

U.S. Customs and Border Protection

19 CFR PARTS 101, 113, AND 133

CBP DEC. 15-15

RIN 1515-AD56 [FORMERLY 1505-AB54]

CUSTOMS AND BORDER PROTECTION'S BOND PROGRAM

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, proposed amendments to the U.S. Customs and Border Protection (CBP) regulations that serve to centralize the processing of continuous bonds at CBP's Revenue Division within the Office of Administration. Upon consideration of comments received from the public in response to the proposed rulemaking, and in light of CBP's ongoing efforts concerning the development of electronic bonds, CBP has determined not to proceed at this time with certain proposed regulatory changes relating to the application, approval, and execution of bonds. CBP has also determined not to proceed with proposals relating to provisions that are the subject of other rulemakings currently under inter-departmental review. In the notice of proposed rulemaking, CBP used the terms "CBP-approved electronic data interchange system" and "electronic filing" to describe the manner by which continuous bonds may be submitted to CBP. In this final rule, these terms are clarified to reflect that continuous bonds may be scanned and submitted to CBP as an email attachment, or by facsimile. This document also amends the CBP regulations to allow for the filing of single transaction bonds pursuant to these methods. In this rulemaking, CBP also clarifies the CBP regulations to reflect that intellectual property rights sample bonds are posted to protect the importer or owner of the sample, and changes provisions of the international carrier bond regarding the payment of fees. Lastly, this final rule adopts non-substantive amendments to the regulations regarding

nomenclature and organizational changes, including editorial changes to enhance general readability, and makes technical corrections to reflect statutory amendments.

DATES: Effective December 14, 2015.

FOR FURTHER INFORMATION CONTACT: Kara Welty, Chief, Debt Management Branch, Revenue Division, Office of Administration, Tel. (317) 614-4614.

SUPPLEMENTARY INFORMATION:

Background

Proposed Rule

On January 5, 2010, U.S. Customs and Border Protection (CBP) published in the **Federal Register** (75 FR 266) a proposal to amend title 19 of the Code of Federal Regulations (19 CFR) regarding CBP's bond program. The proposed amendments to CBP's bond regulations were intended to update and modernize CBP's bond program and centralize the filing, review and approval of continuous bonds at CBP's Revenue Division, Office of Administration, in Indianapolis, Indiana, which assumes the bond functions previously performed at the port level. In that document, CBP also proposed to amend § 113.64, which prescribes international carrier bond conditions, to state that an obligor must pay liquidated damages for failure to timely submit to CBP passenger processing fees that were required to be collected. In addition, CBP proposed to amend the regulations in part 133 to reflect that bonds relating to allegations of counterfeit trademarks are permitted to be continuous bonds.

Bond Final Rule Separate and Distinct From eBond Test

Title VI of the North American Free Trade Agreement Implementation Act, Public Law 103-182, 107 Stat. 2057 (Dec. 8, 1993), establishes the National Customs Automation Program (NCAP), an automated and electronic system for the processing of commercial importations. CBP is currently conducting a voluntary NCAP eBond test. In a general notice published in the **Federal Register** (79 FR 70881) on November 28, 2014, CBP described the terms and conditions of the eBond test which provides for the transmission to the Automated Commercial Environment (ACE) of electronic bond contracts (eBonds) between principals and sureties, with CBP as the third-party beneficiary, for the purpose of linking those eBonds to the transactions they are intended to secure (eBond system). The test deployed on January 3, 2015, and a modification to the test was published in the **Federal Register** (80 FR 899) and went into effect on January 7, 2015.

The eBond test is separate and distinct from this bond final rule. In this regard, it is noted that the eBond test pertains to electronic bonds that are not submitted on the CBP Form 301 and that are transmitted through an electronic data interchange to ACE to secure a limited subset of ACE entry types. The bond regulations contained in this final rule, however, pertain to all entry types and provide for the filing of both continuous bonds and single transaction bonds primarily on the CBP Form 301. As a result of this rule, CBP Form 301 bonds may be scanned and emailed to CBP as a computer file attachment (*i.e.*, in a .pdf or a .tif format), or submitted by facsimile (fax) or mail. Bonds emailed or faxed to CBP on the CBP Form 301 are not submitted via a “CBP-approved electronic data interchange system” in that they do not constitute a computer-to-computer interchange of strictly formatted messages. To clarify this fact, this final rule no longer refers to CBP Form 301 bonds, or the submission of bonds outside of the eBond test, as “electronic” or submitted or filed “electronically” or via a “CBP-authorized electronic data interchange system.” Moreover, as bonds may still be submitted to CBP outside of the eBond test, it is important to note the following:

- Non-eBond test participants must adhere to the regulatory provisions set forth in Chapter 1 of title 19 of the Code of Federal Regulations.
- For eBond test participants, the regulatory provisions set forth in Chapter 1 of title 19 of the CFR are suspended to the extent that they conflict with the terms of the eBond test.

Amendments Suggested by Commenters

This final rule adopts changes suggested by commenters in response to the proposed rulemaking that are a natural outgrowth of that document. Specifically, the changes:

- Permit both single transaction bonds (STBs) and continuous bonds to be scanned and submitted to CBP as an email attachment or by fax.
- Liberalize the existing procedure, set forth in § 113.37(d), by which agents or attorneys acting for a corporate surety may identify themselves to CBP by permitting the submission of a surety-generated 9-digit alphanumeric identification number as a substitute for submission of a social security number.
- Remove the reference, in § 113.38(c)(4), to “port director” as among the CBP personnel authorized to determine whether CBP will accept the bonds of a particular surety.

- Effect a technical correction to § 113.52, which currently requires that CBP report a bonded debt to the Department of Justice for prosecution if unpaid for 90 days. As section 2103 of the Miscellaneous Trade and Technical Corrections Act of 2004 amended 19 U.S.C. 1514 by extending the time to file and amend a protest from 90 days to 180 days after the date of liquidation or reliquidation, or date of the decision, order, or finding being protested for entries made on or after December 18, 2004, the 90-day period should be changed to 180 days to reflect that fact.

Clarifying and Conforming Amendments

This document also amends the regulations to effect clarifications that better explain the bond process and conform the regulations to reflect amendments to title 19 of the CFR that went into effect after publication of the proposed rule. Specifically, these changes:

- Clarify in § 113.14, which pertains to situations where the approved form of a bond is inadequate, that in situations where CBP determines that none of the conditions contained in Subpart G, CBP Bond Conditions, of part 113 are applicable to a transaction sought to be secured, either the Director, Revenue Division, or the port director, may draft conditions that cover the transaction as CBP deems appropriate and the port director is not limited to drafting conditions only for single transaction bonds (STBs) in these instances. This change is necessary to reflect the fact that there are certain continuous bonds for which the port director, and not the Revenue Division, will draft bond conditions that are specific to the issues and the geography of the port involved.
- Clarify in § 113.15, which prescribes the retention of approved bonds, that except for bonds containing the agreement to pay court costs (condemned goods) (*see* § 113.72), and as may otherwise be deemed appropriate by CBP, bonds that are approved by the port director will be retained at the port office and bonds that are approved at the Revenue Division (including bonds relating to repayment of erroneous drawback payments containing the conditions set forth in § 113.65) will be retained at the Revenue Division.
- Clarify the introductory language in § 113.39(a) to state that reports to CBP Headquarters are to be sent to the attention of the Executive Director, Regulations and Rulings, Office of International Trade.

- Clarify § 113.64(b)(1) and (2) to state, in positive terms, that the principal (carrier) must pay processing fees to CBP “within” the prescribed number of “calendar” days after the close of the calendar quarter in which they were due.
- Clarify § 133.25(c), relating to the terms of the IPR sample bond, by adding in the second sentence the phrase “. . . , conditioned to indemnify the importer or owner of the imported article against any loss or damage resulting from the furnishing of the sample by CBP to the owner of the mark.” This language is added to eliminate confusion and make clear that the IPR sample bond is posted to protect the importer or owner of the sample.

Proposals Not Adopted

As noted above, this final rule adopts changes suggested by commenters in response to the proposed rulemaking, including recommendations to not proceed with certain proposed amendments. In this document, CBP has also determined not to adopt as final certain regulatory proposals that are the subject of other CBP rulemakings that are currently in formal inter-departmental review. In addition, CBP is not finalizing certain proposals in light of ongoing efforts concerning the development and deployment of eBonds in the ACE environment. In this regard, it is noted that CBP has announced a deployment schedule that will include electronic filing of STBs. This schedule is available for viewing at: <http://www.cbp.gov/sites/default/files/documents/Product%20Backlog%20as%20of%2003-31-14.pdf>. As many of the regulatory changes offered in the proposed rule may not be consistent with the deployment of eBonds in the ACE, or have otherwise been overtaken by events, the following proposed changes are not being adopted as final, in whole or in part (notwithstanding non-substantive editorial changes that are retained in this document), as described below:

- Proposed changes to 19 CFR 113.11 relating to bond applications, with the exception that this section is amended to specify that both STBs and continuous bonds may be scanned and submitted to CBP as an email attachment or by fax, paper STBs may be filed at the Revenue Division or with the port director, and continuous bonds must be filed with the Director, Revenue Division.
- Proposed changes to 19 CFR 113.12 regarding bond approval, with the exception that paragraphs (a) and (b) are respectively amended to state that STBs may be approved by either the

Revenue Division or by the director of the port where filed, and continuous bonds will be approved by the Director, Revenue Division.

- Proposed changes to 19 CFR 113.13(c) which would remove the 30-day time period from date of notification within which a principal must remedy a bond deficiency. Upon further review, and in response to commenters' suggestions, CBP has decided to reinstate a prescribed time period within which a principal must remedy the bond insufficiency. CBP views a 30-day response period as too lengthy to adequately protect the revenue and ensure compliance with applicable law and regulations, and therefore this provision is amended to prescribe a 15-day period.
- Proposed changes to 19 CFR 113.21 relating to information required on the bond.
- Proposed changes to 19 CFR 113.22 relating to witnesses required on the bond.
- Proposed changes to 19 CFR 113.23 relating to changes made on the bond.
- Proposed changes to 19 CFR 113.24 relating to riders, with the exception that this section is amended to reflect that riders must be filed with the Revenue Division and may be scanned and submitted to CBP as an email attachment or by fax. In addition, this section clarifies that riders must be attached to their related bond if submitted in a paper format and sets forth a reference to the CBP Web site containing a comprehensive listing of acceptable riders. In addition, this section sets forth a reference to the CBP Web site containing a comprehensive listing of acceptable riders.
- Proposed changes to 19 CFR 113.25 relating to seals on the bond.
- Proposed changes to 19 CFR 113.26 relating to riders, with the exception that this section is amended to allow the filing of riders up to sixty days prior to the effective date rather than thirty days.
- Proposed changes to 19 CFR 113.27 relating to termination of bonds, with the exception that this section is amended to reflect that termination notices must be sent to the Revenue Division.
- Proposed changes to 19 CFR 113.33 relating to bond execution requirements of corporations, with the exception that paragraph (c) is amended to include a reference to the Revenue Division.

- Proposed changes to 19 CFR 113.37 relating to signature and seal requirements of corporate sureties, with the exception that the outdated existing reference to the “Bureau of Government Financial Operations” is replaced with an updated reference to “Bureau of the Fiscal Service” to reflect current administrative and legal authorities. Also, as noted above, CBP is adopting as final the proposed amendments to paragraph (d) whereby agents or attorneys acting for a corporate surety may identify themselves to CBP by submitting a surety-generated 9-digit alphanumeric identification number as a substitute for submission of a social security number.
- Proposed changes to 19 CFR 113.39 to reflect a generalized reference to “authorized CBP officer” as to who may recommend the removal of a surety company from Treasury Department Circular 570, with the exception that this section is amended by adding references to the Revenue Division and also to replace the outdated existing reference to the “Bureau of Government Financial Operations” with an updated reference to “Bureau of the Fiscal Service”.
- Proposed changes to § 113.40, which provides for acceptance of cash deposits or obligations of the United States in lieu of sureties on bonds, with the exception that this section is amended to provide that the Secretary of Homeland Security is among those who may authorize the enforcement of bond laws and regulations and the Director, Revenue Division, and not the Port Director, is authorized to accept cash deposits in lieu of sureties on bonds.
- Proposed changes to 19 CFR 113.62(a)(1)(i) to include a reference to the “periodic monthly statement” inasmuch as this type of payment is made pursuant to a test program that has not been provided by regulation.
- Proposed changes to the title of the bond set forth in Appendix A to Part 113 from “Airport Customs Security Area” to “Airport CBP Security Area” in that the term “CBP” is improperly restrictive in this context. Here, CBP uses “Customs” in the generic sense of the word rather than as a continued reference to the legacy component of CBP, the U.S. Customs Service, previously referred to throughout title 19 CFR as “Customs.” It is noted, however, that CBP adopts in this final rule the proposal to convert this bond from a term bond to a continuous bond.

- Proposed changes to Appendices A and D to part 113 which would remove the witness requirements.
- Proposed changes to 19 CFR 133.21(d) and 19 CFR 133.42(e), as the proposed amendments to these intellectual property rights sample bond provisions are the subject of existing rulemakings which are in formal inter-departmental review.

Discussion of Comments

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

Comment:

One commenter requested confirmation that the proposed substitution of the reference to the Department of the Treasury in 19 CFR 113.1, with a reference to the

Department of Homeland Security (DHS), does not create a deficiency in authority for CBP to require bonds or other security.

CBP Response:

The proposed substitution does not create a deficiency in authority. First, in view of the authority transferred by the Homeland Security Act of 2002 and delegated by Treasury Department Order No. 100-16 (May 23, 2003), Appendix to part 0 of title 19 of the Code of Federal Regulations (19 CFR part 0), all of the Secretary of the Treasury's authority pursuant to 19 U.S.C. 1623(a) was transferred and/or delegated to the DHS Secretary who then appropriately delegated it to the Commissioner of CBP, who may re-delegate it further within CBP. Second, any authority outside the scope of 19 U.S.C. 1623(a) is encompassed within the dependent clause of the sentence which begins 19 CFR 113.1.

Comment:

Six commenters provided submissions regarding various aspects of the bond application process as set forth in proposed § 113.11. The bond application comments are summarized as follows:

- The level of continuous bond application detail specified in proposed § 113.11(c) is much greater than the amount of information currently collected in bond applications and constitutes a new "collection of information" pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This contradicts CBP's statement in the proposed rule that "[T]here are no new collections of information proposed in this document."
- The requirement to submit an application for a STB, as set forth in proposed § 113.11(a), should be removed. The commenters

noted that STBs are rarely, if ever, accompanied by bond applications and the transaction that the bond secures serves to provide CBP with the necessary information.

- In the alternative, if CBP elects to retain applications for STBs, as is required in proposed § 113.11(a), CBP should modify the provision to state that STB applications may be filed at either the Revenue Division or the port, and either of those locales may review and approve the bond.
- Requiring applications for any type of customs bonds is an outmoded concept as the preponderance of bond sufficiency decisions rendered by the Revenue Division are not based on the application, but on the Revenue Division's analysis of data that is readily and routinely extracted from CBP's own data systems. In this regard, it is noted that CBP's data processing and analysis capabilities are vastly more comprehensive today than those that were in existence in 1985 when the current bond application regulatory requirements were promulgated. CBP should handle its request for more specific information collection through utilization of CBP Directives.
- The detail set forth in the proposed bond application involves certain information which is pertinent only in the case of Activity Code 1 continuous bonds, even though the requirements of proposed § 113.11(c) purport to apply to all activity codes.
- Proposed § 113.11(d) requires updates to application information in the event of a "material change." Commenters note CBP has not enforced this provision for 25 years. In addition, the term "material change" is undefined and therefore subjective, vague, and difficult to enforce. CBP has the ability to determine for itself whether any information has changed materially enough to warrant a new bond and, as the bond obligee, it is good risk management practice to continually review all bonds for adequacy.
- References in § 113.11 to CBP Form 301 should be deleted inasmuch as certain bonds filed with CBP (e.g., Importer Security Filing (ISF) "Appendix D" Bonds, Airport Customs Security Area "Appendix A" Bonds) are not filed on the CBP Form 301.
- Proposed § 113.11(c)(1)(v) requires that the bond applicant provide information relating to the nature of the relationship between principal, co-principals, or unincorporated divisions or

trade names appearing on the bond. This new requirement does not have any relation to protection of revenue and/or setting bond amounts.

- Proposed § 113.11(c)(1)(viii) requires the applicant to report “anticipated” material changes to the nature of the merchandise that will be imported over the subsequent 12 months. This new requirement does not have any relation to protection of revenue.
- Proposed § 113.11(c)(1)(xii) and (xiii) duplicate the information requested in paragraph (e).
- It is not necessary that a bond application be executed under seal and this requirement should be removed from proposed § 113.11(e)(1). By waiving this requirement, proposed paragraphs (e)(1) and (e)(2) can be combined and require the same certification language for everyone and every situation.
- As proposed, § 113.11 pertains to bond applications, paragraph (e)(1) should be amended by adding the word “applications” to clarify that the provision pertains to paper bond applications.
- The last sentence in the certification language set forth in proposed § 113.11(e)(2) presumes that every bond application submitted electronically will be submitted by a corporate applicant. Non-corporate applicants will not be able to make such a certification.
- The term “continuous transaction bond” in proposed § 113.11(c)(1) should read “continuous bonds.”
- In the proposed rule, CBP would permit certain documentation to be submitted to the Revenue Division in a non-paper format. As such submissions will not contain a written signature or seal, CBP proposes to add alternative certification language stating that the bonds are legally binding “to the same extent as if signed and under seal.” CBP should not permit certification in lieu of requiring a signature on non-paper bonds without developing appropriate safeguards to verify and authenticate the intent of the parties to be bound without the evidence of signatures. Part 113 should be limited to bonds submitted by mail, fax or other electronic imagery where the signature and seal will be visible (*i.e.*, as a .pdf or .tif email attachment). CBP should engage the surety industry and trade in discussions to establish the proper regulatory language. Self-certification of one’s own authority is susceptible to fraud. In a related submission, another commenter noted that if an electronic bond transmission to

CBP is not pursuant to an “authorized electronic interchange system,” as required by 19 U.S.C. 1623(e), a signature is required. To remedy these problems, the commenters suggest amending proposed § 113.11 by: (1) Deleting the introductory paragraph and all references to CBP Form 301; (2) deleting the requirement to submit a bond application for STBs set forth in proposed paragraph (a); (3) removing the specific bond information set forth in proposed paragraph (c); (4) deleting the requirement to submit bond application updates in the event of material change; (5) stating that CBP *may* require a prospective or existing continuous or term bond principal to file a written bond application and, when required, the application must include the information specified by the Revenue Division in order to properly evaluate bond sufficiency; (6) changing the reference to “paper bond” in proposed § 113.11(e)(1) to read, “paper bond application”, and; (7) adding the words, “where applicable” to the certification language in § 113.11(e)(2) to reflect that not all non-paper bond applications will be from corporate applicants. The commenters maintain that such amendments to the bond application procedures will result in true paperwork reduction without sacrificing CBP’s ability to obtain and review the information it needs to make sound bond sufficiency decisions.

CBP Response:

For reasons discussed elsewhere in this preamble, CBP has determined not to proceed with most of the proposed changes to 19 CFR 113.11. It is noted, however, that this final rule amends the CBP regulations to reflect the proposal to set forth CBP’s bond application procedures in § 113.11 (which are currently prescribed in § 113.12) and to set forth the bond approval regulations in § 113.12 (which are currently prescribed in § 113.11) as this non-substantive change reflects the proper chronological order of bond processing events. It is further noted that CBP is amending the STB bond application process set forth in § 113.11(a) to provide that the STB bond application may be in the form of a letter and filed with the Director, Revenue Division or the port director, or the STB may be scanned and submitted to CBP as an email attachment or by fax. Similarly, CBP is amending § 113.11(b) to provide that continuous bonds must be submitted to the Director, Revenue Division and may be scanned and submitted to CBP as an email attachment or by fax. Lastly, this final rule removes references to CBP Form 301 in § 113.11.

Comment:

Several commenters noted that a reference to term bonds should be added to proposed § 113.11 to encompass Airport Customs Security

Area Bonds or, in the alternative, term bonds should be converted into a continuous bond format.

CBP Response:

CBP agrees with the commenters' suggestion that Airport Customs Security Area Bonds, which are currently term bonds that lapse at the end of a specified period,

should be converted to a continuous bond type. This change will allow CBP to avoid lapses in coverage and thereby enhance security. The conversion poses no economic burden on the public and is a logical outgrowth of the proposed rulemaking in that it serves to ensure a uniform approach to bond approval, maintenance, and periodic review. Accordingly, this document amends Appendix A to 19 CFR part 113 by removing the bond text pertaining to specific duration of the bond and to locality.

Comment:

Several commenters provided submissions regarding various aspects of the bond approval process as set forth in proposed § 113.12. The bond approval comments are summarized as follows:

- Paragraph (a) should reflect that the Revenue Division already accepts emailed STB versions of the ISF Bond (Appendix D to part 113).
- The last sentence of proposed § 113.12(b) should be changed to state that "only one continuous bond for a particular activity 'code' will be authorized for each principal." This is necessary because the unqualified reference to "a particular activity," as is currently proposed, is too broad and susceptible to an unintended interpretation that would require a principal to obtain more continuous bonds than are needed to cover all of its activities.

CBP Response:

CBP agrees that additional clarification as to who may approve bonds is beneficial. Accordingly, this document amends § 113.12(a) to state that STBs may be approved by the Revenue Division or by the director of the port where the STB is filed, and amends § 113.12(b) to state that continuous bonds must be approved by the Revenue Division. As CBP has determined not to proceed with the remainder of the proposed amendments to § 113.12, it is not necessary to address other comments concerning this section.

Comment:

Several commenters noted that CBP has apparently launched a new electronic single transaction bond program ("e-STB"). The program appears to be unauthorized and violative of the NPRM which

repeatedly indicates that STBs will continue to be filed and approved by port directors. The final rule should authorize, but not require, the centralization of e-STBs at the Revenue Division.

CBP Response:

This comment predates deployment of the eBond test on January 3, 2015, and prior to this date CBP had not launched a formal e-STB program; rather, based on individual program requirements, such as Importer Security Filing (ISF) and Automated Commercial Environment (ACE) entries, CBP has accepted and processed scanned images of bonds transmitted via email. Nevertheless, as noted above, CBP is in agreement with the commenters' suggestion to liberalize the manner by which STBs may be submitted to CBP. To that end, this final rule amends the CBP regulations to permit STBs to be scanned and submitted to CBP as an email attachment or by fax. For purposes of uniformity, this document also amends § 113.11(b) to clarify that continuous bonds may be scanned and submitted to CBP as an email attachment or by fax.

Comment:

Several commenters provided comments regarding the proposed amendments to § 113.13(c), which pertain to CBP's periodic review to determine bond sufficiency. The comments are summarized as follows:

- Six commenters objected to the proposed amendments to § 113.13(c) which state that 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, and that, if CBP determines a bond to be inadequate, the principal will be promptly notified in writing and additional security for any and all of the principal's transactions covered by the bond may be required until the deficiency is remedied. The commenters state that the proposed changes would permit CBP to deactivate a bond and/or require additional collateralization almost immediately, regardless of the reason for the insufficiency. Although 19 CFR 113.13(c), as it is currently proposed to be amended, suggests that a bond insufficiency is determined by whether "the bond is adequate to protect the revenue and ensure compliance with the law and regulations," the commenters note that CBP finds insufficiency and deactivates bonds for a variety of reasons, not all of them involving threats to compliance or the revenue. The commenters request that CBP maintain the 30 days written notice to the principal as is currently provided in the regulations.

- Several commenters object to CBP’s ability to render a bond insufficient in situations where a bond has been identified as “inadequate,” but the inadequacy is not significant enough to rise to the level of jeopardizing compliance or revenue.
- One commenter suggests replacing the word “immediate” in paragraph (d), with a word connoting a more reasonable period of time.
- The bond is an agreement between the principal, CBP, and the surety, and any notice given by CBP to the principal should also be given to the surety.
- Several commenters suggest the language in proposed paragraphs (c) and (d) pertaining to “additional securities” is duplicative and need only be stated once in paragraph (d).

CBP Response:

When circumstances require, CBP must be able to act quickly to protect the revenue and ensure compliance with law and regulation. There have been situations where the passage of time between CBP’s decision finding a bond to be insufficient and the principal increasing the bond in response to such a finding has resulted in the agency having to write off millions of dollars in uncollectible revenue. It is noted that even in situations where the continuous bond is rendered insufficient “immediately,” the trade retains the ability to move cargo without excessive delay by using STBs. In an effort to alleviate concern that CBP will improperly render a bond insufficient in situations where the bond inadequacy is not significant enough to rise to the level of jeopardizing compliance or revenue, CBP will reinstate a prescribed time period within which a principal is given the opportunity to remedy the bond insufficiency. As noted above in this document, CBP views the existing 30-day response period as too lengthy to adequately protect the revenue and ensure compliance with applicable law and regulations; therefore, § 113.13(c) is amended to prescribe a 15-day period within which a principal must remedy a deficiency and to state that where CBP has determined that a bond is insufficient to adequately protect the revenue and ensure compliance with applicable law and regulations, CBP may provide written notice to the principal and surety that additional security in the form of cash deposit or STB may be required for any and all of the principal’s transactions until the deficiency is remedied. CBP will provide notice of any insufficiency to both the principal and the surety.

Comment:

Several commenters expressed concern with the ISF implications of CBP’s proposed amendments to § 113.13 which would allow CBP to

deactivate a bond and/or require additional collateralization almost immediately. Before introduction of the ISF requirement, this action would cause delays in filing an entry for release as the cargo arrives at terminals in the U.S. Under ISF, the immediate inactivation of a bond for any insufficiency takes on troubling implications in that cargo will be held back from being sent to the U.S. by the carrier overseas. If the cargo is not laden aboard the vessel at the foreign port, it may cause significant shipping delays.

CBP response:

CBP disagrees and notes that even in situations where the continuous bond is rendered insufficient “immediately,” the trade retains the ability to move cargo without excessive delay by using STBs. This includes using a STB to satisfy the ISF bonding requirement.

Comment:

Seven commenters disagree 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.” This language, or substantially similar variations thereof, was proposed to be added to various provisions throughout part 113. The commenters state that, as CBP is the obligee of the bond and a party to it, CBP has a duty to exercise due diligence to ensure that the bond meets the regulations and requirements CBP establishes. The explicit elimination of CBP’s accountability indicates a radical, unnecessary and inappropriate change in CBP’s approach to the bond process and protection of the revenue and such change was not adequately discussed in the proposed rule’s preamble. It was also suggested that, as a matter of law, it is inconceivable that the courts would allow CBP to collect against sureties on bonds which were produced fraudulently, or are deficient on their face, or are inconsistent with CBP regulations and statutory requirements. One commenter noted that the presumption of validity, authority and accuracy may attach to the filer, but not to the surety unless the filer’s authority is specifically verified. If a bond is submitted and accepted by CBP, then CBP must also take responsibility for the problems, errors or deficiencies in the bond which it has accepted.

CBP Response:

As CBP has determined not to proceed with the proposed regulatory provisions containing this language, it is not necessary to address these comments.

Comment:

One commenter suggests that the requirement to “line out” unused portions of the CBP Form 301 should be retained in § 113.21 as it

helps reduce ambiguity or uncertainty as to the intent of the principal or the surety when completing the bond.

CBP response:

As CBP has determined not to proceed with the proposed changes to 19 CFR 113.21, it is not necessary to address this comment.

Comment:

One commenter agrees with CBP's proposal to remove § 113.22, which pertains to bond witness requirements, and suggests that all references to witnesses should be removed from §§ 113.24(d), 113.40(b), and Appendices A, B, C, and D to part 113.

CBP Response:

As CBP has determined not to proceed with the proposed changes to 19 CFR 113.22, it is not necessary to address this comment.

Comment:

Four comments were received regarding § 113.23, which describes the types of changes that may be made to a bond and the process by which to effect such changes. The comments are summarized below:

- This section should be amended to read that changes may be made to the bond “filing” and not the actual bond because the bond has not been approved yet.
- One commenter suggests that the last sentence in § 113.23(c) be amended to read, “[W]hen a modification or interlineation is desired, the principal or surety will withdraw the bond filing if submitted to CBP and a new bond will be executed.”

CBP response:

As CBP has determined not to proceed with the proposed changes to 19 CFR 113.23, it is not necessary to address these comments.

Comment:

Four commenters made submissions regarding the proposed amendments to riders in § 113.24. The comments are summarized as follows:

- Any future riders should be able to be submitted to the Revenue Division.
- Proposed § 113.24(e) requires that all riders submitted on paper be signed by both the principal and co-principals. This requirement deviates from the existing requirement to have a rider signed by only the affected principal and, as such, is overly burdensome and unnecessary. In the alternative, if this revision is retained in the final, the requirement should also apply to each surety and co-surety. Section 113.24(e) does not provide the

format for all acceptable riders, and the final rule should either list all acceptable riders or refer the reader to the CBP Web site for a complete listing.

- As § 113.26 states that the riders in §§ 113.24(e)(2) and (3) are effective on the “date in the rider,” CBP needs to include an effective date in these riders.
- CBP should remove the requirement that the rider must be executed under seal inasmuch as the only approved riders are those intended to correct information that does not rise to the level of materially altering the bond itself (*i.e.*, address change, name change, *etc.*).
- One commenter noted that the riders named in proposed § 113.24, which are to be filed at the Revenue Division, are for a change to the principal’s name or address, as well as addition and deletion riders for unincorporated divisions on a bond. The commenter suggests that reconciliation riders, which are currently filed at CBP Headquarters, should also be filed at the Revenue Division to avoid situations where a bond is terminated, but the rider is not. If a new bond is filed with a new surety, the rider is deemed unavailable as it indicates the surety on the terminated bond. Any entry flagged for reconciliation under the new bond is not valid because there is no reconciliation rider for the new bond. This is a CBP system issue and it would be advisable for the Revenue Division to control the filing and termination of reconciliation riders.

CBP Response:

CBP is not proceeding with the finalization of most of the proposed amendments to § 113.24. One exception is the amendment that provides that riders must be filed with the Revenue Division and that they may be scanned and filed as an email attachment or by fax. Other exceptions are the amendment of paragraph (c) to clarify that riders must be attached to their related bond if submitted in a paper format and the amendment of § 113.24 to include a reference to the CBP Web site containing a listing of all acceptable riders. As CBP has determined not to proceed with the remainder of the proposed changes to 19 CFR 113.24, it is not necessary to address the rest of the comments pertaining to this section. In response to the commenter’s concern that there may be situations where a bond is terminated but the rider is not, CBP wishes to clarify that termination of the bond also terminates any and all riders to the bond.

Comment:

Five commenters noted the following regarding the seal requirements set forth in proposed § 113.25.

- CBP should add language to this provision stating that seal requirements apply only to bonds directly executed by principals (*e.g.*, corporate officers), and that bonds executed by a duly empowered attorney-in-fact acting for the principal are exempt from seal requirements.
- As bonds are produced in a variety of ways, the regulations should specify whether the requirements imposed on the party executing the bond apply to the principal, surety or both.
- Paragraph (a), which requires that the party executing a bond submitted electronically to CBP “must retain a copy of the paper seal and make such seal available to CBP for inspection upon request,” should be amended to apply to the party “filing” the electronic bond inasmuch as this more accurately reflects the typical business practice and makes a necessary distinction.
- CBP should specify whether the requirement to retain a copy of the paper bond, and provide it to CBP upon request, is imposed upon the principal, the surety, or both.

CBP Response:

As CBP has determined not to proceed with the proposed changes to 19 CFR 113.25, it is not necessary to address these comments.

Comment:

Several commenters made recommendations pertaining to the effective dates of bonds and bond riders set forth in § 113.26. The comments follow:

- One commenter requested that CBP clarify, in paragraph (e), that the applicable time frame is 15 business days.
- CBP should make the rule more flexible with respect to the effective date of riders that are filed to correct an initial rejection.

CBP Response:

As CBP has determined not to proceed with the proposed changes to 19 CFR 113.26, with the exception that this document amends this section to allow the filing of riders up to 60 days prior to their effective dates, it is not necessary to address these comments.

Comment:

Several commenters submitted the following comments regarding bond termination procedures set forth in § 113.27:

- Proposed § 113.27 should be amended to provide CBP with the discretion to permit a withdrawal of a termination if it would be in the interest of CBP, the principal, and the surety.
- A commenter expressed dissatisfaction with the proposed amendments to § 113.27(b) which eliminate the current authority for sureties to terminate a bond in less than 30 days upon a showing “that a lesser time is reasonable under the circumstances,” and recommends that the authority be reinstated.
- The trade supports the proposed procedures set forth in paragraph (c) which avoid gaps in bond coverage.
- One commenter noted that pursuant to § 113.27(c)(1), a new bond must be filed after termination has taken effect and the bond must contain the conditions in Subpart G, regardless of whether the new bond is on CBP Form 301 or some other form in the regulations. As the conditions in Subpart G are only found on the CBP Form 301 and not on the other forms, the regulation should be amended accordingly.
- One commenter stated that the proposed language in § 113.27(c)(2) permits a termination to be conditioned on the approval of a new bond intended to replace the one being terminated. The commenter supports the concept, but not the way it is expressed (“ . . . terminated pursuant to this *section*. . .”) as this could circumvent a surety’s decision to terminate a bond when that surety does not desire any delay or extension as to when termination becomes effective. A surety does not need a principal’s consent to terminate the bond, so the principal should not be able to delay that decision once the surety has given notice of termination under § 113.27(b). Further, this language should apply only when the principal has given notice of termination under § 113.27(a), and it should be moved there with some minor changes. A surety does not have a need to avail itself of the method outlined in proposed § 113.27(c)(2).
- Several commenters recommended removing the reference to “sureties” in § 113.27(c)(2) as this provision pertains to actions initiated by principals (usually importers), and by moving the regulatory text set forth in paragraph (c)(2) to paragraph (a). This restructuring will clarify that proposed paragraph (c)(2) does not apply to § 113.27(b).

CBP Response:

As CBP has determined not to proceed with the proposed changes to 19 CFR 113.27, with the exception that termination notices must be

filed at the Revenue Division and they may be submitted to CBP via email or by fax, it is not necessary to address these comments.

Comment:

Several comments were submitted regarding corporations and Limited Liability Corporations (LLC) in § 113.33:

- One commenter suggested that CBP should amend proposed § 113.33 to include a definition of “corporation.”
- One commenter noted that proposed § 113.33(b) states that where the continuous bond of a corporate principal or LLC principal is submitted to CBP in an electronic format, the bond must contain the certification language set forth in § 113.11(e)(2). The commenter continued to note that the CBP Form 301 is subject to OMB approval and, as this certification is not required under the existing regulations, the addition of any language must be approved by OMB. The commenter also expresses concern that there is no physical room on the CBP Form 301 to place this certification.

CBP Response:

As CBP has determined not to proceed with most of the proposed changes to 19 CFR 113.33, with the exception that § 113.33(c) is amended to add a reference to the Revenue Division, it is not necessary to address these comments.

Comment:

One commenter stated that the use of individual sureties is outmoded and therefore § 113.35 should be removed from title 19 of the CFR. However, another commenter suggested that this section should be revised to set forth the specific types of property that can be posted by individual sureties (*e.g.*, such assets should be liquid and be able to be readily valued).

CBP Response:

Although this provision is not commonly used, CBP opts to retain it and does not deem further specification as to the types of property that may be posted by individual sureties as necessary.

Comment:

One commenter noted that CBP should amend § 113.37(d) to remove the requirement that an agent or attorney on the bond must provide his or her social security number (SSN), as this requirement is counter to the protections afforded by the Privacy Act of 1974 (5 U.S.C. 552a). The commenter noted that CBP no longer uses the importer number (*i.e.*, Employee Identification Number, whether CBP-assigned or SSN) of the bond principal on the CBP Form 5955a. Additionally, the commenter noted that the Department of Com-

merce's Bureau of Census abolished the use of SSNs in its Automated Export System, citing 5 U.S.C. 552a, and suggested that CBP allow a surety attorney-in-fact to obtain and use a CBP-assigned importer number.

CBP Response:

In this final rule CBP is not adopting most of the proposed changes to § 113.37, with the following exceptions:

- Sections 113.37(d) and (g)(ii) are amended to allow an agent or attorney to place either his/her social security number or a surety-generated 9-digit alphanumeric identification number on the bond.
- Sections 113.37(a) and (f) are amended by removing the outdated reference to "Bureau of Government Financial Operations" and replacing it with a reference to "Bureau of the Fiscal Service" in order to conform to current administrative and legal authorities.
- Section 113.37(g)(1) is amended to allow corporate surety powers of attorney to be scanned and submitted to CBP as an email attachment, or by fax or mail.

Comment:

Two commenters suggested that CBP should amend proposed § 113.37(g) to reflect that the ACE permits a surety to manage its powers of attorney without the need to prepare and submit CBP Form 5297 on paper to CBP. Another commenter stated that CBP should authorize the electronic filing of CBP Form 5297.

CBP Response:

As noted above, CBP is amending § 113.37(g) to allow for the corporate surety powers of attorney to be scanned and submitted to CBP as an email attachment, or by fax or by mail.

Comment:

One commenter recommended that a change is needed to the language set forth in proposed § 113.38, which pertains to delinquent sureties, in order to harmonize the provision with the goal of bond centralization. Specifically, paragraph (c)(4) proposes to include a port director, along with the Commissioner of CBP and the Director, Revenue Division, as a person with the authority to determine that CBP will no longer accept the bonds of a particular surety. The commenter notes that this is troubling because the opinion of an individual port director may set policy based upon his or her criteria, instead of upon criteria developed and administered centrally. Further, such language is inconsistent with current § 113.38(c)(1) and (2) which distinguish between decisions as to non-acceptance of bonds by a port director and decisions as to non-acceptance of bonds by the Commis-

sioner which are issued to port directors. It is also inconsistent with proposed § 113.39(a) which states that the role of any authorized CBP officer in determinations relating to the removal of a surety from Treasury Department Circular 570 status is that of fact gathering and reporting, with the ultimate determination as to whether to refer a matter to Treasury to be made by CBP Headquarters.

CBP Response:

We agree with the commenter. CBP will revert back to the existing language in § 113.38(c)(4) which states that “an appropriate CBP officer” will make these decisions. This final rule also amends § 113.38(c)(4) to no longer require that notice to the surety be provided in person or by certified mail.

Comment:

One commenter requested that CBP extend the effective date of the final rule to 180 days from date of publication in the **Federal Register**.

CBP Response:

CBP does not view an extension beyond the stated effective date to be necessary as the amendments to part 113 promulgated in this document do not require the trade to adopt different procedures.

Comment:

Several commenters noted that the substantive changes proposed in the notice were never the subject of a pre-publication dialogue with the trade, despite the fact that CBP meets regularly with the trade.

CBP Response:

CBP engaged in pre-publication dialogue of these issues with the trade on numerous occasions during the development of this rule-making. CBP believes that the agency met its trade outreach obligations regarding the content and development of these regulations.

Comment:

Several commenters noted that the proposed changes to § 113.39 would allow an “authorized CBP officer” to initiate a procedure to remove a surety from Treasury Department Circular 570. The commenters note that this is an extremely serious action as the Treasury Department Circular 570 is the basis for the surety to secure all types of federal government obligations, not merely customs obligations. Accordingly, it is recommended that CBP delegate the authority to initiate this action to the Commissioner of CBP or the Director, Revenue Division (the same individuals authorized to refuse to accept bonds of significantly delinquent sureties).

CBP Response:

CBP shares the commenters’ concern, and this document does not adopt the proposed amendments to 19 CFR 113.39 which would have had the effect of replacing the existing references to “port director or

Fines, Penalties, and Forfeitures Officer” with a more generalized reference to “CBP.” However, in order to reflect the centralization of the continuous bond program at the Revenue Division, this provision is amended to include “authorized Revenue Division personnel,” in addition to port directors and Fine, Penalties and Forfeitures Officers, as among those who may recommend that a surety company be removed from Treasury Department Circular 570.

Comment:

Section 113.40 prescribes the terms by which cash deposits or other types of U.S. obligations may be accepted by CBP in lieu of sureties on bonds. Paragraph (a) of this section requires that the party execute CBP Form 301 with the appropriate activity designated. A commenter noted that, as CBP bonds exist in formats other than the CBP Form 301, this paragraph should be amended to reflect that fact. A commenter also inquired whether the proposed amendments to § 113.40 authorize port directors to accept cash deposits or other obligations to secure single transactions.

CBP Response:

As a completed CBP Form 301 is not required for every type of cash-in-lieu of surety bond, § 113.40 is amended accordingly. This document also reverts to the original procedure set forth in paragraph (a) which provides that a port director retains the authority to accept cash deposits or obligations of the United States in lieu of sureties on STBs.

Comment:

One commenter recommended that CBP make a technical change to current § 113.52, which requires that CBP report a bonded debt to the Department of Justice for prosecution if unpaid for 90 days. The commenter notes that as a party has 180 days to submit a protest to CBP, the 90-day period should be changed to 180 days to reflect that fact.

CBP Response:

CBP agrees. Section 2103 of the Miscellaneous Trade and Technical Corrections Act of 2004 amended 19 U.S.C. 1514 by extending the time to file and amend a protest from 90 days to 180 days after the date of liquidation or reliquidation, or date of the decision, order, or finding being protested for entries made on or after December 18, 2004. This document makes a technical correction to 19 CFR 113.52 to reflect the statutory amendment.

Comment:

One commenter requested that CBP clarify what is meant by the term “paper bond” as used in proposed §§ 113.11 and 113.25(a). Until CBP adopts the paperless eBond concept, every bond is a paper bond

and every bond application is a paper bond application. It appears the defining element as to which rules for signatures and certification apply is to be determined by the means of delivery to CBP, and CBP should be more precise in its language. CBP should define the term “electronic bond” as that term is used in § 113.25(b) to mean a paper bond that is transmitted electronically.

CBP Response:

As discussed above, CBP has further clarified the text of §§ 113.11, and of other provisions within part 113 as appropriate, to reflect that bonds and related documents may be scanned and submitted to CBP as an email attachment or by fax. Scanned or faxed documents will contain the requisite signatures and certifications.

Conclusion

After review of the comments and further consideration, CBP has decided to adopt as final, with the changes discussed above in the preamble and with additional non-substantive editorial changes, the proposed rule published in the **Federal Register** (75 FR 266) on January 5, 2010.

Executive Orders 13563 And 12866

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

Regulatory Flexibility Act

This section examines the impact on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. 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 rule are importers and various other parties who file bonds with CBP as required by the CBP regulations. “Importers” are not defined as a “major industry” by the Small Busi-

ness 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 rule would likely consist of a 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 amendments set forth in this rule align the CBP regulations with current common practice and improve efficiency by requiring importers to file continuous bonds at the Revenue Division, requiring STBs to be filed at either the Revenue Division or with the port director, and permitting both continuous bonds and STBs to be scanned and submitted to CBP via email as an attachment or by fax.

Because these amendments 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 rule is considered “substantial.” It is not anticipated that there will be additional costs associated with filing continuous or single transaction bonds with the Revenue Division instead of the local port, and many importers already file these types of bonds directly with the Revenue Division. Additionally, these changes to the regulations confer a benefit to the entities as a result of increased efficiencies and harmonized standards in bond processing. The effects of these amendments, however, do not rise to the level of being considered a “significant” economic impact.

In the proposed rulemaking, CBP solicited comments on this conclusion. As we did not receive any comments contradicting our findings, CBP certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The information collections contained in this rule have been previously submitted and approved by the Office of Management and Budget (OMB) and assigned OMB control numbers 1651–0050 and 1515–0144. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

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.

Amendments to the CBP Regulations

For the reasons stated above, parts 101, 113 and 133 of title 19 of the Code of Federal Regulations (19 CFR parts 101, 113 and 133) are amended 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 definitions for “CBP,” “*Commissioner or Commissioner of Customs*,” “*Customs or U.S. Customs Service*,” and “*Customs regulations or CBP regulations*” in alphabetical order to read as follows:

§ 101.1 Definitions.

* * * * *

CBP. The term “CBP” means U.S. Customs and Border Protection. *Commissioner or Commissioner of Customs.* The terms “Commissioner” or “Commissioner of Customs” mean Commissioner of U.S. Customs and Border Protection.

Customs or U.S. Customs Service. The terms “Customs” or “U.S. Customs Service” mean U.S. 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).

* * * * *

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 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.

§ 113.2 [Amended]

■ 7. In § 113.2:

■ a. The heading 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 “transaction”, 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 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.

(a) *Single transaction bond application.* In order to insure that the revenue is adequately protected, the port director may require a person who will be engaged in a single customs transaction relating to the importation or entry of merchandise to file a bond application. The single transaction bond application may be in the form of a letter filed with the Director, Revenue Division or the port director, or the application may be scanned and submitted to CBP as an email attachment or by fax. The application must identify the value and nature of the merchandise involved in the transaction to be secured. 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 multiple transactions relating to the importation or entry of merchandise or the operation of a bonded smelting or refining warehouse, a continuous bond application must be submitted to the Director, Revenue Division. The continuous bond application may be in the form of a letter or it may be scanned and submitted to CBP as an email attachment or by facsimile (fax).

(1) *Information required.* The application must contain the following information:

- (i) The general character of the merchandise to be entered; and
- (ii) The total amount of ordinary customs duties (including any taxes required by law to be treated as duties), plus the estimated amount of any other tax or taxes on the merchandise to be collected by CBP, accruing on all merchandise imported by the principal during the calendar year preceding the date of the application. The total

amount of duties and taxes will be that which 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 the value or nature of the merchandise to be imported will change in any material respect during the next year the change must be identified. If no imports were made during the calendar year prior to the application, a statement of the duties and taxes it is estimated will accrue on all importations during the current year shall be submitted.

(2) *Application updates.* If the Director, Revenue Division approves a bond based upon the application, whenever there is a significant change in the information provided under this paragraph, the principal on the bond must submit a new application containing an update of the information required by paragraph (b)(1) of this section. The new application must be filed no later than 30 days after the new facts become known to the principal.

(c) *Certification.* Any application submitted under this section must be signed by the applicant and contain the following certification:

I certify that the factual information contained in this application 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 application.

■ 10. Section 113.12 is revised to read as follows:

§ 113.12 Bond approval.

(a) *Single transaction bonds.* Single transaction bonds will be approved by the Revenue Division or the director of the port where filed.

(b) *Continuous bonds.* Continuous bonds must be approved by the Revenue Division. Only one continuous bond for a particular activity will be authorized for each principal.

■ 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. Paragraph (b) introductory text 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”;

■ c. Paragraph (b)(2) is revised;

■ d. Paragraph (b)(4) is amended by removing the word “Customs” and adding in its place the term “CBP”;

■ e. Paragraph (c) is revised; and

■ f. 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 revisions read 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 and surety will be promptly notified in writing. The principal will have 15 days from the date of notification to remedy the deficiency. Notwithstanding the foregoing, where CBP determines that a bond is insufficient to adequately protect the revenue and ensure compliance with applicable law and regulations, CBP may provide written notice to the principal and surety that, upon receipt thereof, additional security in the form of cash deposit or single transaction bond may be required for any and all of the principal’s transactions 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 the port director, as CBP deems ap-

propriate, 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. Section 113.15 is revised to read as follows:

§ 113.15 Retention of approved bonds.

Except for bonds containing an agreement to pay court costs (condemned goods) (*see* § 113.72), and except as may otherwise be deemed appropriate by CBP, bonds that are approved by the port director will be retained at the port office and bonds that are approved by the Revenue Division (including bonds relating to repayment of erroneous drawback payments containing the conditions set forth in § 113.65) will be retained at the Revenue Division. The bond containing the agreement to pay court costs (condemned goods), will be transmitted to the United States attorney, as required by section 608, Tariff Act of 1930, as amended (19 U.S.C. 1608).

§ 113.21 [Amended]

■ 14. In § 113.21:

■ a. Paragraphs (a)(1), (b), (c), and (e) are amended by removing the word “shall” each place that it appears and adding in its place the word “must”; and

■ b. Paragraph (d) is amended by removing the word “shall” and adding in its place the word “may”.

§ 113.22 [Amended]

■ 15. Section 113.22 is amended in paragraphs (a) and (b) by removing the word “shall” each place it appears and adding in its place the word “must”.

§ 113.23 [Amended]

■ 16. In § 113.23:

■ a. Paragraph (b) is amended by removing the word “shall” and adding in its place the word “must”;

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

■ c. Paragraph (d) is amended: by removing the word “Customs” each place that it appears and adding in its place the term “CBP”; by removing, in the first sentence, the word “shall” and adding in its place the word “may”, and; in the second sentence, by removing the word “shall” and adding in its place the word “will”.

■ 17. In § 113.24:

■ a. Paragraphs (a), (b) and (c) are revised; and

■ b. Paragraph (d) is amended by removing the word “shall” each place that it appears and adding in its place the word “must”, and by removing the word “Customs” each place that it appears and adding in its place the term “CBP”.

The revisions read as follows:

§ 113.24 Riders.

(a) *Types of riders.* The Revenue Division will accept all types of authorized bond riders. For a comprehensive listing, see the CBP Web site located at *www.cbp.gov*.

(b) *Location and method of filing.* A bond rider must be filed at the Revenue Division, and may be submitted in paper or scanned and submitted to the Revenue Division as an email attachment or by facsimile (fax).

(c) *Attachment of rider to paper bond.* A rider submitted to CBP in paper format must be securely attached to the related bond to prevent their loss or misplacement.

* * * * *

§ 113.25 [Amended]

■ 18. Section 113.25 is amended by removing the word “shall” each place that it appears and adding in its place the word “must”.

■ 19. In § 113.26:

■ a. Paragraph (a) is revised;

■ b. Paragraph (b) is amended by removing the words “the Customs Bond, Customs” and adding in their place the term “CBP”; and

■ c. Paragraph (c) is amended by removing the words “the Customs Bond, Customs” and adding in their place the term “CBP”.

The revision reads as follows:

§ 113.26 Effective dates of bonds and riders.

(a) *General.* A continuous bond, and any associated application required by § 113.11 or a rider, must be filed at least 60 days prior to the effective date requested for the continuous bond or rider.

* * * * *

■ 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 bond must be mailed, faxed, or emailed to the Revenue Division or, in the case of a bond relating to repayment of erroneous drawback payment, to the drawback office where the bond was approved. The termination will take effect on the date requested if that date is at least 10 business days after the date CBP receives the request. If no termination date is requested, the termination will take effect on the tenth business day following the date CBP receives the request.

(b) *Termination by surety.* A surety may not disavow already incurred obligations but may, with or without the consent of the principal, terminate its agreement to accept future obligations on a bond. The surety must provide reasonable notice of termination, made pursuant to the methods set forth in paragraph (a) of this section, to both the Revenue Division or a drawback office, as appropriate, and to the principal. The notice must state the date on which the termination will be effective. Thirty days will constitute reasonable notice unless the surety can show to the satisfaction of CBP that a shorter time frame is reasonable under the facts and circumstances.

(c) *Effect of termination.* If a bond is terminated, no new customs transactions may be charged against the bond. A new bond in an appropriate amount on CBP Form 301, containing the appropriate bond conditions set forth in subpart G of this part, must be filed before further customs activity may be transacted.

■ 21. In § 113.32:

■ a. Introductory text is added;

■ b. Paragraph (a) is removed;

■ c. 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. 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.

The addition reads as follows:

§ 113.32 Partnerships as principals.

A partnership, including a limited partnership, means any business association recognized as such under the laws of the State where the association is organized.

* * * * *

■ 22. Section 113.33 is amended:

■ a. In paragraph (a), by removing the word “Customs” and adding in its place the term “CBP”;

■ b. In paragraph (b), be removing the word “shall” each place that it appears and adding in its place the word “must”;

■ c. By revising paragraph (c);

■ d. In paragraph (d), by removing the words “port director” and adding in their place the words “Revenue Division”, and removing the word “shall” each place that it appears and adding in its place the word “must”; and

■ e. In paragraph (e), removing the words “shall be” and adding in their place the word “are”.

The revision reads as follows:

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

* * * * *

(c) *Bond executed by an officer of corporation.* When a bond is executed by an officer of a corporation, a power of attorney will not be required if the person signing the bond on behalf of the corporation is known to the Revenue Division, port director, or drawback office to be the president, vice president, treasurer, or secretary of the corporation. The officer’s signature is prima facie evidence of that officer’s authority to bind the corporation. When a power of attorney is required, it must conform to the requirements of subpart C, part 141, of this chapter.

* * * * *

§ 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 ensure 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 will not be accepted as surety 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 ascertain 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 six 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”; removing the word “shall” where it appears after the word “corporation” and adding in its place the word “will”; removing the words “shall be for a greater amount than” and adding in their place the words “may exceed”, and; removing the phrase “Bureau of Government Financial Operations” and adding in its place the phrase, “Bureau of the Fiscal Service”.

■ b. Paragraph (b) 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 “must”;

■ d. Paragraph (d) is revised;

■ e. Paragraph (e) is amended by removing the word “shall” each place that it appears and adding in its place the word “must”;

■ f. Paragraph (f) is amended by removing the words “Bureau of Government Financial Operations” and adding in their place the words, “Bureau of the Fiscal Service”; removing the word “shall” and adding in its place the word “must”; 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 removing in the signature block the words “Port Director (Drawback Office)” and adding in their place the words “Authorized CBP officer”;

■ g. Paragraph (g)(1) introductory text and (g)(1)(ii) are revised;

■ h. Paragraph (g)(2) is amended by removing the word “shall” each place that it appears and adding in its place the word “must” and by removing the word “Customs” each place that it appears and adding in its place the term “CBP”;

■ i. Paragraph (g)(3) is amended by removing the word “Customs” each place it appears and adding in its place the term “CBP”; in the first, second and third sentences by removing the word “shall” each place that it appears and adding in its place the word “must”, and; in the fourth sentence, by removing the word “shall” and adding in its place the word “will”;

■ j. Paragraph (g)(4) is amended by removing the word “shall” each place that it appears 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 (g)(5) is revised.

The revisions read as follows:

§ 113.37 Corporate sureties.

* * * * *

(d) *Social security or other surety-generated identification number of agent or attorney on the bond.* In the appropriate place on each bond executed by the agent or attorney acting for a corporate surety, the agent or attorney must place his/her social security number or other surety-generated 9-digit alphanumeric identification number, as it appears on the corporate surety power of attorney.

* * * * *

(g) * * *

(1) *Execution and contents.* Corporate surety powers of attorney may be submitted to CBP on the CBP Form 5297 and may be scanned and submitted as an email attachment, or submitted by facsimile (fax) or mail.

* * * * *

(ii) Name and address of agent or attorney, and social security number or other surety-generated 9-digit alphanumeric identification number for the agent or attorney.

* * * * *

(5) *Change on the power of attorney.* (i) No change may be made on the CBP Form 5297 after it has been approved by CBP except the following:

- (A) Grantee name change;
- (B) Grantee address change; and
- (C) The addition of port(s) to the corporate surety power of attorney on file.

(ii) To make any other change to the power of attorney two separate CBP Forms 5297 must be submitted, one revoking the previous power of attorney, and one containing a new grant of authority.

■ 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” in its place; and the text of paragraph (a) is further amended by removing the word, “shall” and adding in its place the word, “will”;

■ b. The heading and text of paragraph (b) are amended by removing the word “Customs” each place it appears and adding the term “CBP” in its place;

■ c. Paragraph (c)(1) is amended in the heading and first sentence by adding the words “single transaction” before the word “bond” each place that it appears and, in the second sentence, 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,”;

■ 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 read as follows:

§ 113.38 Delinquent sureties.

* * * * *

(c) * * *

(2) *Non-acceptance of bond upon instruction by Commissioner of CBP or Director, Revenue Division.* The Commissioner of CBP, or the Director, Revenue Division, 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 with respect to either the number or dollar amounts of outstanding bills.

* * * * *

(4) *Review and final decision.* After a review of any submission made by a surety under paragraph (c)(3) of this section, if an appropriate CBP officer is still of the opinion that bonds secured by the surety should not be accepted, written notice of the decision will be

provided to the surety 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 Revenue Director, to the Director, Revenue Director. Notice will be given to the public by publishing the decision in the *Customs Bulletin*.

* * * * *

■ 28. In § 113.39:

■ a. The introductory text is revised;

■ b. Paragraph (a) introductory text is revised;

■ 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 “port director, Fines, Penalties, and Forfeitures Officer, or authorized Revenue Director personnel”; 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, “Bureau of the Fiscal 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 “port director, Fines, Penalties, and Forfeitures Officer, and Director, Revenue Division”.

The revisions read as follows:

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

If a port director, Fines, Penalties, and Forfeitures Officer, or authorized Revenue Division officer is dissatisfied with a surety company because the company has neglected or refused to pay a valid demand made on the surety company’s bond or otherwise has failed to honor an obligation on that bond, the port director, Fines, Penalties, and Forfeitures Officer, or authorized Revenue Division personnel may take the following steps to recommend that the surety company be removed from Treasury Department Circular 570.

(a) *Report to Headquarters.* A port director, Fines, Penalties, and Forfeitures Officer, or authorized Revenue Division officer will send the following evidence to CBP Headquarters, Attention: Executive Director, Regulations and Rulings, Office of International Trade:

* * * * *

■ 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; and

■ c. Paragraph (c) is revised.

The revisions 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 the Treasury, the Secretary of Homeland Security, or the Commissioner of CBP are authorized to enforce, the Director, Revenue Division or, in the case of single transaction bonds, a port director, 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, and a CBP Form 301 or other CBP-approved bond designating the appropriate activity for the cash deposits or U.S. obligations in lieu of surety must 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, of any U.S. obligation (other than U.S. money), the obligor must deliver a duly executed power of attorney and agreement authorizing the Director, Revenue Division, 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, is set forth below and must be appropriately modified when the obligor is either an individual or a partnership:

* * * * *

(c) *Application of United States money or obligations on default.* If United States 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.

§ 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”; and removing in the second sentence the word “shall” and adding in its place the word “will”.

■ 32. In § 113.43:

■ a. Paragraph (a) is revised;

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

■ c. Paragraph (c) is amended by removing the word “shall” each place that it appears and adding in its place the word “will”.

The revision reads as follows:

§ 113.43 Extension of time period.

(a) *Application received within time period.* If a document referred to in § 113.42 is not produced within 120 days from the date of the transaction in connection with which the bond was given, the port director or an appropriate CBP officer, in his or her discretion, and upon written application of the importer, may extend the period for one further period not to exceed 60 days.

* * * * *

§ 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 in its place 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”.

■ 36. Section 113.52 is revised to read as follows:

§ 113.52 Failure to satisfy the bond.

If any CBP bond, except one given only for the production of free-entry or reduced-duty documents (*see* § 113.43(c) of this chapter) has not been satisfied upon the expiration of 180 days after liability has accrued under the bond, the matter will be reported to the Department of Justice for prosecution unless measures have been taken to file an application for relief or protest in accordance with the provisions of this chapter or to satisfactorily settle this matter.

§ 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) introductory text is amended by removing in the paragraph heading the word “Customs” and adding in its place the term “CBP” and removing the word “Customs” each place that it appears and adding in its place the term “CBP”;

■ c. Paragraph (a)(3) is amended by adding after the word “Commissioner” the words “of CBP”; and

■ d. 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) introductory text is amended by removing the word “shall” each place that it appears and adding in its place the word “must” and removing the word “Customs” and adding in its place the word “customs”;
- b. Paragraph (c)(1) is amended by removing the word “shall” and adding in its place the word “will”;
- c. Paragraph (c)(3) is amended by removing the word “Customs” and adding in its place the term “CBP”; and
- d. 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 word “Customs” and adding in its place the 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) introductory text, (a)(1)(ii), and (a)(2) introductory text are amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP”;
 - c. Paragraph (a)(3) is amended by removing the words “the port director” and adding in their place the term “CBP”;
 - d. Paragraph (b) introductory text and paragraph (b)(1) are amended by removing the word “Customs” each place that it appears and adding in its place 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 its 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 its 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 (4) are amended by removing the word “Customs” each place that it appears and adding in its place 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 in their place the words “CBP regulations”; and by removing the words “Customs security” each place that they appear and adding in their place the words “customs security”;

■ m. Paragraph (j) is amended by removing the words “Customs and Border Protection” and adding in their place the term “CBP”;

■ n. Paragraph (k)(2) is amended by removing the words “Customs and Border Protection (CBP)” and adding in their place the term “CBP”; and

■ o. Paragraphs (m)(2) and (4) are amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP” and removing the word “shall” each place that it appears and adding in its place 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;

* * * * *

§ 113.63 [Amended]

■ 42. In § 113.63:

■ a. The introductory text is amended by removing the word “shall” each place that it appears and adding in its place the word “must”;

■ b. Paragraph (a)(2) is amended by removing the words “Customs Regulations” and adding in their place the words “CBP regulations”;

■ c. Paragraph (a)(3) is amended by adding the term “CBP” before the word “regulations” and removing the word “Customs” and adding in its place the term “CBP”;

■ d. Paragraph (a)(5) is amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP” and removing the word “Regulations” and adding in its place the word “regulations”;

■ e. Paragraph (b)(2) is amended by removing the word “Customs” and adding in its place the term “CBP”;

■ f. Paragraph (b)(3) is amended by removing the words “Customs Regulations” and adding in their place the words “CBP regulations”;

■ g. Paragraphs (c)(1) and (2) are amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP”;

■ h. Paragraph (c)(3) is amended by removing the words “Customs Regulations” and adding in its place the words “CBP regulations”;

■ i. Paragraph (c)(4) is amended by removing the word “Customs” and adding in its place the term “CBP” and removing the words “Customs Regulations” and adding in their place the words “CBP regulations”;

■ j. Paragraph (d) is amended by removing in the paragraph heading and text the word “Customs” each place that it appears and adding in their place the term “CBP”;

■ k. Paragraph (e) is amended by removing the words “Customs laws and regulations” and adding in their place the words “customs laws and CBP regulations”;

■ l. The heading and text of paragraph (f) are amended by removing the words “Customs Regulations” each place that they appear and adding in their place the words “CBP regulations” and by removing the words “Customs security” each place that they appear and adding in their place the words “customs security”;

■ m. Paragraph (g) is amended by removing the words “Customs and Border Protection” and adding in their place the term “CBP”;

■ n. Paragraph (h)(1) is amended by removing the word “Customs” and adding in its place the term “CBP”;

■ o. Paragraph (h)(2) is amended by removing the words “Customs Regulations” and adding in their place the words “CBP regulations”;

■ p. Paragraph (h)(5) is amended by removing the word “Customs” and adding in its place the term “CBP”;

■ q. 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

■ r. 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 text 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 words “Customs and Border Protection (CBP)” and adding in their place the term “CBP” and by removing the second sentence;

■ c. 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 in its place the term “CBP”; by removing the word “Regulations” each place it ap-

pears and adding in its place the word “regulations”, 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 they appear and adding in their place the words “CBP regulations”; and by removing the words “Customs security” each place that they appear and adding in their place the words “customs security”; and

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

The addition reads 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 within 31 calendar 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 that 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 within 60 calendar 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 text 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 (4) are amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP”.

■ 45. In § 113.66:

■ a. The introductory text is amended by removing the word “shall” each place that it appears and adding in its place 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 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 a 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. Paragraph (a) introductory text is amended by removing the word “shall” each place that it appears and adding in its place the word “must”;

■ b. Paragraph (a)(1) introductory text is amended by removing the word “Customs” and adding in its place the term “CBP”;

■ c. Paragraph (a)(1)(i) is amended by removing the words “Customs Regulations” and adding in their place the words “CBP regulations”;

■ d. Paragraph (a)(1)(iii) is amended by removing the word “Customs” and adding in its place the term “CBP”;

■ e. 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” each place it appears and adding in its place the term “CBP”;

■ f. Paragraph (b) introductory text is amended by removing the word “shall” each place it appears and adding in its place the word “must”;

■ g. Paragraph (b)(1) introductory text is amended by removing the word “Customs” and adding in its place the term “CBP”;

■ h. Paragraph (b)(1)(i) is amended by removing the words “Customs Regulations” and adding in their place the words “CBP regulations”; and

■ i. Paragraphs (b)(1)(iii) and (b)(2)(iii) are amended by removing the word “Customs” each place it appears and adding in its place 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 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 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 it appears and adding in its place the word “must” and by removing the word “entry” and adding in its place the word “transaction”; and

■ b. The introductory text of 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 text is amended by removing the word “shall” each place it appears and adding in its place 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 in its place 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 in its place 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 in its place the word “must”;
- b. Paragraph (a)(1) is amended by removing the words “Customs Regulations” and adding in their place the words “CBP regulations”;
- c. Paragraph (a)(2) is amended by removing the word “Customs” each place that it appears and adding in its place the term “CBP” by removing the word “Regulations” and adding in its place the word “regulations” 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 (c) is amended by removing the words “Customs and Border Protection (CBP)” and adding in their place the term “CBP”;
- f. Paragraph (d)(2) is amended by removing the words “Customs officer” and adding in its place the words “CBP Officer”; and
- g. Paragraph (e) is amended by removing the words “Customs Regulations” and adding in their place the words “CBP regulations”.

§ 113.74 [Amended]

- 53. Section 113.74 is amended by removing the word “entry” and adding in its place the word “transaction”.
- 54. Appendix A to Part 113 is revised to read as follows:

Appendix A to Part 113—Airport Customs Security Area Bond

AIRPORT CUSTOMS SECURITY AREA BOND

_____(name of principal) of _____(address) and _____(name of surety) of _____(address) are held and firmly bound unto the United States of America in the sum of ____dollars (\$____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, by these conditions.

WITNESS our hands and seals this ___day of ___, 20__.
WHEREAS, the principal (including the principal’s employees, agents, and contractors) desires access to airport customs security areas;

Now, Therefore, the Condition of this Obligation is Such That—

The principal agrees to comply with the CBP regulations applicable to customs security areas at airports. If the principal defaults on the condition of this obligation, the principal and surety, jointly and severally, agree to pay liquidated damages of \$1,000 for each default; or such other amount as may be authorized by law or regulation. This bond is effective __, 20__, and remains in force for one year beginning with the effective date and for each succeeding annual period, or until terminated. This bond constitutes a separate bond for each annual period in the amount listed above for liabilities that accrue in each annual period.

Signed, Sealed, and Delivered in the Presence of —

Name
Address

Name
Address
Principal (SEAL)

Name
Address

Name
Address

Name
Address
Surety (SEAL)

Name
Address

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 in its place 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 in its place 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: 15 U.S.C. 1124, 1125, 1127; 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1202, 1499, 1526, 1624; 31 U.S.C. 9701;

* * * * *

Sections 133.21 through 133.25 also issued under 18 U.S.C. 1905; Sec. 818(g), Pub. L. 112–81.

* * * * *

■ 58. In § 133.25, paragraph (c) is revised to read as follows:

§ 133.25 Procedure on detention of articles subject to restriction.

* * * * *

(c) Disclosure *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 release 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 paragraph, the owner of the mark must furnish to CBP a bond in the form and amount specified by CBP, conditioned to indemnify the importer or owner of the imported article against any loss or damage resulting from the furnishing of the sample by CBP to the owner of the mark. 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, whichever occurs sooner. 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 returning 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.”

* * * * *

Dated: November 4, 2015.

R. GIL KERLIKOWSKE,
Commissioner.

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

[Published in the Federal Register, November 13, 2015 (80 FR 70154)]

19 CFR PARTS 103, 161, AND 175

CBP DEC. 15–16

RIN 1651–AB05

FREEDOM OF INFORMATION ACT PROCEDURES

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

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Customs and Border Protection (“CBP”) Freedom of Information Act (“FOIA”) regulations. Due to the transfer of CBP from the Department of the Treasury to the Department of Homeland Security (“DHS”), and the subsequent promulgation of DHS FOIA regulations which provide that the DHS FOIA regulations generally apply to all DHS components, most of the CBP FOIA regulations have been functionally superseded. This document sets forth that, with the exception of a regulation pertaining to the treatment of confidential commercial information, CBP will apply the DHS FOIA and Privacy Act regulations for purposes of administering the FOIA. This final rule removes outdated regulations, aligns CBP’s regulatory procedures for processing FOIA requests with those of DHS, thereby creating a consistent standard among the DHS components, and brings CBP within compliance of the FOIA guidelines developed by OMB.

EFFECTIVE DATE: November 17, 2015.

FOR FURTHER INFORMATION CONTACT: Shari Suzuki, Chief, FOIA Appeals, Policy & Litigation Branch, Office of International Trade, (202) 325–0121.

SUPPLEMENTARY INFORMATION:

Background

The Freedom of Information Act (“FOIA”) (5 U.S.C. 552) provides for the disclosure of agency records and information to the public

unless the records and information are exempted from disclosure. U.S. Customs and Border Protection (“CBP”) regulations specifically covering the production and disclosure of records under the FOIA are set forth in part 103 of title 19 of the Code of Federal Regulations (19 CFR part 103) and consist of sections 103.1–103.13 (19 CFR 103.1–103.13).

Prior to March 1, 2003, the United States Customs Service (“Customs”) was a component of the Department of the Treasury. On November 25, 2002, the President signed the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*, Public Law 107–296, (the “HSA”), establishing the Department of Homeland Security (“DHS”). Pursuant to section 403(1) of the HSA, Customs was transferred from Treasury to DHS effective March 1, 2003, and renamed as the Bureau of Customs and Border Protection (now U.S. Customs and Border Protection or CBP).

DHS published FOIA and Privacy Act regulations in the **Federal Register** (68 FR 4056) as an interim rule on January 27, 2003. The DHS regulations specifically covering FOIA-related matters are set forth in subpart A of part 5 of title 6 of the Code of Federal Regulations (6 CFR part 5, subpart A) and consist of sections 5.1–5.12 (6 CFR 5.1–5.12).

Section 5.1(a)(2) (6 CFR 5.1(a)(2)) states that, except to the extent a DHS component adopts separate guidance under the FOIA, the provisions of the DHS FOIA regulations apply to each component of the Department. However, under these regulations DHS components may issue their own guidance pursuant to approval by DHS. As discussed in more detail below, CBP published in the **Federal Register** (71 FR 54197) a final rule on September 14, 2006, relating to the treatment of confidential commercial information. *See also* interim final rule issued on August 11, 2003 at 68 FR 47453. No other provisions of the CBP FOIA regulations have been amended since CBP became a part of DHS.

For additional resources, please *see* the CBP FOIA page online at <http://www.cbp.gov/site-policy-notice/foia>.

Need for Correction

Due to the promulgation of DHS FOIA regulations which provide that the DHS FOIA regulations generally apply to all DHS components except to the extent that a DHS component adopts separate guidance, most of the CBP FOIA regulations have been functionally superseded. The current CBP regulation, section 103.0, directs the public to the Treasury FOIA regulations found at 31 CFR part 1 and instructs that for any inconsistency between 19 CFR part 103 and the Treasury FOIA regulations, the Treasury FOIA regulations control.

The existing CBP regulations are now obsolete and retaining inconsistent regulations causes confusion for those seeking to file a FOIA request. As a result, CBP is amending sections 103.0 through 103.3, removing and reserving sections 103.4 through 103.13 of Subpart A of Part 103, and directing readers to the DHS FOIA regulations. This will align CBP's regulatory procedures for processing FOIA requests and appeals with DHS procedures.

The DHS FOIA regulations reflect many Congressional amendments to the FOIA, for which conforming changes had not been made in the CBP FOIA regulations. The DHS FOIA regulations also reflect OMB's guidelines established in the Uniform Freedom of Information Act Fee Schedule and Guidelines publication. In addition, DHS recently proposed additional updates to its FOIA regulations to update and streamline the language of several procedural provisions, and to incorporate changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007, among other changes (80 FR 45101, July 29, 2015).

While in practice, CBP currently follows the FOIA, as amended, and the rules and procedures set forth in the DHS FOIA regulations, CBP hopes to eliminate confusion for the public making FOIA requests, as well as CBP personnel handling FOIA requests by removing conflicting and sometimes outdated CBP FOIA regulations and directing readers to the DHS FOIA regulations, as appropriate.

Discussion of Amendments

This document makes amendments to the scope section of part 103 (19 CFR 103.0), sections 103.1 through 103.3 of subpart A (19 CFR 103.1–103.3), and by removing sections 103.4 through 103.13 of subpart A of 19 CFR part 103 (19 CFR 103.4–103.13). Specifically, this document amends section 103.0 by removing references to the FOIA subject matters that are no longer discussed within Part 103 because they are now addressed in the DHS regulations and amends section 103.1 to account for CBP's move to virtual reading rooms (19 CFR 103.1). In addition, section 103.2 is revised to explain in paragraph (a) that CBP processes FOIA requests pursuant to the DHS FOIA regulations set forth in 6 CFR part 5, subpart A (19 CFR 103.2(a)), unless CBP provides a particular exception. Paragraph (b) of section 103.2 sets forth the exception that CBP will not apply the DHS FOIA regulation pertaining to the treatment of business information contained in 6 CFR 5.8 (19 CFR 103.2(b)). Rather, as explained below, CBP will continue to apply its current regulation in section 103.35 (19 CFR 103.35) which governs the treatment of confidential commercial information. A corresponding amendment is made to section 103.35

(19 CFR 103.35). Lastly, section 103.3 is revised to explain how CBP processes Privacy Act requests pursuant to the DHS Privacy Act regulations set forth in 6 CFR part 5, subpart B (6 CFR 5).

Exceptions to DHS Regulations

On September 14, 2006, CBP published a final rule in the **Federal Register** (71 FR 54197) governing the disclosure procedures that CBP follows when commercial information is provided to CBP by a business submitter. The rule finalized an interim rule in section 103.35 (19 CFR 103.35) to subpart C, published in the **Federal Register** on August 11, 2003 (68 FR 47453), in order to clearly set forth CBP's policy governing the disclosure of confidential commercial information that is provided to CBP by a business submitter.

As opposed to section 103.35 in title 19 CFR, the DHS FOIA regulation controlling the treatment of business information in 6 CFR 5.8 contains an affirmative requirement that a business submitter must identify information as privileged or confidential in order to be withheld from disclosure. In this regard, 6 CFR 5.8 specifically states that a submitter of business information must use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of their submission that they consider to be exempt from disclosure under the FOIA.

Section 5.8 of title 6 CFR also states that, before business information is released, notice will be provided to submitters whenever a FOIA request is made that seeks the business information that has been designated in good faith as confidential or when the agency has a reason to believe that the information may be protected from disclosure. When notice is provided by the agency, the submitter is required to submit a detailed written statement specifying the grounds for withholding any portion of the information and show why the information is a trade secret or commercial or financial information that is privileged or confidential.

CBP has determined that 19 CFR 103.35 remains an effective regulation. In addition, CBP believes that this regulation should be retained in order to assure the public that CBP's established policy governing the treatment of confidential commercial information subject to FOIA requests will not change as a result of the amendments in this document. *See* 68 FR 47753 (August 11, 2003). For example, CBP will not require business submitters to designate information as protected from disclosure as privileged or confidential in order for CBP to withhold the information in response to a FOIA request. Therefore, CBP will continue to apply 19 CFR 103.35 in order to process confidential information under the FOIA. This action is fully consistent with DHS's recent proposed rule on FOIA, which explicitly

proposed to incorporate the provisions of 19 CFR 103.35 into DHS's title 6 FOIA regulation. *See* 80 FR at 45103.

Other Changes

CBP has also determined that paragraph (b) of section 103.13 (19 CFR 103.13(b)), which provides that identifying data will not be eliminated from petitions by domestic interested parties, is more appropriately placed within 19 CFR part 175. Part 175 sets forth the regulations for petitions by domestic interested parties. As existing 19 CFR 103.13(b) is specific to petitions by domestic interested parties, this relocation will provide the public involved with such petitions with all relevant regulations in one location. Accordingly, this document moves the provision currently found in paragraph (b) of section 103.13 (19 CFR 103.13(b)) to the end of section 175.21(b) (19 CFR 175.21(b)).

This document also amends sections 103.31a, 103.32, 103.34, 161.15, and 175.21 (19 CFR 103.31a, 103.32, 103.34, 161.15, and 175.21) in order to remove references in these sections to the CBP FOIA regulations that are being removed and to update the references accordingly. In sections 103.31a and 103.32 (19 CFR 103.31a and 103.32), references to CBP FOIA regulations are removed and replaced with references to the DHS FOIA provisions at 6 CFR 5.3. In addition, the introductory paragraph to section 103.31a (19 CFR 103.31a) is revised to replace a reference to section 103.12(d), which is removed by this document, with text from current section 103.12(d) (19 CFR 103.12) providing that trade secrets and commercial or financial information are *per se* exempt from disclosure.

In sections 103.34, 161.15, and 175.21 (19 CFR 103.34, 161.15, and 175.21), the reference to CBP FOIA regulations are replaced with references to the FOIA statute at 5 U.S.C. 552. In addition, section 161.15 (19 CFR 161.15) is revised to replace a reference to section 103.12(g)(4) (19 CFR 103.12), which is removed by this document, with a reference to 5 U.S.C. 552(b)(7)(D) and text from current section 103.12(g)(4). Section 161.15 (19 CFR 161.15) is also being revised to replace a reference to 103.12(i) (19 CFR 103.12), which is removed by this document, with text from current section 103.12(i) which tracks the language found in 5 U.S.C. 552(a)(7)(C)(2). Lastly, this document makes non-substantive amendments to these regulations to reflect the nomenclature changes effected by the reorganization of the U.S. Customs Service under DHS in 2003 and to remove the word *consignee* from section 175.21 to be consistent with the statutory amendments to 19 U.S.C. 1484(a)(2)(B).

Executive Orders 13563 and 12866

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

Following the creation of DHS in 2003, DHS promulgated the Freedom of Information Act and Privacy Act Procedures interim final rule set forth in 6 CFR part 5. For consistent and appropriate administration, CBP generally began applying the DHS FOIA procedures after their publication. However, the CBP FOIA procedures remained in the Code of Federal Regulations, sometimes causing confusion about their use among the public and agency personnel. Unlike the CBP FOIA regulations outlined in 19 CFR 103 subpart A, the DHS FOIA procedures are up-to-date and conform to FOIA guidelines established by OMB. This rule will serve to remove obsolete provisions of CBP’s FOIA regulations and will establish uniform FOIA administration procedures among DHS and its component, CBP, in the Code of Federal Regulations. This rule will not affect CBP’s current application of FOIA procedures as CBP already adheres to DHS FOIA regulations. Instead, the rule will provide greater clarity of CBP’s application of FOIA procedures. Therefore, this rule will not have an economic impact on CBP or the public.

Inapplicability of Notice and Delayed Effective Date

Pursuant to 5 U.S.C. 553(b)(B), CBP has determined that it would be unnecessary and contrary to the public interest to delay publication of this rule in final form pending an opportunity for public comment because the existing regulations are obsolete and maintaining inconsistent regulations causes confusion for the public. In addition, pursuant to 5 U.S.C. 553(d)(3), CBP has determined that there is good cause for this final rule to become effective immediately upon publication. CBP currently follows the DHS FOIA regulations as a matter of law and policy. The amendments contained in this document merely align CBP’s regulatory procedures for processing FOIA requests and appeals with DHS procedures and bring CBP in compliance with OMB’s guidelines established in the Uniform Freedom of Information Act Fee Schedule and Guidelines publication.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). The Regulatory Flexibility Act applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other law (5 U.S.C. 553(a)(2)). Because this rule is not subject to such notice and comment rulemaking requirements, the provisions of the Regulatory Flexibility Act do not apply. However, as discussed above in the “Executive Orders 13563 and 12866” section, this rule will not have an economic impact on the public because it merely clarifies CBP’s current adherence to DHS FOIA procedures rather than existing, outdated CBP FOIA regulations.

Signing Authority

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

List of Subjects

19 CFR Part 103

Administrative practice and procedure, Computer technology, Confidential business information, Customs duties and inspection, Freedom of information, Privacy, Reporting and recordkeeping requirements.

19 CFR Part 161

Customs duties and inspection, Exports, Imports, Law enforcement.

19 CFR Part 175

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

Amendments to the CBP Regulations

For the reasons discussed in the preamble, parts 103, 161, and 175 of title 19 of the Code of Federal Regulations (19 CFR parts 103, 161, and 175) are amended as set forth below.

PART 103—AVAILABILITY OF INFORMATION

■ 1. The general authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301; 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

■ 2. Section 103.0 is revised to read as follows:

§ 103.0 Scope.

This part governs the production/disclosure of agency-maintained documents/information requested pursuant to the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552), the Privacy Act of 1974, as amended (5 U.S.C. 552a), and/or under other statutory or regulatory provisions and/or as requested through administrative and/or legal processes. In this respect, this part contains regulations on production or disclosure in federal, state, local, and foreign proceedings and includes specific information pertaining to the procedures to be followed when producing or disclosing documents or information under various circumstances. In addition, this part contains regulations on other information subject to restricted access. As information obtained by CBP is derived from myriad sources, persons seeking information should consult with the appropriate field officer before invoking the formal procedures set forth in this part. Except for 19 CFR 103.35, the regulations in this part supplement the regulations of the Department of Homeland Security regarding public access to records found at 6 CFR part 5. For purposes of this part, the CBP Office of the Chief Counsel is considered to be a part of CBP.

Subpart A—Production of Documents/ Disclosure of Information Under the FOIA

■ 3. Section 103.1 is revised to read as follows:

§ 103.1 Public Reading Room.

CBP maintains a virtual public reading room at <http://foiarr.cbp.gov/> where the material required to be made available under 5 U.S.C. 552(a) and this part may be inspected and copied.

■ 4. Section 103.2 is revised to read as follows:

§ 103.2 Department of Homeland Security Freedom of Information Act Procedures.

(a) *Department of Homeland Security FOIA Regulations.* In order to process requests for documents/information and appeals under the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552), except as provided in paragraph (b) of this section, CBP applies the Department of Homeland Security FOIA regulations in 6 CFR part 5, subpart A.

(b) *Exception.* Notwithstanding section 5.8 of Title 6, CBP retains its own policy on the treatment of confidential commercial information provided in § 103.35.

■ 5. Section 103.3 is revised to read as follows:

§ 103.3 Department of Homeland Security Privacy Act Procedures.

Department of Homeland Security Privacy Act Regulations. In order to process access requests for documents/information and appeals under the Privacy Act of 1974, as amended (5 U.S.C. 552a), CBP applies the Department of Homeland Security Privacy Act regulations in 6 CFR part 5, subpart B.

§§ 103.4 through 103.13 [Removed and Reserved]

■ 6. Remove and reserve §§ 103.4 through 103.13.

■ 7. In § 103.31a, revise the introductory text to read as follows:

§ 103.31a Advance electronic information for air, truck, and rail cargo; Importer Security Filing Information for vessel cargo.

The following types of advance electronic information are *per se* exempt from disclosure as either trade secrets or privileged or confidential commercial or financial information, unless CBP receives a specific request for such records pursuant to 6 CFR 5.3, and the owner of the information expressly agrees in writing to its release:

* * * * *

§ 103.32 [Amended]

■ 8. In § 103.32:

■ a. In the parenthetical clause in the first sentence, add the words “or CBP Decisions” after the words “Treasury Decisions”;

■ b. Remove the word “Customs” each place it appears and add in its place the term “CBP”;

■ c. Remove the word “shall” each place it appears and add in its place the word “must”; and

■ d. Remove the reference in the last sentence to “§ 103.5” and add in its place “6 CFR 5.3”.

■ 9. In § 103.34:

■ a. The section heading is revised;

■ b. Paragraph (a) is amended by:

■ i. Removing the word “Customs” each place it appears and adding in its place the term “CBP”;

■ ii. Removing the phrase “the U.S. Customs Service” and adding in its place the term “CBP”; and

■ c. Paragraph (b) is revised. The revisions read as follows:

§ 103.34 Sanctions for improper actions by CBP officers or employees.

* * * * *

(b) Under 5 U.S.C. 552(a)(4)(F), the Special Counsel, Merit Systems Protection Board, has authority, upon the issuance of a written finding by a court that a CBP officer or employee who was primarily responsible for withholding a record may have acted arbitrarily or capriciously, to initiate a proceeding to determine whether disciplinary action is warranted against that officer or employee. Such proceedings are governed by Merit Systems Protection Board regulations found at Part 1201 of Title 5 of the Code of Federal Regulations.

■ 10. In § 103.35, the first sentence of paragraph (a) is revised to read as follows:

§ 103.35 Confidential commercial information; exempt.

(a) * * * Notwithstanding 6 CFR 5.8, for purposes of this section, “commercial information” is defined as trade secret, commercial, or financial information obtained from a person.

* * *

* * * * *

PART 161—GENERAL ENFORCEMENT PROVISIONS

■ 11. The general authority citation for part 161 continues to read and a specific authority citation for section 161.15 is added to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1600, 1619, 1624.

* * * * *

Section 161.15 also issued under 5 U.S.C. 552.

■ 12. Section 161.15 is revised to read as follows:

§ 161.15 Confidentiality for informant.

The name and address of the informant must be kept confidential. No files or information will be revealed which might aid in the unauthorized identification of an informant. Pursuant to 5 U.S.C. 552(b)(7)(D), specific informant records that are exempt from disclosure are those that could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source. Informant records maintained by CBP under an informant's name or personal identifier that are requested by a third party according to the informant's name or personal identifier are not subject to the disclosure requirements of 5 U.S.C. 552(a), unless the informant's status as an informant has been officially confirmed.

PART 175—PETITIONS BY DOMESTIC INTERESTED PARTIES

■ 13. The general authority citation for part 175 continues, and a specific authority citation for section 175.21 is added, to read as follows:

Authority: R.S. 251, as amended, secs. 516, 624, 46 Stat. 735, as amended, 759; 19 U.S.C. 66, 1516, 1624, unless otherwise noted.

* * * * *

Section 175.21 also issued under 5 U.S.C. 552.

■ 14. In § 175.21, paragraph (b) is revised to read as follows:

§ 175.21 Notice of filing of petition, inspection of petition, and inspection of documents and papers.

* * * * *

(b) *Inspection of petition; inspection of documents and papers.* The petition filed by a domestic interested party will be made available for inspection by interested parties in accordance with the provisions of 5 U.S.C. 552(a). However, neither a petitioner nor other interested parties will in any case be permitted to inspect documents or papers of the importer of record which are exempted from disclosure by 5 U.S.C. 552(b)(4). Identifying data is not to be deleted from petitions filed by American manufacturers, producers, and wholesalers pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516).

Dated: November 9, 2015.

R. GIL KERLIKOWSKA,
Commissioner,
U.S. Customs and Border Protection.

[Published in the Federal Register, November 17, 2015 (80 FR 71690)]


**TEST TO COLLECT BIOMETRIC INFORMATION AT THE
OTAY MESA PORT-OF-ENTRY**

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

ACTION: General notice.

SUMMARY: This notice announces that U.S. Customs and Border Protection (CBP) intends to conduct a test to collect biometric information at the Otay Mesa, California land border port-of-entry from certain aliens entering and departing the United States. During this test, CBP will also collect biographic data from all travelers departing the United States at the Otay Mesa port-of-entry. This notice describes the scope of the test, its purpose, how it will be implemented, the persons covered, the duration of the test, and privacy considerations.

DATES: This test will begin no earlier than December 7, 2015 and will end on or before June 30, 2016.

FOR FURTHER INFORMATION CONTACT: Edward Fluhr, Assistant Director, Entry/Exit Transformation Office, U.S. Customs and Border Protection, by phone at (202) 344-2377 or via email at edward.fluhr@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:**Background**

The Department of Homeland Security (DHS) established the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program in accordance with several federal statutory mandates requiring DHS to create an integrated, automated biometric entry and exit system that records the arrival and departure of aliens; compares the biometric data of aliens to verify their identity; and authenticates travel documents presented by such aliens through the comparison of biometric identifiers. Under US-VISIT, certain aliens, as described below, may be required to provide certain biometric information (digital fingerprint scans, photographs, facial and iris images, or other biometric identifiers¹) when attempting to enter or depart the United States.

The federal statutes requiring DHS to create a biometric entry and exit system to record the arrival and departure of aliens include, but are not limited to:

- Section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Public Law 106–215, 114 Stat. 337 (2000);
- Section 205 of the Visa Waiver Permanent Program Act of 2000, Public Law 106–396, 114 Stat. 1637, 1641 (2000);
- Section 414 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56, 115 Stat. 272, 353 (2001);
- Section 302 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act), Public Law 107–173, 116 Stat. 543, 552 (2002);
- Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, 118 Stat. 3638, 3817 (2004); and
- Section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–52, 121 Stat. 266 (2007).

¹ As used in this notice, a “biometric identifier” is a physical characteristic or other physical attribute unique to a person that can be collected, stored, and used to verify the identity of a person who presents himself or herself to a CBP officer at the border. To verify a person’s identity, a similar physical characteristic or attribute is collected and compared against the previously collected identifier.

Section 7208 of IRTPA, as codified in 8 U.S.C. 1365b, requires specifically that DHS' entry and exit data system collects biometric exit data for all categories of individuals who are required to provide biometric entry data.

On January 5, 2004, DHS published an interim final rule in the **Federal Register** (69 FR 468) implementing the first phase of US-VISIT at certain U.S. air and sea ports-of-entry. The interim final rule amended 8 CFR 235.1 to authorize DHS to require certain aliens who arrive at designated U.S. air and sea ports-of-entry to provide biometric data to CBP during the inspection process. The air and sea ports-of-entry where such collection of biometric information occurs were designated by notice in the **Federal Register**. See 69 FR 482 (January 5, 2004). Since that time, aliens who are required by law to submit biometric information have been submitting fingerprints and photographs upon entry to the United States at designated air and sea ports-of-entry. This DHS biometric entry program is currently operational at 115 airports and 15 seaports across the United States.

The second phase of US-VISIT was implemented on August 31, 2004 when DHS published an interim final rule in the **Federal Register** (69 FR 53318) expanding the program to the 50 most highly trafficked land border ports-of-entry in the United States as required in 8 U.S.C. 1365a(d)(2).² This interim final rule amended 8 CFR 215.8, which provides that the Secretary, or his designee, may establish pilot programs to collect biometric information from certain aliens departing the United States at land border ports-of-entry, and up to fifteen air or sea ports of entry, designated through notice in the **Federal Register**. See 8 CFR 215.8(a)(1). The interim final rule also authorized DHS to identify the specific land border ports-of-entry in a separate notice published in the **Federal Register**.³

On November 9, 2004, DHS published a notice in the **Federal Register** (69 FR 64964) identifying the fifty most trafficked land border ports-of-entry where biometric data would be collected from certain aliens upon arrival. Today, DHS collects fingerprint biometric data to verify the identity of certain aliens seeking admission at all land border ports-of-entry. This notice also specified that DHS would announce, through a future **Federal Register** notice, the piloting of a future biometric collection program at a limited number of sites as part of DHS' efforts to process aliens upon departure from the United States.

² Section 1365a(d)(2) provides in pertinent part: "Not later than December 31, 2004, the Attorney General [now Secretary of Homeland Security] shall implement the integrated entry and exit data system . . . at the 50 land border ports of entry determined by the Attorney General to serve the highest numbers of arriving and departing aliens."

³ On December 19, 2008, DHS published a final rule in the **Federal Register** (73 FR 77473) finalizing this interim final rule without change.

On March 16, 2013, US-VISIT's entry and exit operations, including deployment of a biometric exit system, were transferred to U.S. Customs and Border Protection (CBP). *See* Consolidated and Further Continuing Appropriations Act, 2013, Public Law 113-6 (2013). The Act also transferred US-VISIT's overstay analysis function to U.S. Immigration and Customs Enforcement (ICE) and its biometric identity management services to the Office of Biometric Identity Management (OBIM), a newly-created office within the National Protection and Programs Directorate. CBP assumed the biometric entry and exit operations on April 1, 2013.

The purpose of this notice is to inform the public that CBP will be conducting a test on the collection of biometric exit information at the Otay Mesa, California land border port-of-entry. This notice describes the scope of the test, its purpose, how it will be implemented, the persons covered, the duration of the test, and privacy considerations.

Otay Mesa Land Border Port-of Entry Pedestrian Exit Test

The Otay Mesa Land Border Port-of Entry Pedestrian Exit Test is a short-term biometric data collection that will help CBP determine the viability of capturing biometric data from certain departing aliens in various environmental conditions. This test is one of CBP's key steps in developing the capability to fulfill DHS' mandate to collect biometric information from arriving and departing aliens.

Scope, Purpose and Implementation

Currently, aliens who seek admission at the Otay Mesa, California land border port-of-entry may be required to provide fingerprint biometric data for CBP to verify their identity. (Certain aliens, including individuals traveling on A or G visas and others as specified in 8 CFR 215.8(a)(2), are exempt from this requirement). During this test, facial and iris images of these non-exempt aliens will be captured, either via a biometric kiosk or freestanding facial and iris cameras, upon arrival and departure of the alien if they cross the border at the Otay Mesa land border port-of-entry. The captured biometric exit data will be stored in a secure, standalone database and analyzed for off-line matching against facial and iris images previously captured upon arrival and associated with biometric data already on file. No biometric data will be distributed from the standalone database, except for analysis and reporting purposes on the results of the test. Biometric information will not be collected from U.S. citizens under this test.

CBP will also collect biographic data from all travelers exiting the United States at the Otay Mesa port-of-entry, including U.S. citizens.

Biographic data consists of the traveler's identifying information provided on his or her travel documents, such as full name, date of birth, gender, and country of citizenship, and does not involve biometric identifiers such as fingerprints and facial or iris images. The traveler's travel documents will be read upon exit via a Radio-Frequency Identification (RFID) technology reader, a kiosk, or a hand-held device.

Pursuant to various authorities under Titles 8 and 19 of the U.S. Code, and other authorities CBP enforces on behalf of third party agencies at the border, CBP routinely collects biographic data from travelers entering and departing the United States. See, *e.g.*, 8 U.S.C. 1181, 1185, 1221; and 19 U.S.C. 1433. During the test at the Otay Mesa port-of-entry, this same data will be collected from all departing travelers. This will enable CBP to evaluate the viability of using biographic or biometric data or a combination of the two to provide a high level of confidence in validating the traveler's identity upon exit.

CBP will use the results of the test to assess the operational feasibility of biometric information collection for potential deployment across the U.S. southwest border. Once the biometric data is captured, CBP will analyze and evaluate the test based on a number of criteria, including the speed and quality of the data capture, the ability to match biometric data captured upon arrival and departure, the concurrent and independent capability of facial and iris biometrics, and the feasibility and accuracy of capturing biometrics from a distance. With regard to biographic data, CBP will use such data to identify travelers who are known or suspected of being terrorists, have affiliations to terrorist organizations, have active warrants for criminal activity, are inadmissible, have overstayed their visas, or have been otherwise identified as potential security risks or are the subject of law enforcement concerns. A successful test will enhance DHS security efforts at our Nation's border while expediting the movement of legitimate travelers.

Persons Covered

For the duration of the test, all aliens shall provide the biometric information described above at the time of arrival to and departure from the United States to the extent they cross through the Otay Mesa land port-of-entry, except for aliens who, at the time of such arrival or departure, are exempt pursuant to 8 CFR 235.1(f)(1)(iv) and 8 CFR 215.8(a)(2). Exempted aliens include:

- (1) Canadian citizens who under section 101(a)(15)(B) of the INA who are not otherwise required to present a visa or have been issued Form I-94 (see § 1.4) or Form I-95 upon arrival at the United States;

(2) Aliens admitted on A-1, A-2, C-3 (except for attendants, servants, or personal employees of accredited officials), G-1, G-2, G-3, G-4, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, or NATO-6 visas, and certain Taiwan officials who hold E-1 visas and members of their immediate families who hold E-1 visas who are maintaining such status at time of departure, unless the Secretary of State and the Secretary of Homeland Security jointly determine that a class of such aliens should be subject to this notice;

(3) Children under the age of 14;

(4) Persons over the age of 79;

(5) Classes of aliens the Secretary of Homeland Security and the Secretary of State jointly determine shall be exempt; or

(6) An individual alien whom the Secretary of Homeland Security, the Secretary of State, or the Director of Central Intelligence determines shall be exempt.

As a part of this test, CBP will also collect biographic information from all persons exiting the Otay Mesa port-of-entry.

Duration of Test

Beginning no earlier than December 7, 2015, CBP will collect facial and iris biometric data from non-exempt aliens subject to this notice upon arrival at the Otay Mesa land border port-of-entry.

Beginning no earlier than February 1, 2016, CBP will collect facial and iris biometric data from these non-exempt aliens when they exit the United States through the Otay Mesa land border port-of-entry.

Beginning no earlier than February 1, 2016, CBP will collect biographic information from all persons exiting the Otay Mesa port-of-entry.

This test will end on or before June 30, 2016.

For purposes of analysis, CBP will retain data collected from this test for approximately one year from the date of collection.

Privacy

CBP will ensure that all Privacy Act requirements and applicable policies are adhered to during the implementation of this test. Additionally, CBP will be issuing a Privacy Impact Assessment (PIA), which will outline how CBP will ensure compliance with Privacy Act protections. The PIA will examine the privacy impact of the Otay Mesa Land Border Port-of-Entry Pedestrian Exit Test as it relates to DHS' Fair Information Practice Principles (FIPPs). The FIPPs account for the nature and purpose of the information being collected in relation to DHS' mission to preserve, protect and secure the United

States. The PIA will address issues such as the security, integrity, and sharing of data, use limitation and transparency. Once issued, the PIA will be made publicly available at: <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>. CBP has also issued an update to the DHS/CBP-007 Border Crossing Information (BCI) System of Records, which fully encompasses all the data that is being collected at the Otay Mesa land border port-of-entry for purposes of this test. The system of records notice (SORN) was published in the **Federal Register** on May 11, 2015 (80 FR 26937).

Paperwork Reduction Act

CBP requires aliens subject to this notice to provide biometric and biographic data at the Otay Mesa port-of-entry in the circumstances described above. This requirement is considered an information collection requirement under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). The Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act, has previously approved this information collection for use. The OMB control number for this collection is 1651-0138.

Dated: November 9, 2015.

R. GIL KERLIKOWSKIE,
Commissioner.

[Published in the Federal Register, November 13, 2015 (80 FR 70241)]



NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING ACYCLOVIR TABLETS

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of certain Acyclovir tablets. Based upon the facts presented, CBP has concluded that the country of origin of the Acyclovir Tablets is China and India for purposes of U.S. Government procurement.

DATES: The final determination was issued on November 5, 2015. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination no later than December 14, 2015.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202) 325-0132.

SUPPLEMENTARY INFORMATION:

Notice is hereby given that on November 5, 2015, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain Acyclovir Tablets, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ267177, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18). In the final determination, CBP concluded that the processing in the United States does not result in a substantial transformation. Therefore, the country of origin of the Acyclovir tablets is China and India for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: November 5, 2015.

MYLES B. HARMON,
*Acting Executive Director,
Regulations and Rulings,
Office of International Trade.*

HQ H267177

November 5, 2015

MAR-2 OT:RR:CTF:VS H267177 RSD

CATEGORY: ORIGIN

Ms. KAREN YU,
REGULATORY AFFAIRS,
CARLSBAD TECHNOLOGY INC.,
5923 BALFOUR COURT,
CARLSBAD, CALIFORNIA 92008

RE: U.S. Government procurement; Trade Agreements Act; Country of Origin of Acyclovir Tablets; Substantial Transformation

DEAR Ms. YU:

This is in response to your ruling request dated July 7, 2015, requesting a final determination on behalf of Carlsbad Technology Inc., (Carlsbad) pursuant to subpart B of Part 177 of the U.S. Customs and Border Protection (CBP) Regulations (19 CFR part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of Acyclovir Tablets. As a U.S. manufacturer of a like product, Carlsbad Inc. is a party-at-interest within the meaning of 19 CFR 177.22(d)(1), and is entitled to request this final determination.

FACTS:

Acyclovir is a pharmaceutical product used as a synthetic nucleoside analogue active against herpes viruses. The active pharmaceutical ingredient (“API”), Acyclovir is manufactured in China and India. The API is shipped to the U.S., where it undergoes five manufacturing steps. Inactive ingredient (excipients) used in the production of the product in the U.S. are corn starch, microcrystalline cellulose, magnesium stearate, and sodium starch glycolate.

The first stage of U.S. manufacturing is the sizing of the active and inactive ingredients including the corn starch glycolate, by passing them through a sieve to remove any larger granules.

The second stage of U.S. manufacturing is the preparation of Acyclovir granules. The Acyclovir API, corn starch, and sodium starch glycolate are de-lumped and granulated with a binding suspension of corn starch. The wet granules are then sieved through a comil and discharged into stainless steel drums. These granules are then moved to a tray dryer for a drying process for 10 to 18 hours or until it meets its dryness specification. The dried granules will then be sieved through a comil again and discharged into stainless steel drums. The third stage of U.S. manufacturing is the preparation of the tablet blend. The inactive ingredients, microcrystalline cellulose and sodium starch glycolated are de-lumped by passing them through a sieve and added to the de-lumped acyclovir granules for preblend. Then the magnesium stearate is sieved and added to the final blend. All the blended product is discharged into stainless steel drums. The fourth stage of U.S. manufacturing is tablet

compression. The blended granules are then fed to a tablet press machine where the tablets are formed. The bulk tablets are collected into plastic bags, which are sealed and packaged in containers. The fifth stage of U.S. manufacturing is packaging in high density polyethylene plastic bottles. These bottles are then put into cartons for distribution in the U.S.

ISSUE:

What is the country of origin of the Acyclovir tablets processed as described above for purposes U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers if certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. *See also* 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. government procurement, CBP applies the provisions of subpart B of part 177 consistent with the Federal Acquisition Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government’s purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1). The Federal Acquisition Regulations define “U.S.-made end product” as:

. . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 CFR 25.003

A substantial transformation occurs when an article emerges from a process with a new name, character and use different from that possessed by the article prior to processing. A substantial transformation will not result from a minor manufacturing or combining process that leaves the identity of the article intact. *See United States v. Gibson-Thomsen Co.*, 27 C.C.P.A. 267 (1940); and, *National Juice Products Association v. United States*, 628 F. Supp. 978 (Ct. Int’l Trade 1986).

In determining whether a substantial transformation occurs in the manufacture of chemical products such as pharmaceuticals, CBP has consistently examined the complexity of the processing and whether the final article

retains the essential identity and character of the raw material. To that end, CBP has generally held that the processing of pharmaceutical products from bulk form into measured doses does not result in a substantial transformation of the product. *See e.g.*, Headquarters Ruling Letter (“HQ”) 561975, dated April 3, 2002; HQ 561544, dated May 1, 2000; and, HQ 735146, dated November 15, 1993.

For instance, in HQ 561975, the anesthetic drug sevoflurane imported into the U.S. in bulk form and processed into dosage form by extensive testing operations, followed by filtering and packaging into bottles, was found not to have undergone a substantial transformation in the U.S. There was no change in name (the product was identified as sevoflurane in both its bulk and processed form). The sevoflurane retained its chemical and physical properties after the U.S. processing. Lastly, because the imported bulk sevoflurane had a predetermined medicinal use as an inhalable anesthetic drug, the processing in the United States resulted in no change in the product’s use.

Likewise, in HQ 561544, the testing, filtering and sterile packaging of Geneticin Sulfate bulk powder, to create Geneticin Selective Antibiotic, was not found to have substantially transformed the antibiotic substance because the processing only involved the removal of impurities from the bulk chemical and the placement of the chemical into smaller packaging.

In HQ 735146, 100 percent pure acetaminophen imported from China was blended with excipients in the United States, granulated and sold to pharmaceutical companies to process into tablets for retail sale under private labels. It was found that the process in the United States did not substantially transform the imported product because the product was referred to as acetaminophen before importation and after U.S. processing, its use was for medicinal purposes and continued to be so used after U.S. processing, and the granulating process minimally affected the chemical and physical properties of the acetaminophen.

In HQ H233356 dated December 26, 2012, mefenamic acid imported from India was blended with excipients and packaged into dosage form in the United States. Based on prior rulings, we found that the specific processing consisting of blending the active ingredients with inactive ingredients in a tumbler and then encapsulating and packaging the product did not substantially transform the mefenamic acid because its chemical character remained the same. As such, we found that the country of origin of the Ponstel (mefenamic acid) capsules was India, where the mefenamic acid was manufactured.

In this case, the processing performed in the U.S. does not result in a change in the medicinal use of the finished product and the active ingredient. The Acyclovir retains its chemical and physical properties and is merely put into a dosage form and is packaged for sale. The active ingredient does not undergo a change in name, character or use. Therefore, in accordance with our prior rulings, we find that no substantial transformation occurs in U.S., and for purposes of government procurement, the Acyclovir tablets would be considered a product where the active ingredient was produced, which would be China and India.

HOLDING:

Based upon the facts in this case, we find that the imported Acyclovir is not substantially transformed in U.S. Accordingly, the country of origin for government procurement purposes of the Acyclovir tablets is China and India, where the active ingredient is produced.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31 that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

MYLES B. HARMON

*Acting Executive Director
Office of Regulations and Rulings
Office of International Trade*

[Published in the Federal Register, November 13, 2015 (80 FR 70243)]


AGENCY INFORMATION COLLECTION ACTIVITIES:**Canadian Border Boat Landing Permit**

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

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

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Canadian Border Boat Landing Permit (CBP Form I-68). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before December 14, 2015 to be assured of consideration.

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

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

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

SUPPLEMENTARY INFORMATION:

This proposed information collection was previously published in the **Federal Register** (80 FR 25313) on May 4, 2015, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Canadian Border Boat Landing Permit.

OMB Number: 1651-0108.

Form Number: CBP Form I-68.

Abstract: The Canadian Border Boat Landing Permit (CBP Form I-68) allows participants entering the United States along the northern border by small pleasure boats weighing less than 5 tons to telephonically report their arrival without having to appear in person for an inspection by a CBP officer. United States citizens, Lawful Permanent Residents of the United States, Canadian citizens, and Landed Residents of Canada who are nationals of the Visa Waiver Program countries listed in 8 CFR 217.2(a) are eligible to participate.

The information collected on CBP Form I-68 allows people who enter the United States from Canada by small pleasure boats to be inspected only once during the boating season, rather than each time they make an entry. This information collection is provided for by 8 CFR 235.1(g) and Section 235 of Immigration and Nationality Act. CBP Form I-68 is accessible at <http://www.cbp.gov/newsroom/publications/forms?title=68&=Apply>.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Individuals or Households.

Estimated Number of Respondents: 68,000.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 11,288.

Estimated Annual Cost: \$1,088,000.

Dated: November 9, 2015.

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

[Published in the Federal Register, November 13, 2015 (80 FR 70243)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Cargo Container and Road Vehicle Certification for Transport Under Customs Seal

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

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

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

DATES: Written comments should be received on or before December 14, 2015 to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION:

This proposed information collection was previously published in the **Federal Register** (80 FR 48117) on August 11, 2015, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/ or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/ startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Cargo Container and Road Vehicle for Transport under Customs Seal.

OMB Number: 1651-0124.

Abstract: The United States is a signatory to several international Customs conventions and is responsible for specifying the technical requirements that containers and road vehicles must meet to be acceptable for transport under Customs

seal. Customs and Border Protection (CBP) has the responsibility of collecting information for the purpose of certifying containers and vehicles for international transport under Customs seal. A certification of compliance facilitates the movement of containers and road vehicles across international territories. The procedures for obtaining a certification of a container or vehicle are set forth in 19 CFR part 115.

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

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 25.

Estimated Number of Annual Responses per Respondent: 120.

Estimated Time per Response: 3.5 hours.

Estimated Total Annual Burden Hours: 10,500.

Dated: November 4, 2015.

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

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