# U.S. Customs and Border Protection

**8 CFR PART 212**

**RIN 1651–AA97**

**CBP DECISION NO. 17–10**

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule adopts as final proposed amendments to the Department of Homeland Security's (DHS) regulations describing the procedures for issuance of a discretionary waiver, on the basis of unforeseen emergency in individual cases, of certain documentary requirements for individuals seeking admission to the United States as a nonimmigrant. The Department of State (DOS) is issuing a parallel final rule amending a similar DOS regulation published in today's edition of the **Federal Register**. DHS and DOS have acted jointly in this matter.

**DATES:** This rule is effective October 5, 2017.

**FOR FURTHER INFORMATION CONTACT:** Joseph O'Donnell, Fines, Penalties and Forfeitures, Office of Field Operations, U.S. Customs and Border Protection, telephone number (202) 344–1691, or by email at *joseph.r.odonnell@cbp.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The Secretary of Homeland Security and the Secretary of State, acting jointly, in specified situations, may waive certain documentary requirements (*i.e.,* an unexpired passport and, if required, a valid unexpired visa) for individuals seeking admission to the United States as nonimmigrants.[1] *See* section 212(d)(4) of the Immigration

[1] Previously, the Attorney General acting jointly with the Secretary of State was authorized to waive the documentary requirements due to an unforeseen emergency. However, pursuant to the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135 (HSA), as of

and Nationality Act (INA), as amended (8 U.S.C. 1182(d)(4)); *see also* section 212(a)(7)(B)(i) of the INA (8 U.S.C. 1182(a)(7)(B)(i)) (describing documentary requirements for nonimmigrants). One of these situations is where the agencies determine in individual cases that the nonimmigrant is unable to present the required documents due to an unforeseen emergency. *See* section 212(d)(4)(A) of the INA (8 U.S.C. 1182(d)(4)(A)). Regulations governing issuance of unforeseen emergency waivers are set forth at 8 CFR 212.1(g). DOS has similar implementing regulations. *See* 22 CFR 41.2(i).

On March 8, 2016, U.S. Customs and Border Protection (CBP) published a notice of proposed rulemaking (NPRM) in the **Federal Register** (81 FR 12032) proposing to amend 8 CFR 212.1(g). The NPRM provided a 60-day public comment period. In the NPRM, CBP proposed to reinstate a 1996 amendment to 8 CFR 212.1(g) that was invalidated by court order in *United Airlines, Inc.* v. *Brien,* 588 F.3d 158 (2d Cir. 2009). The court invalidated the 1996 amendment on procedural grounds because the legacy Immigration and Naturalization Service (INS) did not coordinate with DOS in amending the regulation in violation of the joint action requirement under section 212(d)(4)(A) of the INA (8 U.S.C. 1182(d)(4)(A)). *United Airlines,* 588 F.3d at 179.

Among other things, the 1996 amendment would have removed certain language from 8 CFR 212.1(g) that precluded DHS from assessing carrier fines under section 273 of the INA (8 U.S.C. 1323) when an "unforeseen emergency" waiver had been granted under section 212(d)(4)(A) of the INA and 8 CFR 212.1(g). Section 273 of the INA makes it unlawful for a carrier to bring to the United States any alien who does not have a valid passport and an unexpired visa, if a visa was required under the INA or the regulations issued thereunder, and subjects the carrier to a fine for violating this provision. The 1996 amendment of 8 CFR 212.1(g) would have removed the phrase that a visa and passport "are not required" if legacy INS (now CBP) concluded that the nonimmigrant was unable to present the required documents because of an unforeseen emergency.

The NPRM proposed to reinstate the 1996 amendment by removing the phrase "are not required" so that CBP could assess carrier fines under section 273 of the INA in appropriate cases notwithstanding that an "unforeseen emergency" waiver has been granted under sec-

March 1, 2003, functions of the legacy Immigration and Naturalization Service (INS) of the Department of Justice and the legacy U.S. Customs Service of the Department of the Treasury were transferred to DHS. Specifically, pursuant to sections 102(a), 441, 1512(d) and 1517 of the HSA and 8 CFR 2.1, the authorities of the Attorney General, as described in section 212 of the INA (8 U.S.C. 1182), were transferred to the Secretary of Homeland Security, and the reference to the Attorney General in the statute is deemed to refer to the Secretary. Thus, the waiver authority in section 212(d)(4) of the INA now resides with the Secretary of Homeland Security acting jointly with the Secretary of State.

tion 212(d)(4)(A) of the Act and 8 CFR 212.1(g).[2] The NPRM also proposed to amend 8 CFR 212.1(g) by reinstating 2002 and 2007 amendments to 8 CFR 212.1(g) that were also invalidated as a result of the court order in *United Airlines*.[3]

Further background information is provided in the NPRM. On March 8, 2016, DOS published a parallel NPRM proposing amendment of 22 CFR 41.2(i). *See* 81 FR 12050.

## Discussion of Comments

DHS received eleven comments on this rule. Two comments favored the proposed amendments, and two did not. The remaining comments criticized U.S. immigration policy or aspects of the regulation that were unchanged and are outside the scope of this rulemaking. A summary of the relevant issues raised in the comments and CBP's responses are set forth below.

*Comment*

Two commenters said that the proposed regulation did not clearly specify what constitutes an "unforeseen emergency" under 8 CFR 212.1(g). One of these commenters recommended the addition of more details about the criteria for qualifying for the unforeseen emergency waiver. The other commenter requested an explanation of the phrase "unforeseen emergency" and was concerned about the "lack of substantial definitions on key terms."

*CBP Response*

The proposed regulation permits the CBP district director[4] to grant an unforeseen emergency waiver on an individual case-by-case basis in the exercise of his or her discretion based on the circumstances presented. CBP has determined that this discretionary case-by-case approach is preferable to establishing a specific definition of or crite-

[2] CBP would not apply a fine if CBP granted the waiver and did not revoke it prior to the nonimmigrant alien's boarding.

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

[4] The DHS regulation at 8 CFR 1.2 defines "district director" broadly. It specifies that to the extent that authority has been delegated to such official, it means asylum office director; director, field operations; district director for interior enforcement; district director for services; field office director; service center director; or special agent in charge. It further specifies that term means such other official, including an official in an acting capacity, within CBP or another DHS component who is delegated the function or authority above for a particular geographic district, region, or area. In determining eligibility for an unforeseen emergency waiver under 8 CFR 212.1(g), the term "district director" would encompass the CBP port director for the port where the nonimmigrant is seeking admission to the United States.

ria for establishing an unforeseen emergency because it is impossible to define or forecast all the various circumstances that could arise that might justify an unforeseen emergency waiver. CBP also has concluded that the inclusion of a definition or the criteria for determining an unforeseen emergency in the regulation would be too limiting.

*Comment*

One commenter stated that in now proposing parallel amendments to their respective regulations, CBP and DOS have satisfied the joint action requirement. This same commenter indicated that the proposed amendment is inconsistent with the decision in *United Airlines* to uphold the Board of Immigration Appeals' (BIA) longstanding rule that a carrier may not be fined under section 273 for having brought an alien to the United States if that alien receives an unforeseen emergency visa waiver.

Another commenter stated that it was unclear how the Government could waive passport/visa requirements and yet retain the ability to fine airline carriers for such transport.

*CBP Response*

CBP agrees that DHS and DOS have satisfied the joint action requirement under section 212(d)(4)(A) of the INA (8 U.S.C. 1182(d)(4)(A)) by proposing and now issuing parallel regulations.

CBP disagrees that this rule is inconsistent with the decision in *United Airlines.* In *United Airlines,* the court considered the validity of the BIA rule interpreting the pre-1996 version of 8 CFR 212.1(g). *See* 588 F.3d at 169–70. By way of background, section 273(a)(1) of the INA (8 U.S.C. 1323(a)(1)) makes it unlawful for a carrier to bring to the United States any alien who does not have a valid passport and an unexpired visa, if a visa was required under the INA or the regulations issued thereunder. Because the pre-1996 version of 8 CFR 212.1(g) specified that a visa and a passport are not required if a nonimmigrant demonstrates an unforeseen emergency, the BIA concluded that a carrier could not be fined pursuant to section 273 when an unforeseen emergency waiver was granted under 8 CFR 212.1(g).[5] *See id.* at 163.

However, in 1996, legacy INS amended 8 CFR 212.1(g) to remove the language that a passport and visa are not required if a nonim-

[5] The court also upheld legacy INS's decision to parole aliens arriving in the United States without proper documents rather than granting them a waiver, thereby preserving INS's ability to fine the carrier under section 273 of the INA. *See United Airlines,* 588 F.3d at 174. For further explanation about parole, *see* infra note 7.

migrant demonstrates an unforeseen emergency. *See* 61 FR 11717. Subsequently, the BIA, applying the 1996 version of the regulation, held that a carrier was subject to a fine for bringing an alien passenger to the United States without a valid nonimmigrant visa even though the passenger was subsequently granted a post-arrival waiver of the visa document requirement. *See Matter of Finnair Flight AY103,* 23 I&N Dec. 140 (BIA 2001).

Therefore, this final rule, which allows CBP to waive passport and/or visa requirements for a nonimmigrant due to an unforeseen emergency yet still retain the authority to fine the carrier for transporting an alien to the United States without proper documentation, is consistent with the relevant BIA precedent and *United Airlines.*

In fact, the court in *United Airlines* explicitly sanctioned the approach taken by this final rule. The court stated that if the INS (now CBP) finds that application of the BIA's interpretation of section 273 creates a disincentive for airlines to make a reasonable, good faith effort to ensure that every alien has the requisite travel and entry documents prior to arrival in the United States, it may amend the regulations so that a post-arrival waiver does not nullify the documentary requirements of section 212(a)(7)(B) of the INA. *See United Airlines,* 588 F.3d at 173.

*Comment*

Two commenters expressed the view that the rule would create an economic incentive for carriers to comply with section 273. One commenter stated that unless a carrier would receive more than $4,300 to transport an alien into the United States without proper documentation, the carrier would be disincentivized to provide such transportation due to the possibility of a $4,300 fine under section 273.[6] This commenter stated that CBP's authority to assess carrier fines in such cases would force airlines and other small entities to implement more stringent practices regarding whom they transport to the United States. This commenter supported Alternative 1, the chosen proposal, which was described in the NPRM as allowing CBP to waive the requirement for individuals seeking admission as nonimmigrants to present valid documentation for entry into the United States in an unforeseen emergency while retaining the authority to fine carriers

[6] Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74 (Nov. 2, 2015), on July 1, 2016, DHS issued a rule that adjusted the fine from $4,300 to $5,345 to account for inflation. *See* 81 FR 42987. The adjusted penalty amount became effective for penalties assessed after August 1, 2016 whose associated violation occurred after November 2, 2015. On January 27, 2017, DHS further adjusted the penalty amount for inflation from $5,345 to $5,432 for penalties assessed after January 27, 2017 whose associated violation occurred after November 2, 2015. *See* 82 FR 8571. Pursuant to this Act, the penalty amount will be adjusted every year.

under section 273. This commenter indicated that Alternative 2, described in the NPRM as the same as Alternative 1 but with a waiver of the penalty for small entities, would remove the economic incentive to comply with section 273 and create an unnecessary safety risk.

Another commenter stated that CBP's ability to assess carrier fines, regardless of whether the undocumented passenger received a waiver, would provide an economic incentive for carriers to adhere to section 273 and dissuade carriers from attempting to determine on their own whether an undocumented passenger would qualify for an unforeseen emergency waiver.

*CBP Response*

CBP agrees that this rule will incentivize carriers to make a reasonable, good-faith effort to ensure that every alien has the proper documentation prior to arrival in the United States.

## Conclusion

After review of the comments and further consideration, DHS adopts as final the proposed amendments published in the **Federal Register** (81 FR 12032) on March 8, 2016.

## Regulatory Analyses

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

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 ("Reducing Regulation and Controlling Regulatory Costs") directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process."

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order

13771. *See* OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

In 1996, the legacy INS published a final rule (61 FR 11717) amending 8 CFR 212.1(g) which allowed for the waiver of required passport and visa documents for a nonimmigrant in an unforeseen emergency while still retaining the ability to fine the carrier for transporting an alien to the United States without the required documents. In 2009, the U.S. Court of Appeals for the Second Circuit issued an opinion in *United Airlines, Inc.* v. *Brien,* 588 F.3d 158 (2d Cir. 2009), which held that the regulation amending 8 CFR 212.1(g) was improperly promulgated because DOS and the legacy INS did not jointly promulgate the rule. In its ruling, the court upheld legacy INS's decision to parole aliens arriving in the United States without proper documents rather than granting them a waiver, thereby preserving INS's authority to fine the carrier under section 273 of the INA.[7] *See United Airlines,* 588 F.3d at 174. This has led to a situation in which carriers are being penalized inconsistently when they transport aliens to the United States without proper documentation. If an alien qualifies for parole, the carrier nonetheless is subject to a fine. If an alien does not qualify for parole but receives a waiver, the carrier is not subject to a fine. Since the carriers' underlying conduct is the same in both cases, *i.e.,* transporting an alien to the United States without proper documentation, CBP believes the penalties should be the same.

As such, DHS and DOS are now jointly promulgating final rules to allow CBP to waive the requirement to present entry documents for nonimmigrants under an unforeseen emergency while still retaining the ability to fine the carrier for transporting an alien to the United States without proper entry documentation.[8]

From FY 2010–2016,[9] if this rule had been in effect, carriers would have been subject to penalties averaging $1.4 million per year for 786 violations of section 273. This $1.4 million represents a transfer from violative carriers to the United States government. To avoid the

[7] An alien applying for admission may be paroled into the United States for urgent humanitarian reasons or significant public benefit. Parole does not constitute an admission to the United States and is to be terminated when, *inter alia,* the purpose of parole is accomplished or neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States. *See* INA sections 212(d)(5), 101(a)(13)(B) (8 U.S.C. 1182(d)(5), 1101(a)(13)(B)); *see also* 8 CFR 212.5(c)–(e); *http://www.dhs.gov/definition-terms* for information on various types of parole.

[8] The maximum penalty amount under section 273 has increased from $4,300 to $5,432 as a result of multiple adjustments to account for inflation. *See supra* note 7.

[9] Note that in the NPRM we used data from FY 2010–2015. Now that FY 2016 data is available, we have included it in the analysis.

penalties imposed by this rule and existing penalties, carriers may adopt further oversight. In the NPRM, CBP requested comment on any additional oversight costs that could result from this rule but no such comments were received.

CBP currently assesses penalties under this provision against any carriers that transport aliens without proper documents who are inadmissible, including when these aliens qualify for parole. Therefore, CBP will not have to set up a new process to fine carriers as a result of this rule. A penalty under this provision takes CBP approximately 2.5 hours to process. Therefore, on average this rule would take approximately 1,965 hours (2.5 hours per violation * 786 violations per year) a year for CBP to administer.

Currently, carriers are penalized for violations of section 273 inconsistently. When a carrier transports an alien without proper documentation, whether it is penalized depends not on the nature of the carrier's violation, but on whether the alien it transported qualifies for a waiver. CBP believes it is more equitable to penalize carriers who violate section 273 equally. Additionally, CBP believes that the language of 8 CFR 212.1(g), as amended in the final rule, which allows CBP to assess a section 273 penalty when a waiver is granted, provides an economic incentive for carriers to comply with the statutory requirements of section 273. Finally, we received three comments that were supportive of the rule on the basis that the rule would create an economic incentive for carriers to comply with section 273.

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

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

As discussed above, DHS and DOS are finalizing parallel and simultaneous amendments to 8 CFR 212.1(g) and 22 CFR 41.2(i) respectively, that would allow CBP to waive the passport and/or visa requirements for nonimmigrants due to an unforeseen emergency

while retaining the authority to impose a maximum penalty of $5,432 on a carrier for transporting an alien to the United States without proper documentation.

The Regulatory Flexibility Act does not specify thresholds for economic significance but instead gives agencies flexibility to determine the appropriate threshold for a particular rule. CBP believes that a maximum penalty of $5,432 may be considered a significant economic impact given the wide range of companies subject to the requirements of this rule and that it is possible that a specific small entity may receive more than one penalty in a year. Therefore, CBP is preparing this Final Regulatory Flexibility Analysis under section 604 of the Regulatory Flexibility Act.

It is unlawful under section 273 of the INA for any person or company to transport an alien to the United States (other than from a foreign contiguous territory) who does not have a valid passport and an unexpired visa (if a visa is required). 8 U.S.C. 1323. As such, it is possible that any person or company engaged in the transportation of aliens may be affected by this rule. Below, Table 1 presents data on the industries CBP has identified that could be affected by this rule. While CBP finds that only 19 small entities have violated section 273 from FY 2011 to FY 2016, CBP is unable to certify that a substantial number of small entities will not be affected by the final rule in the future.[10] Accordingly, CBP has conducted the following Final Regulatory Flexibility Analysis.

*1. A statement of the need for, and objectives of, the rule.*

In 1996, the legacy INS published a final rule (61 FR 11717) amending 8 CFR 212.1(g). The amended regulation allowed for the waiver of required passport and visa documents for a nonimmigrant in an unforeseen emergency while still retaining the authority to fine the carrier for transporting an alien to the United States without the required documents. In 2009, the U.S. Court of Appeals for the Second Circuit issued an opinion in *United Airlines, Inc.* v. *Brien,* 588 F.3d 158 (2d Cir. 2009), holding that the regulation amending 8 CFR 212.1(g) was improperly promulgated because DOS and the legacy INS did not jointly promulgate the rule. As such, DHS and DOS are now jointly promulgating rules to allow CBP to waive the requirement to present entry documents for nonimmigrants under an unforeseen emergency while still retaining the ability to fine the carrier for transporting an alien to the United States without proper entry

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

documentation. CBP has concluded that the language of 8 CFR 212.1(g), as amended in the final rule, which allows CBP to assess a section 273 penalty when a waiver is granted, provides the necessary economic incentive for carriers to comply with the statutory requirements of section 273.

The objective of this regulation is to allow CBP to retain its ability to fine a carrier for transporting an alien to the United States without proper entry documentation in the event it grants the alien a waiver for an unforeseen emergency. In general, nonimmigrant aliens must present an unexpired passport and, if required, a valid unexpired visa in order to be admitted to the United States. *See* section 212(a)(7)(B)(i) of the INA (8 U.S.C. 1182(a)(7)(B)(i)). The Secretary of Homeland Security and the Secretary of State, acting jointly, in specified situations may waive either or both of these requirements. *See* sections 212(a)(7)(B)(ii) and 212(d)(4) of the INA (8 U.S.C. 1182(a)(7)(B)(ii), 1182(d)(4)). One of these situations is when the nonimmigrant is unable to present the required documents due to an unforeseen emergency.

*2. A statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.*

CBP received three comments on the Initial Regulatory Flexibility Analysis, published with the NPRM. Two of the commenters were supportive of both the rule and the analysis and one commenter was not. The two commenters that were supportive of the rule and the analysis agreed with CBP that this rule would encourage and incentivize carriers to confirm that every alien has the proper documentation prior to arrival in the United States. The one comment we received that was not supportive of the analysis was in favor of alternative 3, which was for CBP to take no regulatory action. We disagree with this comment because this alternative would continue the current inconsistency regarding the assessment of fines when a carrier violates section 273 for transporting an alien without proper documents based on whether the alien qualifies for parole. Under the commenter's proposed alternative, carriers who transport an alien without proper documents would be subject to a fine if the alien qualifies for parole, but would not be subject to a fine if the alien does not qualify for parole. Since CBP wants to eliminate this inconsistency, we did not make any changes to the rule as a result of the comments.

*3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments.*

CBP did not receive any comments from the Chief Counsel for Advocacy of the Small Business Administration.

*4. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.*

It is unlawful under section 273 for any person or company to transport an alien to the United States (other than from a foreign contiguous territory) who does not have a valid passport and an unexpired visa (if a visa is required). As such, it is possible that any person or company engaged in the transportation of aliens may be affected by this rule. Below, Table 1 presents data on the industries that CBP estimates could be affected by this rule. The data include the NAICS codes of an industry, a description of the industry, and the Small Business Administration's (SBA) guidance on what qualifies an entity to be considered small in the respective industry.[11] Additionally, Table 1 includes the number small entities in the respective industry that have violated section 273 from FY 2011 through FY 2016.[12] Of the industries that could be affected, only six industries have had small entities that have violated section 273 from FY 2011 through FY 2016.[13]

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[11] SBA Table of Small Business Size Standards Matched to small business North American Industry Classification System Codes, effective February 26, 2016, can be found here: *https://www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards.*

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

[13] We received data on which companies between FY 2011 and FY 2016 violated section 273 from CBP's Office of Field Operations, which assesses the penalties. We then looked up each of the violating companies on Hoovers to determine how many were small and in what industry each violating company belonged. Hoovers is a business research company that provides information on companies and industries on its Web site, *www.hoovers.com.*

TABLE 1

| NAICS | Industry description | SBA size standard | Small entities that have violated Sec. 273 of the INA |
|---|---|---|---|
| 481111 | Scheduled Passenger Air Transportation | <1,500 employees | 12 |
| 481112 | Scheduled Freight Air Transportation | <1,500 employees | 0 |
| 481211 | Nonscheduled Chartered Passenger Air Transportation | <1,500 employees | 2 |
| 481212 | Nonscheduled Chartered Freight Air Transportation | <1,500 employees | 0 |
| 481219 | Other Nonscheduled Air Transportation. | <$15 million in revenue | 0 |
| 488119 | Other Airport Operations | <$32.5 million in revenue | 2 |
| 482111 | Line-Haul Railroads | <1,500 employees | 0 |
| 482112 | Short Line Railroads | <1,500 employees | 0 |
| 483111 | Deep Sea Freight Transportation | <500 employees | 0 |
| 483112 | Deep Sea Passenger Transportation | <1,500 employees | 0 |
| 483113 | Coastal and Great Lakes Freight Transportation | <500 employees | 0 |
| 483114 | Coastal and Great Lakes Passenger Transportation | <500 employees | 0 |
| 483211 | Inland Water Freight Transportation | <750 employees | 0 |
| 483212 | Inland Water Passenger Transportation. | <500 employees | 0 |
| 484230 | Specialized Freight (except, Used Goods) Trucking, Long-Distance | <$27.5 million in revenue | 0 |
| 485991 | Special Needs Transportation | <$15 million in revenue | 0 |
| 487110 | Scenic and Sightseeing Transportation, Land | <$7.5 million in revenue | 0 |
| 423860 | Scenic and Sightseeing Transportation, Land Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers | <500 employees | 1 |
| 488330 | Navigational Services to Shipping | <$38.5 million in revenue | 0 |
| 441228 | Motorcycle, ATV, and All Other Motor Vehicle Dealers | <500 employees | 1 |
| 541614 | Process, Physical Distribution and Logistics Consulting Services | <$15 million in revenue | 0 |
| 561520 | Tour Operators | <$20.5 million in revenue | 1 |
| 621910 | Ambulance Services | <$15 million in revenue | 0 |

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

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

The U.S. Census Bureau (Census) provides estimates of the number of entities within an industry. The Census organizes an industry

by various intervals of annual revenue and number of employees.[14] Using these intervals and the SBA's small entity standards, CBP can estimate the number of small entities within an industry. However, the Census intervals do not necessarily correspond exactly with the SBA's small entity size standards. As an example, as shown in Table 2 below, the SBA's small entity size standards state that an entity classified under NAICS code 481211 is small if it has fewer than 1,500 employees. The Census, however, only has the following intervals of employees: 0–4 employees, 5–9 employees, 10–19 employees, 20–99 employees, 100–499 employees, and 500+ employees. It is not possible to differentiate between the entities in the 500+ employee interval that would be considered small under SBA's small entity size standards (entities with fewer than 1,500 employees) and those entities the SBA does not consider small (entities with more than 1,500 employees).

We therefore, sought an alternative data source to supplement the Census data. Any scheduled airline with a capacity of carrying over 18,000 pounds is required to report employee information to the Department of Transportation.[15] Using this data, we were able to identify carriers with over 1,500 employees, who are not considered small entities under the SBA size standards. We subtracted these airlines from the total small entities in each NAICS code to estimate the total small entities that could be affected by this rule. We note that these estimates could include businesses with over 1,500 employees that have a payload of less than 18,000 pounds or that do not offer scheduled flights. As there are a large number of small businesses with over 18,000 pounds of capacity, as shown in DOT's data, we do not believe there are many, if any, large carriers that are not included in DOT's data.

Although CBP can use the Census and DOT data to provide an estimate of the number of small entities that have the potential to be affected by this rule, CBP cannot use the Census data to determine the number of small entities that are, or will be, engaged in the transportation of aliens within a reasonable degree of accuracy.[16] As shown in both Tables 1 and 2, however, CBP's internal records show

[14] *http://www.census.gov/econ/susb/*.

[15] *http://transtats.bts.gov/Employment/*.

[16] For instance, CBP cannot tell which scheduled passenger air transportation entities do, or will, transport aliens and which do, or will, not transport aliens.

that only 19 small entities from FY 2011 to FY 2016 violated section 273 and thus would have been subject to a penalty if this rule were in effect.[17]

TABLE 2

| NAICS | Industry description | SBA size standard | Total number of entities | Total number of small entities | Small entities that have violated Sec. 273 of the INA |
|---|---|---|---|---|---|
| 481111..... | Scheduled Passenger Air Transportation ..... | <1,500 employees ..... | 264 ..... | 239 ..... | 12 |
| 481112..... | Scheduled Freight Air Transportation ..... | <1,500 employees ..... | 212 ..... | 20,7227 ... | 0 |
| 481211 .... | Nonscheduled Chartered Passenger Air Transportation..... | <1,500 employees ..... | 1,479 ..... | 1,396 ..... | 2 |
| 481212 .... | Nonscheduled Chartered Freight Air Transportation. ..... | <1,500 employees ..... | 177 ..... | 171 ..... | 0 |
| 481219 .... | Other Nonscheduled Air Transportation ..... | <$15 million in revenue ..... | 516 ..... | 504 ..... | 0 |
| 488119 .... | Other Airport Operations . | <$32.5 million in revenue..... | 1,149 ..... | 1,085 ..... | 2 |
| 482111..... | Line-Haul Railroads..... | <1,500 employees ..... | not available ..... | not available ..... | 0 |
| 482112 .... | Short Line railroads..... | <1,500 employees ..... | not available ..... | not available ..... | 0 |
| 483111..... | Deep Sea Freight Transportation ..... | <500 employees ..... | 191 ..... | 177 ..... | 0 |
| 483112 .... | Deep Sea Passenger Transportation ..... | <1,500 employees ..... | 54 ..... | 47 ..... | 0 |
| 483113 .... | Coastal and Great Lakes Freight Transportation.... | <500 employees ..... | 337 ..... | 307 ..... | 0 |
| 483114 .... | Coastal and Great Lakes Passenger Transportation. ..... | <500 employees ..... | 110 ..... | 108 ..... | 0 |
| 483211 .... | Inland Water Freight Transportation ..... | <750 employees ..... | 318 ..... | 294 ..... | 0 |
| 483212 .... | Inland Water Passenger Transportation ..... | <500 employees ..... | 193 ..... | 191 ..... | 0 |
| 484230 .... | Specialized Freight (except, Used Goods) Trucking, Long-Distance. ..... | <$27.5 million in revenue..... | 8,100 ..... | 7,927 ..... | 0 |
| 485991 .... | Special Needs Transportation ..... | <$15 million in revenue ..... | 2,627 ..... | 2,567 ..... | 0 |
| 487110 .... | Scenic and Sightseeing Transportation, Land..... | <$7.5 million in revenue..... | 564 ..... | 553 ..... | 0 |

[17] Note that in the IRFA we used data from FY 2008–2012. We have updated the analysis to use more recent data.

TABLE 2

| NAICS | Industry description | SBA size standard | Total number of entities | Total number of small entities | Small entities that have violated Sec. 273 of the INA |
|---|---|---|---|---|---|
| 423860 .... | Scenic and Sightseeing Transportation, Land Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers. ..... | <500 employees..... | 2,149 ..... | 2,082 ..... | 1 |
| 488330 .... | Navigational Services to Shipping ..... | <$38.5 million in revenue ..... | 718 ..... | 694 ..... | 0 |
| 441228 .... | Motorcycle, ATV, and All Other Motor Vehicle Dealers. ..... | <500 employees..... | 6,329 ..... | 6,312 ..... | 1 |
| 541614 .... | Process, Physical Distribution and Logistics Consulting Services. ..... | <$15 million in revenue..... | 6,667 ..... | 6,556 ..... | 0 |
| 561520 .... | Tour Operators ..... | <$20.5 million in revenue ..... | 2,609 ..... | 2,586 ..... | 1 |
| 621910 .... | Ambulance Services ..... | <$15 million in revenue..... | 3,314 ..... | 3,217 ..... | 0 |

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

*5. A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

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

*6. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.*

*Alternative 1 (chosen alternative):* Allows CBP to waive the requirement for nonimmigrants to present valid documentation for entry into the United States in an unforeseen emergency while retaining the ability to enforce the statutory requirement imposing a maximum penalty of $5,432 on a carrier, regardless of size, for transporting an alien to the United States without proper documentation. When the nonimmigrant without proper documentation is not admitted, including when he or she is granted parole, CBP already has the authority to fine the carrier that did not comply with the requirements.

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

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

CBP has chosen to implement Alternative 1. CBP believes that a penalty mechanism is necessary in order to enforce the statutory prohibition on transporting aliens into the United States without proper documentation. In addition, this rule would end the current inconsistency in the issuance of fines for violations of section 273. CBP believes that the language of 8 CFR 212.1(g), as amended in the final rule, which allows CBP to assess a section 273 penalty when a waiver is granted, provides an economic incentive for carriers to comply with the requirements of section 273. Finally, those who commented on the proposed rule were supportive of the chosen alternative.

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

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

*C. Unfunded Mandates Reform Act of 1995*

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

*D. Executive Order 13132*

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

*E. Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collections of information for this final rule are included in an existing collection for DHS Form I–193 (OMB control number 1651–0107).

**List of Subjects in 8 CFR Part 212**

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

## Amendments to the Regulations

For the reasons stated in the preamble, DHS amends part 212 of title 8 of the Code of Federal Regulations (8 CFR part 212), as set forth below.

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

■ 1. The general authority citation for part 212 is revised to read as follows:

Authority: 6 U.S.C. 111, 202, 236 and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1185, 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); 8 CFR part 2.

* * * * *

■ 2. Amend § 212.1 by revising paragraph (g) to read as follows:

### § 212.1 Documentary requirements for nonimmigrants.

* * * * *

(g) Unforeseen emergency. A nonimmigrant seeking admission to the United States must present an unexpired visa and passport valid for the amount of time set forth in section 212(a)(7)(B)(i) of the Act, 8 U.S.C. 1182(a)(7)(B)(i), or a valid biometric border crossing card issued by the DOS on Form DSP–150, at the time of application for admission, unless the nonimmigrant satisfies the requirements described in one or more of paragraphs (a) through (f) or (i), (o), or (p) of this section. Upon a nonimmigrant's application on Form I–193, or successor form, "Application for Waiver of Passport and/or Visa," a district director may, in the exercise of its discretion, on a case-by-case basis, waive either or both of the documentary requirements of section 212(a)(7)(B)(i) if satisfied that the nonimmigrant cannot present the required documents because of an unforeseen emergency. The district director may at any time revoke a waiver previously authorized pursuant to this paragraph and notify the nonimmigrant in writing to that effect.

* * * * *

ELAINE C. DUKE,
*Acting Secretary.*

[Published in the Federal Register, September 5, 2017 (82 FR 41867)]

## 8 CFR CHAPTER I

## 19 CFR CHAPTER I

# REDUCING REGULATION AND CONTROLLING REGULATORY COSTS

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

**ACTION:** Request for information.

**SUMMARY:** As part of its implementation of Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," issued by the President on January 30, 2017, and Executive Order 13777, "Enforcing the Regulatory Reform Agenda," issued by the President on February 24, 2017, U.S. Customs and Border Protection (CBP) within the Department of Homeland Security (DHS) is seeking comments and information from interested parties to assist CBP in identifying existing regulations, paperwork requirements, and other regulatory obligations that can be modified or repealed, consistent with law, to achieve savings of time and money while continuing to achieve CBP's statutory obligations.

**DATES:** Written comments and information are requested on or before December 11, 2017.

**ADDRESSES:** You may submit suggestions identified by docket number by submitting them to the *Federal eRulemaking Portal: http:// www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2017–0035. All submissions received must include the agency name and docket number for this rulemaking. All suggestions received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Any member of the public may access the docket to read suggestions received.

**FOR FURTHER INFORMATION CONTACT:** Elena Ryan, Special Advisor, Programs and Policy Analysis, U.S. Department of Homeland Security, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE., 10th Floor, MS1177, Washington, DC 20229. Telephone: 202–325–0004. Email: *regulatoryreformsuggestion@ cbp.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

On January 30, 2017, the President issued Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs." That Executive Order stated that the policy of the executive branch is to be

prudent and financially responsible in the expenditure of funds, from both public and private sources. The Executive Order also stated that it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. Toward that end, for fiscal year 2017, the Executive Order requires that:

(a) "Unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed." Sec. 2(a).

(b) "For fiscal year 2017 the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero, unless otherwise required by law or consistent with advice provided in writing by the Director of the Office of Management and Budget." Sec. 2(b); and

(c) "Any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations." Sec. 2(c).

Further, the Executive Order requires that for fiscal year 2018, and for each fiscal year thereafter, the head of each agency shall identify, for each regulation that increases incremental cost, offsetting regulations, and provide the agency's best approximation of the total costs or savings associated with each new regulation or repealed regulation.

Additionally, on February 24, 2017, the President issued Executive Order 13777, "Enforcing the Regulatory Reform Agenda". The Executive Order established a Federal policy to alleviate unnecessary regulatory burdens placed on the American people. Section 3(a) of the Executive Order directs Federal agencies to establish a Regulatory Reform Task Force (Task Force). One of the duties of the Task Force is to evaluate existing regulations and make recommendations to the agency head regarding their repeal, replacement, or modification. The Executive Order further asks that each Task Force attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) Are outdated, unnecessary, or ineffective;

(iii) Impose costs that exceed benefits;

(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) Are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision in particular those regulations that rely in whole or in part on data,

information, or methods that are not publicly available or that are insufficiently transparent to meet the standard of reproducibility; or

(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

The Office of Management and Budget has directed that agency policies (such as guidance and interpretative documents) and information collections that impose costs on the public may also be identified under the above criteria, in addition to regulations.

Section 3(e) of the Executive Order calls on the Task Force to seek input and other assistance on this task, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and Tribal governments, small businesses, consumers, nongovernmental organizations, and trade associations.

**Request for Suggestions**

CBP is, through this document, seeking input from entities affected by CBP, including state, local, and tribal governments, small businesses, consumers, non-governmental organizations, manufacturers, and their trade associations. These entities are in the best position to help CBP identify rules that are obsolete, unnecessary, unjustified, or simply no longer make sense, or rules that could be better modernized to accomplish their objectives.

Consistent with CBP's commitment to public participation in the rulemaking process, CBP is soliciting views from the public on specific regulations or paperwork requirements that could be altered or eliminated to reduce burdens while still allowing CBP to meet its mission.

While CBP promulgates rules in accordance with the law and to the best of its analytic capability, it is difficult to be certain of the consequences of a rule, including its costs and benefits, until it has been tested. Because knowledge about the full effects of a rule is widely dispersed in society, members of the public are likely to have useful information and perspectives on the benefits and burdens of existing requirements and how regulatory obligations may be updated, streamlined, revised, or repealed to better achieve regulatory objectives, while minimizing regulatory burdens, consistent with applicable law.

Accordingly, CBP is asking you to consider the following questions when providing your input:

(1) Are there CBP rules or reporting requirements that have become outdated and, if so, how can they be modernized to better accomplish their objective?

(2) Are there CBP rules that are still necessary, but have not operated as well as expected such that a modified, or slightly different approach at lower cost is justified?

(3) Are there CBP rules that unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the secure flow of legitimate trade and travel to and from the United States?

(4) Does CBP currently collect information that it does not need or use effectively?

(5) Are there regulations, reporting requirements, or regulatory processes that are unnecessarily complicated or could be streamlined to achieve statutory obligations in more efficient ways?

(6) Are there rules or reporting requirements that have been overtaken by technological developments? Can new technologies be leveraged to modify, streamline, or do away with existing regulatory or reporting requirements?

To allow CBP to more effectively evaluate suggestions, CBP requests that commenters identify with specificity the regulation (in either Title 19 CFR Chapter I, or Title 8 CFR, Chapter I) or reporting requirement at issue, and provide the legal citation where available. Please note that certain regulations which reflect statutory requirements cannot be eliminated until the statute is amended or repealed to eliminate that requirement. CBP also requests that the submitter provide, in as much detail as possible, an explanation why a regulation or reporting requirement should be modified, streamlined, or repealed, as well as specific suggestions of ways CBP can do so while achieving its regulatory objectives. In addition, supporting data or other information, such as cost information, for any suggestions would be useful.

Comments from the public are crucial to understanding regulatory burden and helping CBP find solutions that are cost effective, facilitate legitimate trade and travel, and enhance homeland security. While CBP intends to fully consider all input received in response to this notice, CBP will not respond individually to comments and none of the comments submitted will bind CBP to take any further action.

Dated: September 6, 2017.

MARK KOUMANS,
*Deputy Executive Assistant Commissioner,*
*Operations Support,*
*U.S. Customs and Border Protection.*

[Published in the Federal Register, September 12, 2017 (82 FR 42751)]

## APPROVAL OF INTERTEK USA, INC., BAYTOWN, TX, AS A COMMERCIAL GAUGER

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

**ACTION:** Notice of approval of Intertek USA, Inc., Baytown, TX, as a commercial gauger.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., Baytown, TX, has been approved to gauge petroleum and petroleum products for customs purposes for the next three years as of September 29, 2014.

**DATES:** As of September 29, 2014, Intertek USA, Inc., Baytown, TX, was reapproved as a Customs-approved commercial gauger. The next triennial inspection date will be scheduled for September 2017.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:**

Notice is hereby given pursuant to 19 CFR 151.13, that Intertek USA, Inc., 2612 West Main St., Baytown, TX 77520, has been approved to gauge and accredited to test petroleum and petroleum products in accordance with the provisions of 19 CFR 151.13. Intertek USA, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

| API Chapters | Title |
|---|---|
| 3 | Gauging. |
| 7 | Temperature Determination. |
| 8 | Sampling. |
| 12 | Calculation of Petroleum Quantities. |
| 17 | Marine Measurements. |

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202)

344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: August 31, 2017.

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

[Published in the Federal Register, September 12, 2017 (82 FR 42826)]

## ACCREDITATION AND APPROVAL OF INTERTEK USA, INC., SAVANNAH, GA, AS A COMMERCIAL GAUGER AND LABORATORY

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

**ACTION:** Notice of accreditation and approval of Intertek USA, Inc., Savannah, GA, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., Savannah, GA, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes for the next three years as of September 22, 2016.

**DATES:** As of September 22, 2016, Intertek USA, Inc., Savannah, GA, was reapproved as a Customs-approved commercial gauger and reaccredited as a Customs-accredited laboratory. The next triennial inspection date will be scheduled for September 2019.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:**

Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 312 Carolan St., Savannah, GA 31415, has been approved to gauge and accredited to test petroleum and petroleum products in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

| API Chapters | Title |
|---|---|
| 3 | Gauging. |
| 7 | Temperature Determination. |
| 8 | Sampling. |
| 11 | Density Determination. |
| 12 | Calculation of Petroleum Quantities. |
| 17 | Marine Measurements. |

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

| CBPL No. | ASTM | Title |
|---|---|---|
| 27–03 | ASTM D4006 | Standard Test Method for Water in Crude Oil by Distillation. |
| 27–04 | ASTM D95 | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation. |
| 27–06 | ASTM D473 | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method. |
| 27–08 | ASTM D86 | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure. |
| 27–11 | D445 | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids. |
| 27–13 | ASTM D4294 | Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry. |
| 27–48 | D4052 | Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter. |
| 27–57 | D7039 | Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X- Ray Fluorescence Spectrometry. |
| 27–58 | D5191 | Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method). |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling

(202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*.

Dated: September 5, 2017.

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

[Published in the Federal Register, September 12, 2017 (82 FR 42826)]

## ACCREDITATION OF INTERTEK USA, INC., YABUCOA, PR, AS A COMMERCIAL LABORATORY

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

**ACTION:** Notice of accreditation of Intertek USA, Inc., Yabucoa, PR, as a commercial laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., Yabucoa, PR, has been accredited to test petroleum and petroleum products for customs purposes for the next three years as of July 7, 2016.

**DATES:** As of July 7, 2016, Intertek USA, Inc., Yabucoa, PR, was reaccredited as a Customs-accredited laboratory. The next triennial inspection date will be scheduled for July 2019.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:**

Notice is hereby given pursuant to 19 CFR 151.12, that Intertek USA, Inc., Road #901, Km. 2.7, Bo. Camino Nuevo, Yabucoa, PR 00767–0186, has been accredited to test petroleum and petroleum products in accordance with the provisions of 19 CFR 151.12. Intertek USA, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|---|---|---|
| 27–01 | ASTM D287 | Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method). |
| 27–02 | ASTM D1298 | Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method. |
| 27–08 | ASTM D86 | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure. |
| 27–11 | ASTM D445 | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids. |
| 27–13 | ASTM D4294 | Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry. |
| 27–48 | ASTM D4052 | Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter. |

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

Dated: August 31, 2017.

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

[Published in the Federal Register, September 12, 2017 (82 FR 42827)]