least once every 6 months, and more often if deemed advisable.

§ 113.36 [Amended]

25. Section 113.36 is amended by removing the word "shall" and adding in its place the word "will".

26. In § 113.37:

- a. The second sentence in paragraph (a) is amended by removing the word "Customs" and adding in its place the term "CBP"; by removing the word "shall" where it appears after the word

“corporation” and adding in its place the word “will”; and by removing the words “shall be for a greater amount than” and adding in their place the words “may exceed”;

- b. Paragraph (b) is revised;
- c. Paragraph (c) is revised;
- d. Paragraph (d) is amended by removing the word “shall” and adding in its place the word “must”;
- e. Paragraph (e) is revised;
- f. Paragraph (f) is amended: by removing the word “shall” and adding in its place the word “must”; by removing the words “Bureau of Government Financial Operations” and adding in their place the words, “Financial Management Service”; by removing in the last paragraph of the “Corporate Sureties Agreement for Limitation of Liability” set forth under paragraph (f) the number “19__” and adding in its place “20__”; and by removing in the signature block the words “Port Director (Drawback Office)” and adding in their place the words “Authorized CBP officer”; and
- g. Paragraph (g) is revised.

The revisions of § 113.37 read as follows:

§ 113.37 Corporate sureties.

* * * * *

(b) *Name of corporation on the bond.* The name of a corporation executing a CBP bond as a surety must be indicated on the bond.

(c) *Name of agent or attorney on the bond.* The full name of the agent or attorney acting for a corporate surety, as it appears on the bond, must be indicated on the bond.

* * * * *

(e) *Signature and seal of the corporation on the bond.* Except where submitted in an electronic format, a bond executed by a corporate surety must be signed by an authorized officer or attorney of the corporation and the corporate seal must be affixed immediately adjoining the signature of the person executing the bond, as provided in § 113.25(a). Where a corporate surety submits a bond to the RD in an electronic format, the bond must contain the certification language prescribed by § 113.11(e)(2) and the corporate surety must retain a copy of the seal in accordance with § 113.25(b). CBP is entitled to presume, without verification, that submitted bond applications and

related documentation, which include the bond, are properly executed, complete, accurate, and in full compliance with all applicable laws.

* * * * *

(g) *Power of attorney for the agent or attorney of the surety.* Corporations may execute powers of attorney to act on their behalf in the following manner:

(1) *Execution and contents.* The corporate surety power of attorney must be executed on CBP Form 5297 and must contain the following information:

- (i) Corporate surety name and number;
- (ii) Name, address and social security number of agent or attorney;
- (iii) Date of execution of power of attorney;
- (iv) Seal of the corporate surety, either affixed to the CBP Form 5297 or, if submitted in an electronic format, the corporate surety must retain a copy of the seal in accordance with § 113.25(b).
- (v) Signature of any two principal officers of corporation or, where the corporate surety power of attorney is submitted in an electronic format, the principal officers must submit the certification language prescribed in § 113.11(e)(2); and
- (vi) Dollar amount of authorization.

(2) *Filing.* A corporate surety power of attorney executed on CBP Form 5297 must be filed at the RD via mail, fax, or in an electronic format pursuant to the terms prescribed by CBP (see the CBP Internet web site located at www.cbp.gov.) The RD will retain a copy of the original CBP Form 5297 and return a validated copy to the grantee.

(3) *Term and revocation.* Corporate surety powers of attorney will continue in force and effect until revoked. Any surety desiring that a designated agent or attorney be divested of a power of attorney must execute a revocation on CBP Form 5297 and submit this form to the RD. The revocation will take effect on the close of business on the date requested provided the CBP Form 5297 is received at least 5 business days before the date requested; otherwise, the revocation will take effect at the close of business 5 days after the request is received by the RD.

(4) *Change on the power of attorney.* The only changes permitted on the CBP Form 5297 after it has been approved by CBP are changes to the grantee's name and address. To make any other

change to the power of attorney requires the submission of two separate CBP Form 5297s: the first revoking the previous power of attorney and the second containing a new grant of authority.

(5) *Presumption of proper execution.* CBP is entitled to presume, without verification, that submitted bond applications and related documentation, which include the bond, are properly executed, complete, accurate, and in full compliance with all applicable laws.

27. In §113.38:

- a. The heading and text of paragraph (a) are amended by removing the word “Customs” each place it appears and adding the term “CBP”;
- b. The heading and text of paragraph (b) are amended by removing the word “Customs” each place it appears and adding the term “CBP”;
- c. The heading and text of paragraph (c)(1) are amended by adding the words “single transaction” before the word “bond”, and by removing the language, “Director, Border Security and Trade Compliance Division” and adding in its place, “Executive Director, Regulations and Rulings, Office of International Trade, CBP”;
- d. Paragraph (c)(2) is revised;
- e. Paragraph (c)(3) is amended by removing the word “Customs” and adding in its place the term “CBP”; and
- f. Paragraph (c)(4) is revised.

The revisions to § 113.38(c)(2) and (c)(4) read as follows:

§ 113.38 Delinquent sureties.

* * * * *

(c) * * *

(2) *Nonacceptance of bond upon instruction by Commissioner of CBP or Director, Revenue Division.* The Commissioner of CBP, or the Director, Revenue Division (RD), may issue instructions to CBP officers not to accept a bond secured by an individual or corporate surety who, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amounts thereof.

* * * * *

(4) *Review and final decision.* After a review of any submission made by the surety under paragraph (c)(3) of this section, if the

Commissioner of CBP, the Director, RD, or a port director is still of the opinion bonds secured by the surety should not be accepted, written notice of the decision will be provided to the surety in person or by certified mail, return receipt requested, at least five days before the date that CBP will no longer accept the bonds of the surety. Copies of the notice will also be provided to the Executive Director, Regulations and Rulings, Office of International Trade and, if the notice does not originate from the RD, to the Director, RD. Notice will be given to the importing public by publishing the decision in the Customs Bulletin.

* * * * *

§ 113.39 [Amended]

28. In § 113.39:

- a. The introductory text is amended by removing the words “a port director or Fines, Penalties, and Forfeitures Officer is unsatisfied” and adding in their place the words “CBP is dissatisfied”; and by removing the words “port director may” and adding in their place the words “an authorized CBP officer may”;
- b. The introductory text to paragraph (a) is amended by removing the words “A port director or Fines, Penalties, and Forfeitures Officer shall” and adding in their place the words “An authorized CBP officer will”;
- c. Paragraph (a)(5) is amended by removing the words the “port director or Fines, Penalties, and Forfeitures Officer” and adding in their place the words “authorized CBP officer”; and
- d. Paragraph (b) is amended: in the first sentence, by removing the words “The Director, Border Security and Trade Compliance Division, shall” and adding in their place the words “CBP Headquarters will”; in the second sentence, by removing the words “Bureau of Government Financial Operations” and adding in their place the words, “Financial Management Service”; and, in the last sentence, by removing the words “port director and Fines, Penalties, and Forfeitures Officer” and adding in their place the words “appropriate CBP officer and the Director, RD”.

29. In § 113.40:

- a. Paragraph (a) is revised;

- b. Paragraph (b) introductory text is revised and the “Power of Attorney and Agreement (For Corporation)” form is amended by removing the designation “19__” each place that it appears and adding “20__” in its place;
- c. Paragraph (c) is revised;
- d. New paragraphs (d) through (g) are added in alphabetical order.

The revisions to § 113.40 read as follows:

§ 113.40 Acceptance of cash deposits or obligations of the United States in lieu of sureties on bonds.

(a) *General provisions.* In lieu of sureties on any bond required or authorized by any law, regulation, or instruction which the Secretary of Homeland Security, the Secretary of the Treasury, or the Commissioner of CBP are authorized to enforce, the Director, Revenue Division (RD) may accept United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills in an amount equal to the face amount of the bond that would be required. The option to deposit cash or U.S. obligations in lieu of sureties is at the option of the importer. A CBP Form 301 designating the appropriate activity for the cash deposits or obligations in lieu of surety must also be filed. When cash or obligations in lieu of surety are accepted, it must be for a term of no more than one year. Additional cash deposits or obligations in lieu of surety may be required.

(b) *Authority to sell United States obligations on default.* At the time of deposit with the Director, Revenue Division (RD), of any obligation of the United States, other than United States money, the obligor must deliver a duly executed power of attorney and agreement authorizing the Director, RD, in the case of any default in the performance of any of the conditions of the bond, to sell the obligation so deposited and to apply the proceeds of the sale, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of default. The format of the power of attorney and agreement, when the obligor is a corporation, will be modified as appropriate when the obligor is either an individual or a partnership and reads as follows:

* * * * *

(c) *Application of United States money or obligations on default.* If U.S. cash or obligations are deposited in lieu of surety on any bond, the appropriate CBP officer is authorized to apply the cash or money received from the deposited obligation to satisfy any damages, demand, or deficiency arising from a default under the bond.

(d) *Application to the satisfaction of damages, demands or deficiencies.*

(1) *Matters subject to protest.* When the time to protest duties, fees, taxes, charges or exactions as set forth in 19 U.S.C. 1514 expires and no timely protest has been filed, or when a timely protest is filed and is denied in whole in part, CBP may collect against the cash deposit or obligation in lieu of surety and take any and all necessary steps to accomplish such collection.

(2) *User fees.* When the user fees required to be collected are not remitted to CBP in the time period prescribed by law or regulation, CBP may collect against the cash deposit or obligation in lieu of surety and take any and all necessary steps to accomplish such collection.

(3) *Matters subject to administrative petition.* (i) *No timely petition.* If no petition has been filed by the day after the expiration of the petitioning period provided by regulation or specific notice, CBP may collect against the cash deposit or obligation in lieu of surety and take any and all necessary steps to accomplish such collection. CBP may entertain untimely petitions and supplemental petitions and, if relief is granted and collection has been made, CBP will return to the established cash account the difference between the amount collected and the amount ultimately applied.

(ii) *Timely petition.* If CBP denies a petition, CBP may collect immediately against the cash deposit or obligation in lieu of surety and take any and all necessary steps to accomplish such collection. If CBP grants relief, CBP will return to the established cash account the difference between the amount posted and the amount ultimately applied after petitioning, taking all steps necessary to accomplish such collection.

(4) *No waiver of rights.* Forbearance or delay on the part of CBP in collection after it acquires the right to do so pursuant to the terms set forth in this section will not constitute a waiver of the Government's right to collect from the cash deposits or obligations in lieu of surety.

(e) *Additional security.* If, at any point prior to the expiration of the one-year maximum term for cash or obligations in lieu of a bond, CBP determines that the cash or obligations are not sufficient security, CBP possesses the right to require new, additional cash or obligations to be posted in lieu of surety. If new, additional cash or obligations are not timely posted, CBP may as a matter of right take action to

prevent the party from continuing the activity for which the initial cash or obligations was posted. CBP will continue to hold the initial cash or obligations as matter of right subject to the provisions found in paragraph (f) of this section.

(f) *Return of cash or obligations and setoff.* (1) *Tenure of holding.* CBP will hold cash and obligations until such time as CBP is reasonably certain that no circumstances will arise where CBP will need to collect against it. When CBP determines that it is reasonably certain that no circumstances may arise where it would need to collect against the cash or obligations and that the cash or obligations can be returned, CBP will, pursuant to § 24.72 of this chapter, set off the cash or obligations against debt owed to CBP.

(2) *No interest to accrue on cash in lieu of surety.* Cash in lieu of surety does not earn interest while CBP holds it, and it may not be placed in an interest-bearing account, not even a low-interest, low-risk account, under any circumstances.

(g) *No limitation on an importer's liability for duty and no effect on the duration of that liability.* An importer is personally liable for duties, taxes, and charges found due in connection with an entry of merchandise. Furthermore, there is no statute of limitations governing an importer's liability for such duties, taxes, and charges. The fact that an importer posts cash or obligations in lieu of a bond does not alter or affect the two legal facts just described.

§ 113.41 [Amended]

30. Section 113.41 is amended by: removing the word “shall” and adding in its place the word “must”; and removing the word “Customs” and adding in its place the term “CBP”.

§ 113.42 [Amended]

31. Section 113.42 is amended by: removing from the first sentence the word “shall” and adding in its place the word “must”; removing the word “Customs” and adding in its place the term “CBP”; removing the reference to “§ 133.43(a)” and adding in its place a reference to “§ 113.43(a)”; and removing in the second sentence the word “shall” and adding in its place the word “will”.

§ 113.43 [Amended]

32. In § 113.43:

- a. Paragraph (a) is amended by removing the words “of 2 months” and adding in their place the words “not to exceed 60 days”;

- b. Paragraph (b) is amended by: removing the word “shall” each place that it appears and adding the word “will”; and removing the words “2 months” each place that they appear and adding the words “60 days”; and
- c. Paragraph (c) is amended by removing the word “shall” each place that it appears and adding the word “will”.

§ 113.44 [Amended]

33. In § 113.44, paragraph (b) is amended by removing the word “shall” and adding in its place the word “must”.

§ 113.45 [Amended]

34. Section 113.45 is amended by: removing the word “shall” and adding in its place the word “must”; and removing the word “entry” each place that it appears and adding the word “transaction”.

§ 113.51 [Amended]

35. Section 113.51 is amended by removing the word “Customs” and adding in its place the term “CBP”.

§ 113.52 [Amended]

36. Section 113.52 is amended by: removing the word “Customs” and adding in its place the term “CBP”; removing the symbols “§§” and adding in their place the symbol “§”; removing the words “is unsatisfied” and adding in their place the words “has not been satisfied”; and removing the word “shall” and adding in its place the word “will”.

§ 113.53 [Amended]

37. In § 113.53:

- a. The section heading is amended by removing the word “Customs” and adding in its place the term “CBP”;
- b. Paragraph (a) is amended by: removing in the paragraph heading the word “Customs” and adding in its place the term “CBP”; removing in the introductory text the word “Customs” each place that it appears and adding the term “CBP”; and adding in paragraph (a)(3) after the word “Commissioner” the words “of CBP”; and
- c. Paragraph (b) is amended by: adding in the paragraph heading, after the word “director”, the words “or other authorized CBP officer”; removing, in the text, the word “Customs” and adding in its place the term “CBP”; adding after the word “director” the words “or other authorized CBP officer”; and removing the word “shall” and adding in its place the word “will”.

§ 113.55 [Amended]

38. In § 113.55:

- a. Paragraph (c) is amended by: removing in the introductory text the word “shall” each place that it appears and adding the word “must”; removing the word “Customs” and adding in its place the word “customs”; removing in paragraph (c)(1) the word “shall” and adding in its place the word “will”; and removing in paragraph (c)(3) the word “Customs” and adding in its place the term “CBP”; and
- b. Paragraph (d) is removed.

Subpart G—CBP Bond Conditions

39. The subpart G heading is revised to read as set forth above.

§ 113.61 [Amended]

40. Section 113.61 is amended, in the first sentence, by removing the upper case word “Customs” and adding in its place the lower case word “customs”; and in the second sentence, by removing the word “Customs” and adding in its place the term “CBP”.

41. In § 113.62:

- a. The introductory text is amended by: removing the word “shall” and adding in its place the word “must”; and by removing the words “single entry” and adding in their place the words “single transaction”;
- b. Paragraphs (a)(1), (a)(1)(ii), and (a)(2) are amended by: removing the word “Customs” each place that it appears and adding the term “CBP”; and in paragraph (a)(1)(i), by adding after the word “regulation” the words “and including payments made via periodic monthly statement”;
- c. Paragraph (a)(3) is amended by removing the words “the port director” and adding in their place the term “CBP”;
- d. The introductory text to paragraph (b) and paragraph (b)(1) are amended by removing the word “Customs” each place that it appears and adding the term “CBP”;
- e. Paragraph (c) is amended by removing the word “Customs” and adding in its place the term “CBP”;
- f. Paragraph (d) introductory text is amended by removing the word “Customs” wherever it appears and adding in each place the term “CBP”;
- g. Paragraph (f) introductory text and paragraph (f)(2) are amended by removing the word “Customs” wherever it appears and adding in each place the term “CBP”;

- h. Paragraph (f)(3) is revised;
- i. Paragraph (g)(1) is amended by removing the word “Customs” and adding in its place the term “CBP”;
- j. Paragraph (h)(2) is revised;
- k. Paragraphs (h)(3) and (h)(4) are amended by removing the word “Customs” each place that it appears and adding the term “CBP”;
- l. The heading and text of paragraph (i) are amended by removing the words “Customs Regulations” each place that they appear and adding the words “CBP regulations”; and by removing the words “Customs security” each place that they appear and adding the words “CBP security”;
- m. Paragraphs (m)(2) and (m)(4) are amended by removing the word “Customs” each place that it appears and adding the term “CBP”; and by removing the word “shall” each place that it appears and adding the word “will”.

The revisions to § 113.62 read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(f) * * *

(3) Keep any customs seal or cording on the merchandise intact until the merchandise is examined by CBP.

* * * * *

(h) * * *

(2) If a fishing vessel, to present the original approved application to CBP within 24 hours on each arrival of the vessel in the customs territory of the United States from a fishing voyage;

* * * * *

42. In § 113.63:

- a. The introductory paragraph is amended by removing the word “shall” each place that it appears and adding the word “must”;
- b. Paragraphs (a)(2) and (a)(3) are amended by removing the word “Customs” each place that it appears and adding the term “CBP”; and paragraph (a)(3) is further amended by adding the term “CBP” immediately before the word “regulations”;
- c. Paragraph (a)(5) is amended by removing the word “Customs” each place that it appears and adding the term “CBP”;

- d. Paragraphs (b)(2) and (b)(3) are amended by removing the word “Customs” each place that it appears and adding the term “CBP”;
 - e. Paragraphs (c)(1), (c)(2), (c)(3) and (c)(4) are amended by removing the word “Customs” each place that it appears and adding the term “CBP”;
 - f. Paragraph (d) is amended by removing in the paragraph heading and text the word “Customs” each place that it appears and adding the term “CBP”;
 - g. Paragraph (e) is amended by removing the words “Customs laws and regulations” and adding in their place the words “customs laws and CBP regulations”;
 - h. The heading and text of paragraph (f) are amended by removing the words “Customs Regulations” each place that they appear and adding the words “CBP regulations”, and by removing the words “Customs security” each place that they appear and adding the words “CBP security”;
 - i. Paragraphs (h)(1), (h)(2) and (h)(5) are amended by removing the word “Customs” each place that it appears and adding the term “CBP”;
 - j. Paragraph (i)(2) is amended by removing the word “shall” and adding in its place the word “will”; and by removing the word “Customs” and adding in its place the term “CBP”; and
 - k. Paragraph (i)(3) is amended by removing the word “Customs” and adding in its place the term “CBP”.
43. In § 113.64:
- a. The introductory paragraph is amended by: removing the word “shall” and adding in its place the word “must”; and by removing the word “entry” and adding in its place the word “transaction”;
 - b. Paragraph (a) is amended by removing the second sentence;
 - c. Existing paragraphs (b) through (k) are redesignated as paragraphs (c) through (l);
 - d. A new paragraph (b) is added;
 - e. Newly redesignated paragraph (c) is amended by removing the word “Customs” each place that it appears and adding the term “CBP”; and in the third sentence by removing the word “shall” and adding in its place the word “will”;
 - f. The heading and text of newly redesignated (j) are amended by removing the words “Customs Regulations” each place that

they appear and adding the words “CBP regulations”; and by removing the words “Customs security” each place that they appear and adding the words “CBP security”; and

- g. Newly redesignated paragraphs (1)(1) and (1)(2) are amended by removing the word “Customs” each place that it appears and adding the term “CBP”.

The revisions to § 113.64 read as follows:

§ 113.64 International carrier bond conditions.

* * * * *

(b) *Agreement to pay liquidated damages.* (1) *Passenger processing fees:* If the principal (carrier) fails to pay passenger processing fees to CBP no later than 31 days after the close of the calendar quarter in which they were required to be collected pursuant to § 24.22(g) of this chapter, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to two times the passenger processing fees which were required to be collected but not timely remitted to CBP, regardless of whether such fees were in fact collected from passengers, as prescribed by regulation.

(2) *Railroad car processing fees:* If the principal (carrier) fails to pay railroad car processing fees to CBP no later than 60 days after the close of the calendar month in which they were collected pursuant to § 24.22(d) of this chapter, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to two times the railroad car processing fees which have not been timely paid to CBP as prescribed by regulation.

(3) *Reimbursement fees payable by express consignment carrier and centralized hub facilities.* If the principal (carrier) fails to timely pay the reimbursement fees payable to CBP by express consignment carrier facilities and centralized carrier facilities pursuant to the terms set forth in § 24.23(b)(4) of this chapter, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to two times the fees which have not been timely paid to CBP as prescribed by that section.

* * * * *

§ 113.65 [Amended]

44. In § 113.65:

- a. The introductory paragraph is amended by: removing the word “shall” and adding in its place the word “must”; and by removing the word “entry” and adding in its place the word “transaction”; and
 - b. Paragraphs (a)(3) and (a)(4) are amended by removing the word “Customs” each place that it appears and adding the term “CBP”.
45. In § 113.66:
- a. The introductory paragraph is amended by removing the word “shall” each place that it appears and adding the word “must”;
 - b. Paragraph (a) introductory text and paragraph (a)(1) are revised;
 - c. Paragraph (b)(3) is amended by removing the word “Customs” and adding in its place the term “CBP”;
 - d. Paragraph (c)(2) is amended by removing the word “Customs” and adding in its place the term “CBP”;
 - e. Paragraph (d)(2) is amended by: removing the word “shall” and adding in its place the word “will”; and by removing the word “Customs” and adding in its place the term “CBP”; and
 - f. Paragraph (d)(3) is amended by removing the word “Customs” and adding in its place the term “CBP”.

The revisions to § 113.66(a) read as follows:

§ 113.66 Control of containers and instruments of international traffic bond conditions.

(a) *Agreement to Enter Any Diverted Instrument of International Traffic.* If the principal brings in and takes out of the customs territory of the United States an instrument of international traffic without entry and without payment of duty, as provided by the CBP regulations and section 322(a), Tariff Act of 1930, as amended (19 U.S.C. 1322(a)), the principal agrees to:

- (1) Report promptly to CBP when the instrument is diverted to point-to-point local traffic in the customs territory of the United States or when the instrument is otherwise withdrawn in the customs territory of the United States from its use as an instrument of international traffic.

* * * * *

§ 113.67 [Amended]

46. In § 113.67:

- a. The introductory text to paragraph (a) is amended by removing the word “shall” each place that it appears and adding the word “must”;
- b. Paragraphs (a)(1) introductory text, (a)(1)(i), and (a)(1)(iii) are amended by removing the word “Customs” each place that it appears and adding the term “CBP”;
- c. Paragraph (a)(2)(iii) is amended by: removing the word “shall” and adding in its place the word “will”; and by removing the word “Customs” where it appears and adding in each place the term “CBP”.
- d. The introductory text to paragraph (b) is amended by removing the word “shall” each place that it appears and adding the word “must”; and
- e. Paragraphs (b)(1), (b)(1)(i), (b)(1)(iii), and (b)(2)(iii) are amended by removing the word “Customs” each place that it appears and adding the term “CBP”.

§ 113.68 [Amended]

47. In § 113.68:

- a. The introductory text is amended by: removing the word “shall” each place that it appears and adding the word “must”; and by removing the word “entry” and adding in its place the word “transaction”;
- b. Paragraph (a) is amended by removing the word “Customs” and adding in its place the term “CBP”; and
- c. The second sentence of paragraph (b) is amended by removing the word “shall” and adding in its place the word “will”; and by removing the word “Customs” and adding in its place the term “CBP”.

§ 113.69 [Amended]

48. In § 113.69:

- a. The introductory text is amended by: removing the word “shall” each place that it appears and adding the word “must”; and by removing the word “entry” and adding in its place the word “transaction”; and
- b. The introductory paragraph in the “Production of Bill of Lading Bond Conditions” is amended by removing the word “Customs” and adding in its place the term “CBP”.

§ 113.70 [Amended]

49. In § 113.70:

- a. The introductory paragraph is amended by: removing the word “shall” each place that it appears and adding the word “must”; and by removing the word “entry” and adding in its place the word “transaction”; and
- b. The first sentence in the “Bond Condition to Indemnify United States for Detention of Copyrighted Material” is amended by removing the word “Customs” and adding in its place the term “CBP”.

§ 113.71 [Amended]

50. In § 113.71, the introductory text is amended by: removing the word “shall” each place that it appears and adding the word “must”; and by removing the word “entry” and adding in its place the word “transaction”.

§ 113.72 [Amended]

51. In § 113.72, the introductory text is amended by: removing the word “shall” each place that it appears and adding the word “must”; and by removing the word “entry” and adding in its place the word “transaction”.

§ 113.73 [Amended]

52. In § 113.73:

- a. The introductory text is amended by removing the word “shall” each place that it appears and adding the word “must”;
- b. Paragraph (a)(1) is amended by removing the word “Customs” and adding in its place the term “CBP”;
- c. Paragraph (a)(2) is amended by: removing the word “Customs” each place that it appears and adding the term “CBP”; and by removing the word “shall” in the third sentence and adding in its place the word “will”;
- d. Paragraph (b) is amended by: removing the word “shall” and adding in its place the word “will”; and by removing the word “Customs” and adding in its place the term “CBP”;
- e. Paragraph (d)(2) is amended by removing the phrase “Customs officer” and adding in its place the term “CBP Officer”; and
- f. Paragraph (e) is amended by removing the word “Customs” and adding in its place the term “CBP”.

§ 113.74 [Amended]

53. Section 113.74 is amended by removing the word “entry” and adding in its place the word “transaction”.

Appendix A to Part 113 [Amended]

54. Appendix A to Part 113 is amended by removing:

- a. In the Appendix heading, the title of the bond, and the text of the bond, the words “Customs security” each place that they appear and adding the words “CBP security”; and
- b. In the text of the bond, the number “19” where it appears and adding the number “20”; the words ”Customs airports” and adding the words “CBP airports”; and the words “Customs Regulations” and adding the words “CBP regulations”.

Appendix B to Part 113 [Amended]

55. Appendix B to Part 113 is amended by removing the word “Customs” each place that it appears and adding the term “CBP”.

Appendix C to Part 113 [Amended]

56. Appendix C to Part 113 is amended by removing the word “Customs” each place that it appears and adding the term “CBP”.

PART 133 — TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

57. The general and specific authority citations for part 133 continue to read as follows:

AUTHORITY: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

Sections 133.21 through 133.25 also issued under 15 U.S.C. 1124, 19 U.S.C. 1526.

* * * * *

58. Section 133.21(d) is revised to read as follows:

§ 133.21 Articles bearing counterfeit trademarks.

* * * * *

(d) *Samples available to the trademark owner.* At any time following seizure of the merchandise, CBP may provide a sample of the subject merchandise to the owner of the trademark for examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. To obtain a sample under this section, the trademark/trade name owner must furnish CBP with a single transaction bond in the form and amount specified by the port director or a continuous bond in the form and amount specified by the Director, Revenue Division. CBP may demand the return of the sample at any

time. The owner must return the sample to CBP upon demand or at the conclusion of the examination, testing or other use in pursuit of a related private civil remedy for trademark infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark owner, the owner must, in lieu of return of the sample, certify to CBP that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.21(d) was (damaged/destroyed/lost) during examination, testing or other use.”

* * * * *

59. Section 133.25(c) is revised to read as follows:

§ 133.25 Procedure on detention of articles subject to restriction.

* * * * *

(c) *Samples available to the trademark or trade name owner.* At any time following presentation of the merchandise for CBP’s examination, but prior to seizure, CBP may provide a sample of the suspect merchandise to the owner of the trademark or trade name for examination or testing to assist in determining whether the article imported bears an infringing trademark or trade name. To obtain a sample under this section, the trademark/trade name owner must furnish CBP with a single transaction bond in the form and amount specified by the port director or a continuous bond in the form and amount specified by the Director, Revenue Division. CBP may demand the return of the sample at any time. The owner must return the sample to CBP upon demand or at the conclusion of the examination or testing. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark or trade name owner, the owner must, in lieu of return of the sample, certify to CBP that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.25(c) was (damaged/destroyed/lost) during examination or testing for trademark infringement.”

* * * * *

60. In § 133.42, paragraph (e) is amended by: revising the second sentence; removing the word “Customs” where it appears and adding in each place the term “CBP”; and, in the last sentence, removing the word “shall” and adding in its place the word “must”.

The revision to § 133.42(e) reads as follows:

§ 133.42 Infringing copies or phonorecords.

* * * * *

(e) *Samples available to the copyright owner.* * * * To obtain a sample under this section, the copyright owner must furnish to CBP a single transaction bond in the form and amount specified by the port director or a continuous bond in the form and amount specified by the Director, Revenue Division. * * *

* * * * *

Dated: December 14, 2009

JAYSON P. AHERN,
Acting Commissioner
U.S. Customs and Border Protection

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury

[Published in the Federal Register January 5, 2010 (75 FR 266)]



**QUARTERLY IRS INTEREST RATES USED IN
CALCULATING INTEREST ON OVERDUE ACCOUNTS AND
REFUNDS ON CUSTOMS DUTIES**

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

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning January 1, 2010, the interest rates for overpayments will be 3 percent for corporations and 4 percent for non-corporations, and the interest rate for underpayments will be 4 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

EFFECTIVE DATE: January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614-4516.

SUPPLEMENTARY INFORMATION:**Background**

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the Federal Register on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2009-37, the IRS determined the rates of interest for the calendar quarter beginning January 1, 2010, and ending on March 31, 2010. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). For corporate overpayments, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). These interest rates are subject to change for the calendar quarter beginning April 1, 2010, and ending June 30, 2010.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under-payments</u> (percent)	<u>Over-payments</u> (percent)	<u>Corporate Overpayments</u> (Eff. 1-1-99) (percent)
070174	063075	6%	6%	
070175	013176	9%	9%	
020176	013178	7%	7%	
020178	013180	6%	6%	

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under- payments</u> (percent)	<u>Over- payments</u> (percent)	<u>Corporate Overpayments</u> (Eff. 1-1-99) (percent)
020180	013182	12%	12%	
020182	123182	20%	20%	
010183	063083	16%	16%	
070183	123184	11%	11%	
010185	063085	13%	13%	
070185	123185	11%	11%	
010186	063086	10%	10%	
070186	123186	9%	9%	
010187	093087	9%	8%	
100187	123187	10%	9%	
010188	033188	11%	10%	
040188	093088	10%	9%	
100188	033189	11%	10%	
040189	093089	12%	11%	
100189	033191	11%	10%	
040191	123191	10%	9%	
010192	033192	9%	8%	
040192	093092	8%	7%	
100192	063094	7%	6%	
070194	093094	8%	7%	
100194	033195	9%	8%	
040195	063095	10%	9%	
070195	033196	9%	8%	
040196	063096	8%	7%	
070196	033198	9%	8%	
040198	123198	8%	7%	
010199	033199	7%	7%	6%
040199	033100	8%	8%	7%
040100	033101	9%	9%	8%
040101	063001	8%	8%	7%
070101	123101	7%	7%	6%

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under-payments (percent)</u>	<u>Over-payments (percent)</u>	<u>Corporate Overpayments (Eff. 1-1-99) (percent)</u>
010102	123102	6%	6%	5%
010103	093003	5%	5%	4%
100103	033104	4%	4%	3%
040104	063004	5%	5%	4%
070104	093004	4%	4%	3%
100104	033105	5%	5%	4%
040105	093005	6%	6%	5%
100105	063006	7%	7%	6%
070106	123107	8%	8%	7%
010108	033108	7%	7%	6%
040108	063008	6%	6%	5%
070108	093008	5%	5%	4%
100108	123108	6%	6%	5%
010109	033109	5%	5%	4%
040109	033110	4%	4%	3%

Dated: December 29, 2009

JAYSON P. AHERN
Acting Commissioner
U.S. Customs and Border Protection

[Published in the Federal Register January 5, 2010 (75 FR 419)]

Docket No. USCBP-2009-0036

**RECEIPT OF DOMESTIC INTERESTED PARTY PETITION
 CONCERNING THE TARIFF CLASSIFICATION OF
 WICKLESS WAX OBJECTS**

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

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs and Border Protection (CBP) has received a petition submitted on behalf of a domestic interested party request-

ing the reclassification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain wickless wax objects from China. Currently, these objects are classified as “Molded or carved articles of wax” under subheading 9602.00.40, HTSUS. The petitioner contends that the proper classification for these wickless wax objects is in subheading 3406.00.00, HTSUS, as candles. While the 2009 duty rates of both these subheadings is free, petitioner claims that the importers of these products are using this classification as a means of circumventing a dumping order that has been placed on petroleum wax candles from China. This document invites comments with regard to the correctness of the current classification.

DATES: Comments must be received on or before March 8, 2010.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2009-0036.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 799 9th Street, NW (Mint Annex), Washington, DC 20229-1179.

Instructions: All submissions received must include the agency name and docket number for this notice of domestic interested party petition concerning the tariff classification of wickless wax objects. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents, exhibits, or comments received go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Customs and Border Protection, Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, 799 9th Street, NW, 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325-0118. Please note that any submitted comments that CBP receives by mail will be posted on the above-referenced docket for the public’s convenience.

FOR FURTHER INFORMATION CONTACT: Jean-Rene Brousard, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection at (202) 325-0284.

SUPPLEMENTARY INFORMATION:

Background

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of the National Candle Association (NCA), which represents approximately 150 member companies. A majority of NCA's members manufacture, produce, or wholesale candles or candle supplies in the United States. Its members account for approximately 90 percent of all candles made in the United States. The NCA meets all of the requirements of a domestic interested party set forth in 19 U.S.C. 1516(a)(2) and 19 CFR 175.3. The NCA is requesting that Customs and Border Protection (CBP) reclassify the imported wickless wax objects classified in heading 9602, Harmonized Tariff Schedule of the United States (HTSUS), in the following rulings:

- NY L85725, dated June 30, 2005, classified a white solid wax cylinder with a scented fragrance that measures approximately 3" in height and 3" in diameter.
- NY L85383, dated June 15, 2005, classified four wax items without wicks. Item 1 is described as a yellow colored solid wax molded cylinder measuring approximately 3" in height and 3" in diameter. The cylinder has a ¼" hole drilled through its center from top to bottom but does not contain a wick. Item 2 is a pink colored solid wax molded cylinder that measures approximately 2" x 2" x 6". The cylinder has a ¼" hole drilled through its center from top to bottom, but does not contain a wick. Item 3 is an orange colored solid wax molded triangle that measures approximately 3" x 3" x 3". The triangle has a ¼" hole drilled through its center from top to bottom, but does not contain a wick. Item 4 is a blue and white colored solid wax molded hexagon that measures approximately 1" on each side and 4" in height. The hexagon has a ¼" hole drilled through its center from top to bottom, but does not contain a wick.
- NY L84761, dated June 2, 2005, classified a red solid wax cylinder with a scented fragrance that measures approximately 3"

in height and 3" in diameter. The cylinder has a ¼" hole drilled through its center from top to bottom, but does not contain a wick.

- NY G88343, dated March 26, 2001, classified three wax items without wicks. Item 1 is a yellow and lime colored solid wax cylinder that measures approximately 3" in height and 3" in diameter. The cylinder has a ¼" hole drilled through its center from top to bottom, but does not contain a wick. Item 2 is a cylindrical white wax candle holder embedded with fruits, cinnamon sticks and green leaves. The container measures approximately 4" in height and 4" across its widest point. Item 3 is a cylindrical white wax candle holder decorated with a flower, a turkey and rain drop stickers. The container measures approximately 4" in height and 4" across its widest point.
- NY G87878, dated March 7, 2001, classified one wax object without a wick. Item CA23505B, a Basket weave-Look Wax Bowl, is a green colored wax bowl without a wick that measures approximately 3 ¼" in height and 8" in diameter.
- NY G85945, dated January 16, 2001, classified one wax object without a wick. Item 6 is described as a wax bowl, which is a white colored scented wax bowl with no wick that measures approximately 4" in height and 10 ½" in diameter and is decorated with a flower design.
- NY F82375, dated February 11, 2000, classified five wax objects without a wick. Item A is a purple colored solid paraffin wax cylinder that measures approximately 5 ½" in height and 3" in diameter. Item B is a white solid paraffin wax square pillar, approximately 6" in height and 3" wide. Item C is a brown solid paraffin wax block that is approximately 3" in height and 6" square. Item D is a pearl colored rounded wax piece molded in the shape of an oval approximately 1 ½" in height and 3 ½" in diameter. Item E is a white solid paraffin scented wax square block, approximately 3 ½" in height and 3" wide. This item has a hole drilled directly through the center, but does not contain a wick. The ruling indicates that further processing may be performed on the objects such as drilling a hole when needed, adding wicks, dipping, polishing, labeling and packaging.
- NY F81245, dated January 11, 2000, classified a wax block that is scented and measures approximately 6 1/8" in height and 2 ¾" wide. The block is blue and white colored and does not have a hole drilled through it.

- NY E89220, dated November 8, 1999, classified two wax objects. The first sample is described as a scented burgundy colored wax column that measures approximately 9" in height and 3 7/8" in diameter. There is a hole in the top and bottom of the column. The second sample is a pink colored wax column molded in the shape of a baluster that measures approximately 12" in height and 2 3/4" in diameter. The column has a hole in its top and bottom.
- NY E87727, dated September 27, 1999, classified one wax object without a wick. Raw Material C is a white colored solid wax cylinder that measures approximately 5" in height and 5" in diameter. The cylinder has a 1/4" hole drilled through its center from top to bottom.
- NY E82227, dated May 18, 1999, classified a paraffin wax column molded in the shape of an orange colored 3" cube. The cube has a hole in the middle, but does not have a wick. The wax column may also be imported in various rectangular dimensions or in a round shape measuring either 3" in height or 6" in height and 6" in diameter.
- NY E81505, dated May 12, 1999, classified a cog wheel which is described as a wax disc molded in the shape of a cog wheel and measures approximately 1 1/2" in height and 1 1/2" in diameter. The disc is scented and has a hole in the middle, but does not have a wick. The indicated use of the object is for aroma therapy.
- NY D88246, dated March 12, 1999, classified three wax items. One sample is molded in the shape of a square pillar (approximately 3" square and 3 1/2" in height). The other two items are molded in the shape of round columns (approximately 3" in diameter and 3" in height). All of the objects have a hole drilled directly through the center but do not have wicks. The importer indicated that further finishing would be performed in the U.S.

In the rulings listed above, CBP applied General Rule of Interpretation (GRI) 1 to classify the subject merchandise in subheading 9602.00.40, HTSUS, which provides for "[w]orked vegetable or mineral carving material and articles of these materials; molded or carved articles of wax, of stearin, of natural gums or natural resins, of modeling pastes, and other molded or carved articles, not elsewhere specified or included; worked, unhardened gelatin (except gelatin of heading 3503) and articles of unhardened gelatin: [m]olded or carved articles of wax...". Petitioner maintains that this classification is incorrect because it believes that the wax objects are unfinished or

unassembled candles and should be classified in heading 3406, HTSUS, which provides for “[c]andles, tapers and the like” by application of GRI 2(a). In the alternative, the petitioner argues that the wax objects are *prima facie* classifiable in headings 3406 and 9602, HTSUS, and that heading 3406, HTSUS, is the more specific heading by application of GRI 3(a). The 2009 column one general rate of duty for heading 3406, HTSUS, is free.

Classification under the HTSUS is made in accordance with the GRIs. GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system. CBP believes the ENs should always be consulted. *See* Treasury Decision (T.D.) 89–80, 54 FR 35127, 35128 (Aug. 23, 1989).

The Petitioner’s Views

The NCA asserts that Chinese importers are using the classification of wax articles in heading 9602, HTSUS, to circumvent the dumping order on petroleum wax candles from China. *See Petroleum Wax Candles from the People’s Republic of China: Antidumping Duty Order*, 51 FR 30686 (August 28, 1986). In particular, the NCA cites a recent circumvention order issued in 2007 as evidence of this attempt to avoid dumping duties. The order provides that wickless wax forms in the shape of tapers, spirals, rounds, columns, votives pillars, as well as wax-filled containers being imported by or sold to DÉCORWARE, Inc., A&M Wholesalers, Inc., or Albert E. Price are circumventing the dumping order on petroleum wax candles from China. *See Notice of Partial Termination and Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order: Petroleum Wax Candles from the People’s Republic of China*, 72 FR 14518 (March 28, 2007) and *Petroleum Wax Candles from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 72 FR 31053 (June 5, 2007). As in the circumvention inquiry noted above, NCA points to sample candles

with wicks that were allegedly inserted after importation into the U.S. claiming that the wicks of these candles are easily removed which indicates that the wicks were inserted into drilled holes in the wax after importation into the United States. Hence, the NCA believes that the wickless wax forms should be classified as unfinished candles in heading 3406, HTSUS, so as to make circumvention of anti-dumping duties difficult.

In support of NCA's classification argument it refers to the EN for heading 9602, HTSUS, which states "moulded articles means articles which have been moulded to a shape appropriate to their intended use. On the other hand, materials moulded in the shape of blocks, cubes, plates, bars, sticks, etc., whether or not impressed during moulding, are not included." The NCA asserts that the exclusionary language of this note prevents the classification of these objects in heading 9602, HTSUS, by application of GRI 1, thus requiring the application of GRIs 2 or 3.

NCA asserts that the wax objects should be classified in heading 3406, HTSUS, by application of either GRI 2(a) or 3(a). NCA argues that the wax objects are unfinished candles, or blanks, that have the essential character of a candle. It contends that the wax objects provide the finished candle with the shape, color, and size of the finished product and that most consumers identify candles based on these characteristics. In the alternative it argues that the wax objects are unassembled candles by application of GRI 2(a). A third alternative argument offered by NCA is that the wax objects are *prima facie* classifiable in both heading 3406, HTSUS, and heading 9602, HTSUS, and that heading 3406, HTSUS, is more specific than heading 9602, requiring classification in heading 3406, HTSUS, by application of GRI 3(a).

Analysis Used by CBP in Prior Rulings

In the rulings that are the subject of this petition, CBP held that classification in heading 3406, HTSUS, at the GRI 1 level is not possible because these objects do not meet the common definition of a candle.

Historically CBP has classified these wax objects in subheading 9602.00.40, HTSUS, as molded or carved articles of wax by application of GRI 1 because it concluded that the terms of heading 9602, HTSUS, completely describe the subject goods. CBP has interpreted the language of the EN to heading 9602, HTSUS, to mean that a molded article of wax is any object that has been shaped or cut from its primary or bulk form. The exclusionary language of this EN describes wax that is in its primary or bulk form. All of the articles are

molded into smaller shapes from their primary or bulk forms and many of the objects have been carved by the act of drilling holes into the wax. CBP's position has been that these objects are not classifiable as wax in its primary form and thus are completely described as molded articles of wax in heading 9602, HTSUS, by application of GRI 1.

Moreover, in its prior rulings, CBP held that the wax objects are not classifiable as unfinished candles in heading 3406, HTSUS, by application of GRI 2(a) because the wax objects are classifiable by application of GRI 1. CBP reasoned that a candle functions as a source of illumination that is composed of a wick surrounded by wax. CBP concluded that the wax objects, on their own, were unable to provide illumination. CBP's historical position is that the essential character of a candle is imparted by both the wick and the wax components. None of the wax objects have a wick and are unable to provide its user with light. Therefore, CBP held that the wax objects do not have the essential character of a candle.

In addition, CBP also held that the wax forms are not unassembled candles because unassembled goods must be imported with the requisite number of parts. None of the rulings indicate that the wax objects were being imported with an equal number of wicks. Therefore, CBP has concluded that classification by application of GRI 2(a) in heading 3406, HTSUS is inappropriate.

Finally, CBP's prior decisions held that classification by application of GRI 3(a) is inappropriate because the wax objects are not *prima facie* classifiable in two or more headings of the HTSUS. In order for classification by application of GRI 3(a) to be appropriate the goods cannot be classifiable by application of GRIs 1 or 2 and the good must be *prima facie* classifiable in two or more headings. As indicated above, CBP has held that heading 3406, HTSUS, does not describe the imported products. As a result, the wax articles are not *prima facie* classifiable in any other heading, except heading 9602, HTSUS.

Comments

Pursuant to section 175.21(a), CBP regulations (19 CFR 175.21(a)), before making a determination on this matter, CBP invites written comments on the petition from interested parties.

The domestic interested party petition concerning the tariff classification of wax objects, as well as all comments received in response to this notice, will be available for public inspection on the docket at www.regulations.gov. Please note that any submitted comments that CBP receives by mail will be posted on the above-referenced docket for the public's convenience.

Authority

This notice is published in accordance with section 175.21(a), CBP Regulations (19 CFR 175.21(a)) and 19 U.S.C. 1516.

Dated: December 29, 2009

JAYSON P. AHERN

Acting Commissioner

U.S. Customs and Border Protection

[Published in the Federal Register January 5, 2010 (75 FR 420)]



NATIONAL CUSTOMS AUTOMATION PROGRAM TEST CONCERNING AUTOMATED COMMERCIAL ENVIRONMENT (ACE) ENTRY SUMMARY, ACCOUNTS AND REVENUE (ESAR III) CAPABILITIES RELATING TO THE FILING AND PROCESSING OF AD/CVD ENTRIES AND CASE MANAGEMENT

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

ACTION: General notice.

SUMMARY: This document announces Custom and Border Protection's (CBP's) plan to conduct a National Customs Automation Program (NCAP) test concerning new Automated Commercial Environment (ACE) Entry Summary, Accounts and Revenue (ESAR III) capabilities. These new capabilities include functionalities specific to the filing and processing of anti-dumping and countervailing duty (AD/CVD) entries and case management. This notice announces the test's commencement, describes the eligibility, procedural and documentation requirements for voluntary participation in the test, outlines CBP's development and evaluation methodology, and invites public comment concerning any aspect of the test.

DATES: The ESAR III test will commence no earlier than January 17, 2010, and will continue until concluded by way of announcement in the **Federal Register**. Comments concerning this notice and any aspect of the test may be submitted at any time during the test period to the address set forth below.

ADDRESSES: Comments concerning this notice should be submitted via e-mail to Joe Palmer at *ESARinfoinbox@dhs.gov*. Please indicate "ESAR III (AD/CVD Entry Summary Processing/Case Mgt Notice)" in the subject line of your e-mail.

FOR FURTHER INFORMATION CONTACT: For policy-related questions, contact Christine Furgason at *christine.furgason@dhs.gov*. For technical questions related to ABI transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to the Client Representative Branch at (703) 650-3500.

SUPPLEMENTARY INFORMATION:

Background

I. ACE Test Programs

A. ACE Portal Accounts

On May 1, 2002, the former U.S. Customs Service, now U.S. Customs and Border Protection (CBP), published a General Notice in the **Federal Register** (67 FR 21800) announcing a plan to conduct a National Customs Automation Program (NCAP) test of the first phase of the Automated Commercial Environment (ACE). The test was described as the first step toward the full electronic processing of commercial importations with a focus on defining and establishing an importer's account structure. The notice announced that importers and authorized parties would be allowed to access their customs data via a web-based Account Portal. The notice set forth eligibility criteria for companies interested in establishing Account Portals accessible through ACE. Subsequent notices revised the eligibility criteria (see General Notice published in the **Federal Register** on February 1, 2005 (67 FR 5199)) and expanded the universe of eligible participants in the ACE test and the types of ACE Portal Accounts.

On February 4, 2004, CBP published two General Notices in the **Federal Register** that established ACE Truck Carrier Accounts and opened the application period for authorized importers and their designated brokers to participate in the NCAP test to implement the Periodic Monthly Statement (PMS) process (see 69 FR 5360 and 69 FR 5362, respectively). Brokers were invited to establish Broker Accounts in ACE in order to participate in the NCAP test to implement PMS. In both of the February 4, 2004, General Notices, CBP advised participants that they could designate only one person as the Account Owner for the company's ACE Portal Account. The Account Owner was identified as the party responsible for safeguarding the company's ACE Portal Account information, controlling all disclosures of that information to authorized persons, authorizing user access to the ACE Portal Account information, and ensuring the strict control of access by authorized persons to the ACE Portal information.

On September 8, 2004, CBP published a General Notice in the **Federal Register** (69 FR 54302) inviting customs brokers to participate in the ACE Portal test generally and informing interested parties that once they had been notified by CBP that their request to participate in the ACE Portal test had been accepted, they would be asked to sign and submit a Terms and Conditions document. CBP subsequently contacted those participants and asked them to also sign and submit an ACE Power of Attorney form and an Additional Account/Account Owner Information form.

B. Terms and Conditions for Access to the ACE Portal

On May 16, 2007, CBP published a General Notice in the **Federal Register** (72 FR 27632) announcing a revision of the terms and conditions that must be followed as a condition for access to the ACE Portal. These terms and conditions superseded and replaced the Terms and Conditions document previously signed and submitted to CBP by ACE Portal Trade Account Owners. The notice specified that no further action would be required by ACE Portal Trade Account Owners for those ACE Portal Accounts already established with CBP with the proper Account Owner listed. The principal changes to the ACE Terms and Conditions included a revised definition of “Account Owner” to permit either an individual or a legal entity to serve in this capacity, new requirements relating to providing notice to CBP when there has been a material change in the status of the Account and/or Trade Account Owner, and explanatory provisions as to how the information from a particular account may be accessed through the ACE Portal when that account is transferred to a new owner.

On July 7, 2008, CBP published a General Notice in the **Federal Register** (73 FR 38464) which revised the terms and conditions set forth in the May 16, 2007, General Notice regarding the period of Portal inactivity which will result in termination of access to the ACE Portal. The July 7, 2008, General Notice provided that if 45 consecutive days elapse without an Account Owner, Proxy Account Owner, or Account User accessing the ACE Portal, access to the Portal will be terminated. The time period for allowable Portal inactivity previously was 90 days.

C. ACE Non-Portal Accounts

CBP has also permitted certain parties to participate in specified ACE tests without establishing ACE Portal Accounts (“Non-Portal Accounts”). On October 24, 2005, CBP published a General Notice in the **Federal Register** (70 FR 61466) announcing that importers could establish ACE Non-Portal Accounts and participate in the PMS test under certain conditions. On March 29, 2006, CBP published another General Notice in the **Federal Register** (71 FR 15756) announcing that truck carriers who do not have ACE Truck Carrier Accounts may use third parties to transmit truck manifest informa-

tion on their behalf electronically in the ACE Truck Manifest system via Electronic Data Interface (EDI) messaging

D. ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities

On October 18, 2007, CBP published a General Notice in the **Federal Register** (72 FR 59105) announcing CBP's plan to conduct a new test concerning ACE Entry Summary, Accounts and Revenue (ESAR) capabilities, providing enhanced account management functions for ACE Portal Accounts and expanding the universe of ACE account types. This General Notice is commonly referred to as ESAR I. As stated in that notice, ACE is now the lead system for CBP-required master data elements (*e.g.*, company name, address, and point of contact) as well as related reference files (*e.g.*, country code, port code, manufacturer ID, and gold currency exchange rate and conversion calculator). See ACE Systems of Record Notice, published in the **Federal Register** on January 19, 2006 (71 FR 3109). This means that the creation and maintenance of specified master data elements will originate in ACE and will be distributed to other CBP systems such as the Automated Commercial System (ACS).

In addition to announcing that importer Portal Accounts are capable of creating and maintaining specified importer data via the ACE Portal, ESAR I stated that filers have the ability to create a new CBP Form 5106 (Importer ID Input Record) via the ACE Portal or the Automated Broker Interface (ABI), and view applicable Participating Government Agency (PGA) licenses, permits and certificates via the ACE Portal. Through this notice, Broker Portal Accounts were provided the capability through the ACE Portal of maintaining organizational demographic data (*e.g.*, addresses, points of contact, etc.), license and permit qualifiers, data on managing officials, employee lists, information on relationships to individual licensed brokers, points of contact and address information (at filer code level for each local broker permit and each port covered by the local permit, and for the national broker permit). Truck Carrier Portal Accounts were provided the capability through the ACE Portal to view any applicable PGA licenses, permits and certificates, and to maintain through the ACE Portal addresses and points of contact and pre-registered truck conveyance information, including equipment, shipper, and consignee data. Truck Carrier Portal Accounts were also provided with the ability to create and maintain driver accounts and search for and correlate existing driver accounts to their Carrier Account. Finally, ESAR I also announced the expansion of Portal Account Types

to include: carriers (all modes: air, rail, sea); cartman; lighterman; driver/crew; facility operator; filer; foreign trade zone (FTZ) operator; service provider; and surety.

E. ACE Entry, Summary, Accounts and Revenue (ESAR II) Capabilities

On August 26, 2008, CBP published a General Notice in the **Federal Register** (73 FR 50337) announcing the agency's plan to conduct a new test concerning ACE Entry Summary, Accounts, and Revenue (ESAR II) functionality that would provide new Portal and EDI capabilities specific to entry summary filing and processing of consumption and informal entries. The notice stated that functionality will include ABI Census Warning Overrides and issuance of CBP requests for information and notices of action through the ACE Portal, and that new functionality will enhance Portal Account Management and allow for ACE Secure Data Portal reporting. The notice indicated that this release of ESAR II initially would be limited only to formal entries, commonly referred to in the Automated Commercial System (ACS) as type 01 entries, and informal entries, commonly referred to in ACS as type 11 entries. The notice listed the ports where the test was expected to be deployed and requested that interested ABI participants wishing to submit type 01 and 11 entries for this test provide to CBP, within 60 days of the date of publication of that notice, the number of expected ACE entry summaries that will be submitted to the listed ports. Importer and broker volunteers interested in benefiting from Portal functionality available in this test were also advised that they must have an ACE Portal Account. ABI volunteers were advised that for this test, they must have the ability to file entries on a statement (*i.e.*, no non-statement; single pay entry summaries would be allowed) and must use a software package that has completed ABI certification testing for ACE.

CBP subsequently published a General Notice in the **Federal Register** on March 6, 2009 (74 FR 9826) announcing the port-by-port phased deployment strategy for the ESAR II functionality. In that notice, CBP invited any additional interested ABI applicants meeting the eligibility criteria specified in the August 26, 2008, notice to participate in the ESAR II test. Eligible ABI trade volunteers interested in submitting type 01 and 11 entries for the ESAR test were advised to contact their assigned client representative directly. Similarly, interested software developers were also advised to contact their client representative with regard to their interest in ABI certification testing for ACE. To date, the ESAR II functionality is available at all ports, nationwide.

II. Test Concerning New ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities Relating to the Filing and Processing of AD/CVD Entries and Case Management

A. *In General*

This document announces CBP's plan to conduct a test concerning new ACE Entry Summary, Accounts and Revenue (ESAR III) functionalities that provide new Portal and EDI capabilities specific to the filing and processing of anti-dumping and countervailing duty (AD/CVD) entries (commonly referred to in ACS as type 03 entries) and AD/CVD case management. Functionality for other entry types will be implemented as it becomes available and will be announced via subsequent publication in the **Federal Register**. It is noted that type 03 ACE entry summaries and AD/CVD case data that are processed under this test are covered by the ACE Systems of Record Notice (DHS/CBP-001), published in the **Federal Register** on January 19, 2006 (71 FR 3109). For all others who are not participating in the ESAR III, data is processed under ACS Systems of Record Notice (DHS/CBP-015) published in the **Federal Register** on December 19, 2008 (73 FR 77759).

The procedures and criteria related to participation in the prior ACE tests, referenced above in Section I of this document, remain in effect unless otherwise explicitly changed by this or subsequent General Notices published in the **Federal Register**.

B. *Portal Capability*

AD/CVD case management will include the capability to search, display and print both AD/CVD case information and AD/CVD messages. The case reference file will provide the ability to record and track the life cycle of an AD/CVD case and will contain important case information such as the duty deposit rates, entry summary suspension status, bond/cash status, administrative review information and events related to the case history (e.g., "initiation," "preliminary," "Final," "Order," "Terminated"). The AD/CVD messages now resident in ACE will also house additional information in one location such as additional message header data elements (e.g., "message status," "Federal Register Notice cite," "Federal Register Notice publication date," "court order number") and the ability to run searches for all types of messages related to a particular case via the Portal.

Importers with an ACE Portal Account who have selected "portal" as their mode of communication will now also be able to respond to CBP Forms 28, 29 and 4647 regarding AD/CVD entries via the ACE Portal as well as all entry summaries (that is, both ACS and ACE entry summaries).

Brokers with an ACE Portal Account will now also be able to create declarations for their Non-Portal Accounts for AD/CVD entries. Brokers with clients possessing their own importer Portal Accounts, however, will not be able to create declarations on behalf of their

clients. Brokers will have to be granted access as a “user” on the importer’s Portal Account in order to create the declaration.

ACE Secure Data Portal Reports will also be enhanced to include AD/CVD Entry Summary Data.

C. EDI Capability

Trade participants may begin to file entry summaries electronically in ACE for entry types 03 using a better organized, more descriptive ACE ABI CATAIR (Customs and Trade Automated Interface Requirements) document. CATAIR documentation provides complete information describing how importers and/or their agents provide electronic import information to ABI, and receive transmissions from ABI once they have become a participant.

Type 03 entries filed under this ESAR III test will now require the submission of the “sold to” party and “foreign exporter” at the line level. This requirement differs from the ESAR I and II tests that apply to 01 and 011 entry types. The CATAIR should be consulted for further guidance pertaining to the definitions for each of these new data elements. Additionally, 01 entry types filed under this test will now require the “sold to” party and “consignee” party; this is a change from the previous ESAR II test where only the “consignee” party was required. As previously mentioned, the CATAIR document should be consulted for further guidance pertaining to the definitions for the referenced data elements.

Filers will have the ability to make an AD/CVD Non-Reimbursement statement on any line item that includes AD/CVD information. Accompanying the case information, the filer will also have the ability to identify the actual AD/CVD Non-Reimbursement declaration that cites the case and that is on file with CBP.

Filers will have the ability to run an ABI query of AD/CVD case information. Information returned in the query output will include data required by ABI filers to successfully file AD or CVD entry summaries in ACE. The available queries will include: (1) Specific case numbers — input Q1-Record; and, (2) Case criteria (such as country, Manufacturer Identification Number (MID), and date since last update) — input Q2-Record.

Additionally there will be 10 different output records to provide case details including:

- Case general information (status, related case, short description, etc.)
- Case official name
- Manufacturer details

- Foreign exporter details
- Department of Commerce contact information
- Deposit rate details
- Case events
- Bond/cash details
- Tariff details
- Entry summary liquidation suspension details

Revisions to CATAIR chapters will include:

- Entry Summary Create/Update (AE/AX)
- Entry Summary Query (JC/JD)
- Appendix G — ACE Condition Codes and Narrative Text
- ACE ABI CATAIR — Table of Contents
- AD/CVD Case Information Query

Interested parties are directed to *cbp.gov* for more detailed information regarding these new ACE ABI CATAIR formats.

III. *Confidentiality*

All data submitted and entered into the ACE Portal is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law (*see* 19 U.S.C. 1431(c)). As stated in previous notices, participation in this or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552. If necessary, CBP will reserve the right to limit the number of participants and locations during the initial stages of the test.

IV. *Waiver of Affected Regulations*

Any provision in title 19 of the Code of Federal Regulations including, but not limited to, provisions found in parts 141, 142, 143 and 151 relating to entry/entry summary 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(a). Additionally, any previous practice pertaining to party definitions, including but not limited to “ultimate consignee,” that are inconsistent with the requirements set forth in this notice are waived for the duration of the test. The CATAIR should be consulted for appropriate terms and definitions for the purposes of this test.

V. *Misconduct under the Test*

An ACE test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, and/or suspension from this test for any of the following:

- Failure to follow the terms and conditions of this test.
- Failure to exercise reasonable care in the execution of participant obligations.
- Failure to abide by applicable laws and regulations.
- Failure to deposit duties or fees in a timely manner.
- Misuse of the ACE Portal.
- Engagement in any unauthorized disclosure or access to the ACE Portal.
- Engagement in any activity which interferes with the successful evaluation of the new technology.

Suspensions for misconduct will be administered by the Executive Director, Commercial Targeting and Enforcement, Office of International Trade, CBP Headquarters. A notice proposing suspension will be provided in writing to the participant. Such notice will apprise the participant of the facts or conduct warranting suspension and will inform the participant of the date that the suspension will begin. Any decision proposing suspension of a participant may be appealed in writing to the Assistant Commissioner, Office of International Trade, within 15 calendar days of the notification date. Should the participant appeal the notice of proposed suspension, the participant must address the facts or conduct charges contained in the notice and state how compliance will be achieved. In cases of non-payment, late payment, willful misconduct or where public health interests or safety is concerned, the suspension may be effective immediately.

VI. *Test Evaluation Criteria*

To ensure adequate feedback, participants are required to participate in an evaluation of this test. CBP also invites all interested parties to comment on the design, implementation and conduct of the test at any time during the test period. CBP will publish the final results in the **Federal Register** and the Customs Bulletin as required by 19 CFR 101.9(b).

The following evaluation methods and criteria have been suggested:

1. Baseline measurements to be established through data analysis.

2. Questionnaires from both trade participants and CBP addressing such issues as:

- Workload impact (workload shifts/volume, cycle times, etc.).
- Cost savings (staff, interest, reduction in mailing costs, etc.).
- Policy and procedure accommodation.
- Trade compliance impact.
- Problem resolution.
- System efficiency.
- Operational efficiency.
- Other issues identified by the participant group.

Dated: December 24, 2009

DANIEL BALDWIN
Assistant Commissioner
Office of International Trade

[Published in the Federal Register December 30, 2009 (74 FR 69129)]



**REQUEST FOR APPLICANTS FOR APPOINTMENT TO THE
U.S. CUSTOMS AND BORDER PROTECTION AIRPORT
AND SEAPORT INSPECTIONS USER FEE ADVISORY
COMMITTEE.**

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

ACTION: Committee Management: request for applicants for appointment to the U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee.

SUMMARY: U.S. Customs and Border Protection (CBP) is requesting individuals who are interested in serving on the U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee (or the Committee) to apply for appointment. The Committee provides advice and makes recommendations to the Commissioner of CBP on issues related to the performance of airport and seaport inspections involving agriculture, customs, and immigration concerns.

DATES: Applications for membership should reach CBP on or before March 8, 2010.

ADDRESSES: If you wish to apply for membership, your application should be sent to CBP by one of the following methods:

- E-mail: Traderelations@dhs.gov
- Facsimile: (202) 344-1969
- Mail: Ms. Elizabeth Williamson, Program Management Analyst, Office of Trade Relations, Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Room 5.2A, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Williamson, Program Management Analyst, Office of Trade Relations, U.S. Customs and Border Protection, (202) 344-1440, FAX (202) 344-1969.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee was established as an advisory committee in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. This Advisory Committee was originally established pursuant to section 286(k) of the Immigration and Nationality Act (INA), codified at title 8 U.S.C. 1356(k), which references the Federal Advisory Committee Act (5 U.S.C. App.). With the merger of the Immigration and Naturalization Service into the U.S. Department of Homeland Security (DHS), the Advisory Committee's responsibilities were transferred from the Attorney General to the Commissioner of U.S. Customs and Border Protection (CBP) pursuant to section 1512(d) of the Homeland Security Act of 2002.

The Committee

Purpose and Objective: The purpose of the Committee is to provide advice to the Commissioner of CBP and the Secretary of DHS on issues related to the performance of airport and seaport inspections involving agriculture, customs, and immigration concerns on a regular basis in an open and candid atmosphere. The Committee provides a critical and unique forum for distinguished representatives of diverse industry sectors to present their views and advice directly to CBP officials on issues concerning staffing levels, inspectional programs, and user fees.

Balanced Membership Plans: The members will be selected by the Commissioner of CBP (subject to approval by the Secretary of DHS)

to represent the point of view of the airline, cruise ship, transportation, and other industries who may be subject to immigration and agriculture and/or customs inspection user fees. It is intended that the committee will be composed of candidates with diverse views, thus creating a balanced forum.

Committee Meetings

The Committee generally meets biannually, although additional meetings may be scheduled. The Committee is co-chaired by the Deputy Assistant Commissioner for CBP's Office of Administration (formerly the Office of Finance), and the Deputy Assistant Commissioner for CBP's Office of Field Operations.

Committee Membership

CBP is increasing the membership of this committee from the existing 10 members up to 15 members. New members will be appointed to serve a term of up to twenty-four months.

Membership on the Committee is personal to the appointee. Under the Charter, a member may not send an alternate to represent him or her at a Committee meeting. However, since Committee meetings are open to the public, another person from a member's organization may attend and observe the proceedings in a nonparticipating capacity. Regular attendance is essential; the Charter provides that a member who is absent for two consecutive meetings or two meetings in a calendar year may be recommended for replacement on the Committee.

Members who are currently serving on the Committee are eligible to re-apply for membership. A new application letter (see ADDRESSES above) is required, but it may incorporate reference materials previously filed (please attach courtesy copies).

Members of the Airport and Seaport Inspections User Fee Advisory Committee will represent their respective interest groups and are not Special Government Employees as defined in section 202(a) of title 18, United States Code.

Members will not be compensated by the Federal Government for their service as members of the Airport and Seaport Inspections User Fee Advisory Committee.

Application for Advisory Committee Appointment

There is no prescribed format for the application. Applicants may send a letter describing their interest and qualifications and enclose a resume.

Any interested person wishing to serve on the Committee must provide the following:

- Statement of interest and reasons for application; and
- Complete professional biography or resume.

In support of the policy of the DHS on gender and ethnic diversity, qualified women and members of minority groups are encouraged to apply for membership.

Dated: December 23, 2009

JAYSON P. AHERN
Acting Commissioner
U.S. Customs and Border Protection

[Published in the Federal Register December 30, 2009 (74 FR 69133)]

**NOTICE OF CANCELLATION OF CUSTOMS BROKER
 LICENSES**

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

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses and all associated permits are cancelled without prejudice.

<i>Name</i>	<i>License #</i>	<i>Issuing Port</i>
Aston International Inc.	9054	New York
Bonn International Inc.	21037	Los Angeles
Elite Customs Brokers Inc.	4039	New York
Michael De Luca	3398	New York
Robert W. Cisco, Customs Brokers Inc.	22587	New Orleans

Dated: December 24, 2009

DANIEL BALDWIN
Assistant Commissioner
Office of International Trade

[Published in the Federal Register December 31, 2009 (74 FR 69355)]

APPROVAL OF INSPECTORATE AMERICA CORPORATION, AS A COMMERCIAL GAUGER

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

ACTION: Notice of approval of Inspectorate America Corporation, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Inspectorate America Corporation, 1331 N. Ave. I, Suite E, Freeport, TX 77541, has been approved to gauge petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The approval of Inspectorate America Corporation, as commercial gauger became effective on August 20, 2009. The next triennial inspection date will be scheduled for August 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 15, 2009

IRA S. REESE
Executive Director
Laboratories and Scientific Services

[Published in the Federal Register December 30, 2009 (74 FR 69128)]

APPROVAL OF INSPECTORATE AMERICA CORPORATION, AS A COMMERCIAL GAUGER

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

ACTION: Notice of approval of Inspectorate America Corporation, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Inspectorate America Corporation, 178 Mortland Road, Searsport, ME 04974, has been approved to gauge petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The approval of Inspectorate America Corporation, as commercial gauger became effective on August 20, 2009. The next triennial inspection date will be scheduled for August 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 15, 2009

IRA S. REESE
Executive Director
Laboratories and Scientific Services

[Published in the Federal Register December 30, 2009 (74 FR 69128)]

**ACCREDITATION AND APPROVAL OF INSPECTORATE
AMERICA CORPORATION, AS A COMMERCIAL GAUGER
AND LABORATORY**

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

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 33 Rigby Road, South Portland, ME 04106, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

*[http://cbp.gov/xp/cgov/import/operations_support/
labs_scientific_svcs/commercial_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)*

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on August 19, 2009. The next triennial inspection date will be scheduled for August 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 15, 2009

IRA S. REESE
Executive Director
Laboratories and Scientific Services

**ACCREDITATION AND APPROVAL OF PAN PACIFIC
SURVEYORS, INC., AS A COMMERCIAL GAUGER AND
LABORATORY**

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

ACTION: Notice of accreditation and approval of Pan Pacific Surveyors, inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Pan Pacific Surveyors, inc., 444 Quay Ave. Suite #7, Wilmington, CA 90744, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

*[http://cbp.gov/xp/cgov/import/operations_support/
labs_scientific_svcs/commercial_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)*

DATES: The accreditation and approval of Pan Pacific Surveyors, inc., as commercial gauger and laboratory became effective on September 15, 2009. The next triennial inspection date will be scheduled for September 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 15, 2009

IRA S. REESE
Executive Director
Laboratories and Scientific Services

**ACCREDITATION OF R. MARKEY & SONS, INC., AS A
COMMERCIAL LABORATORY**

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

ACTION: Notice of accreditation of R. Markey & Sons, Inc., as a commercial laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12, R. Markey & Sons, Inc., 5 Hanover Square 12th Floor, New York, NY 10004, has been accredited to analyze sugar, sugar syrups and confectionery products under Chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS) for customs purposes, in accordance with the provisions of 19 CFR 151.12. Specifically, R. Markey & Sons has been granted accreditation to perform the following test methods only: (1) Polarization of Raw Sugar, ICUMSA GS 1/2/3-1; (2) The Determination of the Polarization of Raw Sugar Without Wet Lead Clarification, ICUMSA GS 1/2/3-2; (3) Sugar Moisture by Loss of Drying, ICUMSA GS 2/1/3-15; (4) Polarization of White Sugar, ICUMSA GS 2/3-1. Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquires regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

*[http://cbp.gov/xp/cgov/import/operations_support/
labs_scientific_svcs/commercial_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)*

DATES: The accreditation of R. Markey & Sons, Inc., as commercial laboratory became effective on June 03, 2009. The next triennial inspection date will be scheduled for June 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 15, 2009

IRA S. REESE
Executive Director
Laboratories and Scientific Services

[Published in the Federal Register December 30, 2009 (74 FR 69127)]

**ACCREDITATION AND APPROVAL OF SGS NORTH
AMERICA, INC., AS A COMMERCIAL GAUGER AND
LABORATORY**

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

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 1084 West Lathrop Ave., Savannah, GA 31402, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

*[http://cbp.gov/xp/cgov/import/operations_support/
labs_scientific_svcs/commercial_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)*

DATES: The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on September 16, 2009. The next triennial inspection date will be scheduled for September 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 15, 2009

IRA S. REESE
Executive Director
Laboratories and Scientific Services

[Published in the Federal Register December 30, 2009 (74 FR 69126)]

**APPROVAL OF AMSPEC SERVICES LLC, AS A
COMMERCIAL GAUGER**

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

ACTION: Notice of approval of Amspec Services LLC, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Amspec Services LLC, 834 Post Oak, Sulphur, LA 70663, has been approved to gauge petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

*[http://cbp.gov/xp/cgov/import/operations_support/
labs_scientific_svcs/commercial_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)*

DATES: The approval of Amspec Services LLC, as commercial gauger became effective on July 21, 2009. The next triennial inspection date will be scheduled for July 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 15, 2009

IRA S. REESE
Executive Director
Laboratories and Scientific Services

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