

# U.S. Customs and Border Protection

**8 CFR PART 235  
CBP DEC. 19-05  
RIN 1651-AB24**

## **U.S. ASIA-PACIFIC ECONOMIC COOPERATION (APEC) BUSINESS TRAVEL CARD PROGRAM REGULATIONS**

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

**ACTION:** Final rule; conforming amendment.

**SUMMARY:** This document amends the Department of Homeland Security's (DHS) regulations pertaining to the U.S. Asia-Pacific Economic Cooperation (APEC) Business Travel Card Program to conform to the Asia-Pacific Economic Cooperation Business Travel Cards Act of 2017 (APEC Act of 2017). Among other conforming changes, it removes the sunset provision and adds a definition of trusted traveler program. It also updates the regulations to correct two minor errors.

**DATES:** The final rule is effective June 14, 2019.

**FOR FURTHER INFORMATION CONTACT:** Eddy (Rafael) R. Henry, Office of Field Operations, (202) 344-3251, [rafael.e.henry@cbp.dhs.gov](mailto:rafael.e.henry@cbp.dhs.gov).

### **SUPPLEMENTARY INFORMATION:**

#### **Table of Contents**

- I. Background
  - A. Asia-Pacific Economic Cooperation (APEC)
  - B. The APEC Business Travel Card (ABTC)
  - C. U.S. Participation in the ABTC Program
- II. Discussion of Regulatory Changes
- III. Inapplicability of Notice and Delayed Effective Date
- IV. Statutory and Regulatory Requirements
  - A. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review) and 13771 (Reducing Regulation and Controlling Regulatory Costs)

B. Regulatory Flexibility Act

C. Paperwork Reduction Act

List of Subjects

Amendments to the Regulations

## I. Background

The Asia-Pacific Economic Cooperation Business Travel Cards Act of 2011 (APEC Act of 2011) established the U.S. APEC Business Travel Card (ABTC) Program and authorized the Secretary of Homeland Security to issue ABTCs through September 30, 2018. Public Law 112–54, 125 Stat. 550. It also authorized DHS to issue implementing regulations. The U.S. ABTC Program provides qualified U.S. business travelers engaged in business in the APEC region, or U.S. Government officials actively engaged in APEC business, the ability to access fast-track immigration lanes at participating airports in foreign APEC member economies. DHS implemented the program, including the general eligibility requirements, through an interim final rule (IFR) published in the **Federal Register** (79 FR 27161) on May 13, 2014. This interim rule was adopted as a final rule published in the **Federal Register** (81 FR 84403) on November 23, 2016. On November 2, 2017, the President signed into law the Asia-Pacific Economic Cooperation Business Travel Cards Act of 2017 (APEC Act of 2017). Public Law 115–79, 131 Stat. 1258. The APEC Act of 2017 replaced the APEC Act of 2011, setting forth, without changing, the general eligibility requirements for the U.S. ABTC and making the U.S. ABTC Program an ongoing program. In addition, the APEC Act of 2017 included some clarifying provisions, such as a definition of a trusted traveler program. APEC, the U.S. ABTC Program, and the new law are discussed in more detail below.

### A. *Asia-Pacific Economic Cooperation (APEC)*

The United States is a member of APEC, which is an economic forum comprised of twenty-one members.<sup>1</sup> APEC’s primary goal is to support sustainable economic growth and prosperity in the Asia-Pacific region. One way APEC promotes this is by facilitating a favorable and sustainable business environment. APEC also promotes regional connectivity through better physical and institutional linkages to ensure goods, services, and people move quickly and

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<sup>1</sup> APEC members are also referred to as ‘economies’ since the APEC process is primarily concerned with trade and economic issues with the members engaging each other as economic entities. The most recently updated list of members is available at the APEC website at <https://www.apec.org/About-Us/About-APEC/Member-Economies> (last accessed Oct. 22, 2018). For simplicity, we will generally refer to them in the preamble of this document as APEC “members,” except where the term “member economy” or “member economies” is more appropriate.

efficiently across borders. The ABTC Program discussed in Section B makes it simpler for business people to travel, thus enabling them to conduct their business, trade, and investment.

*B. The APEC Business Travel Card (ABTC)*

One of APEC's business facilitation initiatives is the ABTC Program. Pursuant to the ABTC Program, APEC members can issue ABTC cards to business travelers and senior government officials who meet certain standards established by the members to provide simpler short-term entry procedures within the APEC region.<sup>2</sup> The parameters of the ABTC Program are more fully set forth in the APEC Business Travel Card Operating Framework ("APEC Framework").<sup>3</sup>

Individuals may apply for the ABTC Program if they: (1) Are citizens of a participating member economy;<sup>4</sup> (2) have never been convicted of a criminal offense; (3) hold a valid passport issued by the home economy;<sup>5</sup> and, (4) are bona fide business persons engaged in business who may need to travel frequently on short-term visits within the APEC region to fulfill business commitments. A bona fide business person is defined in the APEC Framework as a person who is engaged in the trade of goods, the provision of services, or the conduct of investment activities. Senior government officials or other government officials actively engaged in APEC business may be eligible for an ABTC as well. Each APEC member determines its own definition of the term "senior Government official." Under the APEC Framework, the following persons are not eligible for ABTCs: the business person's dependent spouse or children; persons who wish to

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<sup>2</sup> APEC distinguishes between fully participating and transitional members for the purposes of the ABTC Program. In particular, fully participating members do not require a separate business visa or permit application from ABTC holders to whom they have granted preclearance. Generally, pre-clearance is the prior permission given by economies to an ABTC holder that grants cardholders the authorization to travel to, enter and undertake legitimate business in participating economies without first obtaining a visa. While this term is not strictly defined in the current iteration of the APEC Framework, later versions of the framework may include such a definition. The United States does not currently participate in the pre-clearance aspect of the ABTC Program. Canada and the United States are currently transitional members and do not offer visa-free travel for ABTC holders unless they otherwise qualify for visa-free travel. The IFR published on May 13, 2014 includes a more detailed description of the two types of membership. 79 FR 27161, 27162.

<sup>3</sup> According to the IFR, standards for the ABTCs were set forth in the APEC Framework, dated October 2010. 79 FR 27161, 27162. At the time the IFR was published, the current version of the APEC Framework was Version 17, agreed to on January 30, 2013. 79 FR 27161, 27163 at n. 11. The APEC Framework is now current as Version 20, agreed to on February 26, 2018. Any subsequent revisions to the APEC Framework that directly affect the U.S. ABTC may require a regulatory change.

<sup>4</sup> In the case of Hong Kong China, this applies to its permanent residents who hold Hong Kong permanent identity cards.

<sup>5</sup> In the case of Hong Kong China, this applies to its permanent residents who hold a Hong Kong Special Administrative Region passport or a valid travel document issued by another country or territory.

engage in paid employment (*i.e.*, obtain a paid employment position located in a foreign APEC member economy) or a working holiday; and professional athletes, news correspondents, entertainers, musicians, artists, or persons engaged in similar occupations. Finally, the APEC Framework provides that members may impose additional eligibility criteria.

### *C. U.S. Participation in the ABTC Program*

#### (i) APEC Act of 2011

The APEC Act of 2011 became law on November 12, 2011. Public Law 112–54, 125 Stat. 550. It set forth the basic eligibility and operational criteria for the U.S. ABTCs, and authorized the Secretary of Homeland Security, in coordination with the Secretary of State, to issue U.S. ABTCs through September 30, 2018. The APEC Act of 2011 specifically authorized the Secretary of Homeland Security to issue U.S. ABTCs to any eligible person, including business persons and U.S. Government officials actively engaged in APEC business, who is approved and in good standing in an international trusted traveler program of DHS. The APEC Act of 2011 also authorized the Secretary of Homeland Security, in coordination with the Secretary of State, to prescribe the necessary regulations regarding conditions of or limitations on eligibility for an ABTC.

Pursuant to the APEC Act of 2011, and after consultation with the Department of State and the private sector, DHS published an IFR in the **Federal Register** amending the DHS regulations to establish the U.S. ABTC program. 79 FR 27161 (May 13, 2014).<sup>6</sup> The rule promulgated regulations that adhered to the APEC Framework in effect at that time and implemented the U.S. ABTC program in accordance with the APEC Act of 2011. A final rule published on November 23, 2016 that adopted the interim amendments as final.<sup>7</sup>

The IFR explained that, in accordance with the APEC Framework, participation in the U.S. ABTC Program was limited to U.S. citizens<sup>8</sup> who are either bona fide business persons engaged in APEC business, or U.S. Government officials actively engaged in APEC business. 79 FR 27161, 27164, 27174. It further defined “bona fide business persons engaged in business in the APEC region” as persons engaged in

<sup>6</sup> The IFR became effective on June 12, 2014. 79 FR 27161 (May 13, 2014).

<sup>7</sup> 81 FR 84403. As discussed in more detail below, the final rule adopted the interim amendments as final. Notwithstanding this, subsequent citations are to the IFR only, except where a citation to the final rule is necessary.

<sup>8</sup> In accordance with the APEC Framework, CBP noted that an APEC member may only issue ABTCs to its own citizens; thus, eligibility for the U.S. ABTC was limited to U.S. citizens. 79 FR 27161, 27162, 27174.

the trade of goods, the provision of services or the conduct of investment activities in the APEC region, and “APEC business” to mean U.S. Government activities that support the work of APEC. *Id.* At the same time, the IFR noted that, in accordance with the APEC Framework, professional athletes, news correspondents, entertainers, musicians, artists or persons engaged in similar occupations were not considered to be bona fide business travelers. *Id.*

The IFR clarified that, while the APEC Act of 2011 referred to membership in a DHS trusted traveler program as a precondition for participation in the U.S. ABTC Program, not all DHS trusted traveler programs were compatible with U.S. ABTC travel. Consequently, DHS limited eligibility to participants of Global Entry, NEXUS and SENTRI due to their eligibility requirements, vetting process and expedited processing at ports of entry.<sup>9</sup> *Id.* The IFR and final rule also set forth the U.S. ABTC application process.<sup>10</sup> *See*, 79 FR 27161, 27165, 81 FR 84403, 84407.

The IFR provided that U.S. ABTC card holders may apply to renew their membership up to a year prior to the expiration of their ABTCs, as long as they did so before the expiration of the U.S. ABTC Program. The IFR also noted that a renewal application would require a new U.S. ABTC application, fee and review of eligibility criteria, including membership in a CBP trusted traveler program. *Id.*

Finally, the IFR set forth the notification procedures for applicants who may be denied a U.S. ABTC, listed reasons that a U.S. ABTC holder may be removed from the U.S. ABTC Program, and provided redress procedures for individuals who wished to contest their denial or termination from the U.S. ABTC Program. *Id.* at 27165–66, 27175.

The IFR became effective on June 12, 2014, and on that date CBP began issuing U.S. ABTCs to qualified U.S. citizens. At that time, in accordance with the APEC Framework, CBP issued U.S. ABTCs valid for three years or until the expiration date of the card holder’s passport (if earlier), provided the card holder’s participation in the program was not revoked by CBP prior to the end of the period. On November 23, 2016, DHS adopted the interim amendments as final, albeit with two changes: The final rule amended the validity period of U.S. ABTCs to five years in conformity with revisions to the APEC

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<sup>9</sup> DHS determined that other DHS trusted traveler programs such as FAST and TSA Precheck do not fit the parameters of the U.S. ABTC Program due to their vetting process and their inapplicability to international air travel.

<sup>10</sup> At the time the IFR and final rule were published, U.S. ABTC applications were accepted through CBP’s Global Online Enrollment System (GOES) website. On October 1, 2017, CBP launched a new cloud-based website, the Trusted Traveler Programs (TTP) System, which replaced the Global Online Enrollment System (GOES). The TTP website can be accessed at <https://ttp.cbp.dhs.gov/>.

Framework, and removed all references in the regulations to suspension from the program because CBP does not use suspension as a remedial action. 81 FR 84403.

(ii) APEC Act of 2017

The APEC Act of 2017 became law on November 2, 2017. Public Law 115–79, 131 Stat. 1258. The APEC Act of 2017 replaced the APEC Act of 2011, setting forth, without changing, the general eligibility requirements for the U.S. ABTC and making the U.S. ABTC Program permanent. *Id.* In comparison with the APEC Act of 2011, the APEC Act of 2017 provides more specific details on eligibility and incorporates certain definitions of terms that were originally set forth in the IFR and regulations that implemented the APEC Act of 2011.

Although certain differences exist between the APEC Act of 2011 and the APEC Act of 2017, in most cases, these differences are consistent with the current regulations and therefore do not warrant a change in the regulations. For example, the APEC Act of 2017 now specifies U.S. citizenship in the eligibility criteria for U.S. ABTCs, whereas the APEC Act of 2011 did not. However, the IFR had clarified the eligibility criteria to include U.S. citizenship based on the criteria set forth in the APEC Framework. Since the regulations limit eligibility to U.S. citizens, the inclusion of this requirement in the APEC Act of 2017 does not warrant a change in the regulations. Similarly, the APEC Act of 2017 provides that U.S. ABTCs may be issued to individuals who are “engaged in business” in the APEC region and U.S. Government officials “actively engaged in [APEC] business.” Public Law 115–79. This language is consistent with the eligibility requirements set forth in the APEC Framework. In contrast, the APEC Act of 2011 had described as eligible “business leaders and United States Government officials who are actively engaged in [APEC] business.” Public Law 112–54, 125 Stat. 550. The IFR implementing the APEC Act of 2011 had retained the distinction made in the APEC Framework, which is now made clearer in the APEC Act of 2017. As such, no amendment to the regulations is necessary as a result of this change. Finally, the APEC Act of 2017 specifically vested authority for implementing the program with the Commissioner of CBP, where previously, in the APEC Act of 2011, such authority had been vested in the Secretary of Homeland Security. As the IFR was issued jointly by CBP and DHS, no change to the regulations is required *per se*.<sup>11</sup>

<sup>11</sup> The APEC Act of 2017 also does not provide the Commissioner of CBP with authority to terminate the U.S. ABTC Program. Previously, pursuant to the APEC Act of 2011, the Secretary of Homeland Security had such authority, provided that termination was deter-

Two specific differences between the APEC Act of 2017 and the APEC Act of 2011 do require modifications to the regulations: (1) The inclusion of a definition for “trusted traveler program” in the APEC Act of 2017, and (2) the provision within the APEC Act of 2017 that makes the U.S. ABTC Program an ongoing program. The APEC Act of 2017 provides that, solely for the purposes of the U.S. ABTC Program, “the term ‘trusted traveler program’ means a voluntary program of the Department that allows U.S. Customs and Border Protection to expedite clearance of pre-approved, low-risk travelers arriving in the United States”; no such definition was included in the APEC Act of 2011. Public Law 115–79; Public Law 112–54, 125 Stat. 54. DHS is incorporating this definition into the regulations. We note that as this definition is consistent with CBP’s previous interpretation, its inclusion in the regulations does not necessitate a change in the CBP trusted traveler programs deemed compatible with the U.S. ABTC Program. The Global Entry, SENTRI, and NEXUS trusted traveler programs meet this definition and will continue to be the applicable trusted traveler programs for purposes of the ABTC regulations.<sup>12</sup> Additionally, the APEC Act of 2017 makes the U.S. ABTC Program an ongoing program and the regulations are amended accordingly, as discussed in the section below.

The regulations contained at 8 CFR 235.13, as revised, remain critical to the implementation of the U.S. ABTC Program as they set forth specific application, renewal and redress procedures not contained in the APEC Act of 2017, and they define terms used, but not defined, in the APEC Act of 2017.

## II. Discussion of Regulatory Changes

Section 235.13(b)(1) sets forth the eligibility criteria for participation in the U.S. ABTC Program. This same section provides definitions for terms and phrases used in the relevant statutory and regulatory provisions. This document revises § 235.13(b)(1)(ii) by incorporating the definition of “trusted traveler program” included in the APEC Act of 2017.

In the final rule establishing the regulations governing the U.S. ABTC Program, DHS removed references to suspension of previously mined to be in the interest of the United States. As there is no provision regarding termination in the regulations, no change or amendment is required.

<sup>12</sup> CBP does not consider the FAST and TSA Precheck programs to meet the statutory definition. The FAST program is a commercial clearance program for known low-risk commercial shipments entering the United States from Canada and Mexico. FAST has its own vetting process and focuses more specifically on the business of highway carriers using trucks to transport cargo into the United States rather than on low-risk travelers in general. The TSA Precheck program does not deem an individual low-risk for CBP inspection purposes. It facilitates pre-flight aviation security screening of travelers boarding flights within and departing the United States on U.S. carriers.

issued cards as CBP does not use suspension as a remedial action. One reference to suspension inadvertently remained in the regulations, at 8 CFR 235.13(g). This document corrects the error by removing the remaining reference to suspension. Additionally, this document corrects an inadvertent editorial error in § 235.13(g)(1) by adding a space between the words “removal” and “by”.

Section 235.13(h) concerns the duration of the U.S. ABTC Program and provides that DHS will issue ABTCs through September 30, 2018. The APEC Act of 2017 makes the ABTC Program ongoing. Public Law 115–79, 131 Stat. 1258. Therefore, § 235.13(h) is no longer necessary. This document removes the now-obsolete provision. In light of the savings clause in section 4(b)(2) of the APEC Act of 2017, any ABTCs issued pursuant to the APEC Act of 2011 remain valid until their stated expiration date unless otherwise revoked.

### III. Inapplicability of Notice and Delayed Effective Date

The Administrative Procedure Act (APA) generally requires that agencies publish a notice of proposed rulemaking in the **Federal Register** and provide interested persons the opportunity to submit comments. *See* 5 U.S.C. 553(b) and (c). However, there are certain exceptions to this rule.

The APA provides an exception from notice and comment procedures when an agency finds for good cause that those procedures are “impracticable, unnecessary, or contrary to the public interest.” *See* 5 U.S.C. 553(b)(3)(B). In this case, CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary because the conforming amendments and minor non-substantive edits set forth in this document are required to ensure that the regulation reflects changes to the underlying statutory authority affected by the APEC Act of 2017 and to remove a minor inadvertent error. For this same reason, pursuant to 5 U.S.C. 553(d)(3), CBP finds that good cause exists for dispensing with the requirement for a delayed effective date.

### IV. Statutory and Regulatory Requirements

#### *A. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review) and 13771 (Reducing Regulation and Controlling Regulatory Costs)*

Executive Orders 12866 and 13563 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 12866 section 3(f) provides criteria for what constitutes “significant regulatory action” and 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 each new regulation issued, two prior regulations must be identified for elimination. Executive Order 13771 also requires that agencies prudently manage and control the cost of planned regulations through a budgeting process. As these amendments to the regulations are conforming amendments to reflect statutory changes and to make minor non-substantive edits, they do not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866, and as supplemented by Executive Order 13563. Accordingly, OMB has not reviewed this regulation. Further, as this rule is not a significant regulatory action, it is exempt from the requirements of Executive Order 13771. *See* OMB’s Memorandum titled “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

### *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 an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act. 5 U.S.C. 601 *et seq.*

### *C. Paperwork Reduction Act*

Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. The collections of information in this final rule are approved in accordance with the requirements of the Paperwork Reduction Act under control number 1651–0121. There are no changes being made to the information collection as a result of this final rule.

### List of Subjects in 8 CFR Part 235

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

### Amendments to the Regulations

For the reasons set forth above, 8 CFR part 235 is amended as set forth below.

### PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 1. The authority citations for part 235 is revised to read as follows:

**Authority:** 6 U.S.C. 218 and note; 8 U.S.C. 1101 and note, 1103, 1158, 1182, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2004 Comp., p.278), 1185 note, 1201, 1224, 1225, 1226, 1228, 1365a note, 1365b, 1379, 1731–32; 48 U.S.C. 1806 and note.

■ 2. Amend § 235.13 as follows:

■ a. Revise paragraph (b)(1)(ii);

■ b. In paragraph (g) introductory text, remove the words “suspended or” in the first sentence;

■ c. In the first sentence of paragraph (g)(1), add a space between the words “removal” and “by”; and

■ d. Remove paragraph (h). The revision reads as follows:

#### § 235.13 U.S. Asia-Pacific Economic Cooperation Business Travel Card Program.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) An existing member in good standing of a CBP trusted traveler program or approved for membership in a CBP trusted traveler program during the application process described in paragraph (c) of this section. For the purpose of this section only, “trusted traveler program” is defined as a voluntary program of the Department that allows U.S. Customs and Border Protection to expedite clearance of pre-approved, low-risk travelers arriving in the United States; and

\* \* \* \* \*

Dated: May 24, 2019.

KEVIN K. McALEENAN,  
*Acting Secretary.*

[Published in the Federal Register, June 14, 2019 (84 FR 27704)]

**8 CFR PART 234**

**19 CFR PART 122**

**CBP DEC. 19-06**

**RIN 1651-AB10**

## **FLIGHTS TO AND FROM CUBA**

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

**ACTION:** Final rule.

**SUMMARY:** This rule adopts as final, without change, interim amendments to the U.S. Customs and Border Protection (CBP) regulations published in the **Federal Register** on March 21, 2016, that removed certain provisions regarding flights to and from Cuba that were either obsolete due to intervening regulatory changes or were duplicative of regulations applicable to all other similarly situated international flights.

**DATES:** This rule is effective on June 25, 2019.

**FOR FURTHER INFORMATION CONTACT:** Arthur A.E. Pitts, Sr., U.S. Customs and Border Protection, Office of Field Operations, by phone at (202) 344-2752 or by email at *Arthur.A.Pitts@cbp.dhs.gov*.

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

On March 21, 2016, the Department of Homeland Security (DHS) published an interim final rule (IFR) in the **Federal Register** (81 FR 14948) amending CBP regulations to remove regulations previously codified at 19 CFR, part 122, subpart O. The removed regulations imposed certain restrictions and reporting requirements on flights to and from Cuba. The implementation of robust reporting requirements that generally apply to all international flights rendered much of subpart O redundant. Additionally, the Department of the Treasury's Office of Foreign Assets Control (OFAC) and the Department of Commerce's Bureau of Industry and Security (BIS) issued changes to

the Cuban Assets Control Regulations (CACR) and the Export Administration Regulations (EAR) that rendered many sections of subpart O obsolete.<sup>1</sup>

Despite the removal of subpart O, flights to and from Cuba continue to be subject to the same entry and clearance requirements in 19 CFR part 122 as all other similarly situated international flights. Additionally, flights to and from Cuba continue to be subject to other legal requirements relating to travel and trade between the United States and Cuba including, but not limited to, the CACR and the EAR.

In the IFR, DHS also amended several provisions of title 8 CFR (8 CFR 234.2) and title 19 CFR (19 CFR 122.31 and 122.42) to bring these sections into conformity with the removal of 19 CFR part 122, subpart O.

## II. Discussion of Comments

### A. Overview

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures pursuant to the foreign affairs exemption in 5 U.S.C. 553(a)(1), the IFR provided for the submission of public comments that would be considered before adoption of the interim regulations as a final rule. The prescribed 30-day public comment period closed on April 20, 2016. DHS received submissions from 30 commenters.

The vast majority of commenters supported the removal of subpart O. Those commenters supported the removal of subpart O based on the expectation that it would benefit the U.S. airline industry and other U.S. businesses hoping to expand to Cuba, lower the cost of flights to and from Cuba by increasing flight options available to U.S. consumers, and potentially lead to future trade agreements and other economic cooperation between the United States and Cuba. Three of the commenters that supported the rule requested that DHS impose additional restrictions on international flights and individuals arriving in the United States. Two commenters opposed the IFR due to legal and policy concerns regarding Cuba. A summary of the comments and comment responses follow.

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<sup>1</sup> Following the publication of the IFR, BIS and OFAC published additional changes to the CACR and the EAR in order to implement the National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba (June 16, 2017). See 82 FR 51983 (Nov. 9, 2017) and 82 FR 51998 (Nov. 9, 2017). These changes did not affect provisions related to former subpart O and do not require modification to the IFR.

### *B. Discussion*

*Comment:* One commenter expressed concern that the removal of subpart O would encourage the spread of communist beliefs and stated that DHS should take steps to continue to isolate Cuba. Another commenter stated that the removal of subpart O was inconsistent with federal laws that restrict trade with Cuba and with CBP's putative duty to prevent trade with Cuba. Specifically, it is the position of the commenter that section 6063 of title 22 of the U.S. Code prohibits CBP from removing subpart O until there is a transition government in place in Cuba.

*Response:* DHS disagrees that the removal of subpart O is inconsistent with U.S. law or CBP's obligations under the law. As noted above and explained in detail in the IFR, each section previously codified in subpart O is either redundant of other regulatory provisions or is obsolete due to intervening regulatory changes issued by OFAC and BIS pursuant to OFAC's and BIS's statutory authority to regulate travel and trade with Cuba. Additionally, none of the regulatory requirements previously codified in subpart O is mandated by statute. Rather, subpart O was promulgated pursuant to the Secretary of Homeland Security's broad authority to regulate all aircraft arriving to and departing from the United States. *See* 19 U.S.C. 1433, 1644, and 1644a. The elimination of subpart O, therefore, merely updates CBP's regulations to conform to OFAC's and BIS's regulations and does not conflict with the existing statutory or regulatory scheme restricting travel or trade with Cuba.

The removal of subpart O also does not conflict with title II of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Public Law 104–114, sections 201–207, 110 Stat. 785, 805–814, which includes the provisions codified at 22 U.S.C. 6063. Those provisions do not specifically address DHS's authority to regulate aircraft flying to or from Cuba. The President is authorized to suspend aspects of the economic embargo of Cuba only if certain conditions are met, including the determination that “a transition government in Cuba is in power.” 22 U.S.C. 6064(a). As explained above, however, the removal of the provisions in subpart O, which are either redundant or obsolete, merely conforms CBP's regulations to the BIS and OFAC requirements. It does not affect the existing embargo, and therefore does not require a determination that a transition government is in power in Cuba.

*Comment:* Two commenters expressed support for the removal of subpart O but requested that individuals arriving in the United States from any foreign place, including individuals arriving from Cuba, be subject to criminal background checks in order to enter the

United States. One commenter requested that additional restrictions be placed on flights to and from any foreign place.

*Response:* The requirements applicable to foreign individuals seeking entry into the United States are beyond the scope of this rule. However, DHS notes that despite the removal of subpart O, all travelers arriving in the United States from Cuba must still report to a CBP officer and undergo a customs and immigration inspection, as required by various provisions in the United States Code and titles 8 and 19 and of the CFR. DHS and its component agencies also work closely with the Department of State and other agencies responsible for enforcing the sanctions regime against Cuba, including OFAC and BIS, to ensure that individuals on the Specially Designated National (SDN) list are prohibited entry into the United States.

In addition, despite the removal of subpart O, all aircraft arriving in the United States from Cuba are subject to the various reporting and inspection requirements of title 19 CFR.

*Comment:* One commenter requested that DHS amend section 122.153(c) of title 19 (19 CFR 122.153) to permit Key West International Airport to receive flights to and from Cuba.

*Response:* Section 122.153 of title 19 is within subpart O and, therefore, has been removed. However, it is not necessary to amend the list of airports authorized to accept flights to and from Cuba previously contained in 122.153(c) to add Key West International Airport, or any other airport, in order for that airport to receive flights to and from Cuba. With the removal of subpart O, any airport, including Key West International Airport, may request a new international flight to or from Cuba under the same procedures and requirements applicable to all other similarly situated airports and aircraft operators seeking to conduct international flights. In order to operate flights between the United States and Cuba, all airports and aircraft operators must comply with applicable regulatory requirements of DHS and its component agencies, such as CBP, the Transportation Security Administration (TSA), U.S. Immigration and Customs Enforcement (ICE) and the U.S. Coast Guard, as well as the regulatory requirements of OFAC, BIS, and the Department of Transportation's Federal Aviation Administration.

### **III. Conclusions—Regulatory Amendments**

After careful consideration of the comments received, DHS is adopting the interim regulations, as set forth in the IFR published in the **Federal Register** at 81 FR 14948 on March 21, 2016, as final without change.

## Statutory and Regulatory Requirements

### A. Statutory Requirements

The Administrative Procedure Act (APA) requirements in 5 U.S.C. 553 govern agency rulemaking procedures. Among other procedural requirements, the APA generally requires that a final rule have a 30-day delayed effective date. The APA provides a full exemption from the requirements of section 553 for rules involving the foreign affairs function of the United States. *See* 5 U.S.C. 553(a)(1). This final rule is excluded from the rulemaking provisions of 5 U.S.C. 553 as a foreign affairs function of the United States because it concerns international flights between the United States and Cuba, consistent with U.S. foreign policy goals. These amendments clarify and simplify the regulations regarding air travel between the United States and Cuba and are consistent with President Trump's continued efforts to ensure that engagement between the United States and Cuba advances the interests of the United States and the Cuban people, including the mutual interest in facilitating lawful travel and safe civil aviation.<sup>2</sup> *See* 82 FR 48875. Accordingly, this final rule is not subject to the 30-day delayed effective date requirement.

Additionally, because this rule is not subject to the requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

### B. Executive Orders 12866 and 13771

Executive Order 12866 ("Regulatory Planning and Review") directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Rules involving the foreign affairs function of the United States are exempt from the requirements of Executive Order 12866. Executive Order 13771 ("Reducing Regulation and Controlling Regulatory Costs") requires that whenever an agency promulgates a new regulation, it must identify at least two existing regulations to be repealed. It further directs that any new incremental costs associated with new regulations must be offset by the elimination of existing costs associated with two prior regulations. Pursuant to section 4(a), Executive Order 13771 does not apply to regulations issued with respect to a foreign affairs function of the United States.

As discussed above, DHS has concluded that clarifying and simplifying the regulations regarding restrictions on travel between the

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<sup>2</sup> National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba (June 16, 2017) § 2(d), (f).

United States and Cuba is a foreign affairs function of the United States Government. Accordingly, this rule is exempt from the requirements of Executive Orders 12866 and 13771.

### **Signing Authority**

This final rule is being issued in accordance with 8 CFR 2.1 and 19 CFR 0.2(a). Accordingly, this final rule is signed by the Secretary of Homeland Security.

### **List of Subjects**

#### *8 CFR Part 234*

Air carriers, Aircraft, Airports, Aliens, Cuba.

#### *19 CFR Part 122*

Administrative practice and procedure, Air carriers, Aircraft, Airports, Alcohol and alcoholic beverages, Cigars and cigarettes, Cuba, Customs duties and inspection, Drug traffic control, Freight, Penalties, Reporting and recordkeeping requirements, Security measures.

### **Amendments to Regulations**

For the reasons set forth above, the IFR amending part 122 of the CBP regulations (19 CFR part 122), which was published in the **Federal Register** at 81 FR 14948 on March 21, 2016, is adopted as a final rule without change.

Dated: June 14, 2019.

KEVIN K. McALEENAN,  
*Acting Secretary.*

[Published in the Federal Register, June 25, 2019 (84 FR 29795)]



## **CUSTOMS AND BORDER PROTECTION 2019 TRADE SYMPOSIUM**

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

**ACTION:** Notice of Trade Symposium.

**SUMMARY:** This document announces that CBP will convene the 2019 Trade Symposium in Chicago, IL, on Tuesday, July 23, 2019, and Wednesday, July 24, 2019. The 2019 Trade Symposium will feature agency personnel, members of the trade community and other government agencies in panel discussions on the agency's role in inter-



national trade initiatives and programs. Members of the international trade and transportation communities and other interested parties are encouraged to attend.

**DATES:** Tuesday, July 23, 2019 (opening remarks and general sessions, 8:00 a.m.–5:00 p.m. EDT), and Wednesday, July 24, 2019 (CBP leadership town hall and breakout sessions, 8:00 a.m.–5:00 p.m. EDT).

**ADDRESSES:** The 2019 Trade Symposium will be held at the Marriott Marquis at 2121 South Prairie Ave, Chicago, IL 60616.

*Registration:* Registration will be open from 12:00 p.m. EDT on June 13, 2019 through 4:00 p.m. EDT on July 9, 2019. All registrations must be made online at the CBP website (<http://www.cbp.gov/trade/stakeholder-engagement/trade-symposium>) and will be confirmed with payment by credit card only. The registration fee is \$184.00 per person. Interested parties are requested to register immediately, as space is limited. Members of the public who are pre-registered to attend and later need to cancel, may do so by sending an email to [tradeevents@cbp.dhs.gov](mailto:tradeevents@cbp.dhs.gov). Please include your name and confirmation number with your cancellation request. Cancellation requests made after July 15, 2019 will not receive a refund.

**FOR FURTHER INFORMATION CONTACT:** Daisy Castro, Office of Trade Relations (OTR) at (202) 344–1440, or at [tradeevents@cbp.dhs.gov](mailto:tradeevents@cbp.dhs.gov). The most current 2019 Trade Symposium information can be found at <http://www.cbp.gov/trade/stakeholder-engagement/trade-symposium>. <http://www.cbp.gov/trade/stakeholder-engagement/trade-symposium>.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact OTR at (202) 344–1440, or at [tradeevents@cbp.dhs.gov](mailto:tradeevents@cbp.dhs.gov) as soon as possible.

**SUPPLEMENTARY INFORMATION:** This document announces that CBP will convene the 2019 Trade Symposium in Chicago, IL, on Tuesday, July 23, 2019, and Wednesday, July 24, 2019. The format of the 2019 Trade Symposium will be general sessions on the first day and breakout sessions on the second day. The 2019 Trade Symposium will feature panels composed of agency personnel, members of the trade community and other government agencies. The panel discussions will address trade remedies, e-commerce, the status of affairs in the Northern Triangle (El Salvador, Guatemala, Honduras), the 21st Century Customs Framework, forced labor issues, and other topics. In addition, there will be a working session to obtain feedback on export modernization and one-on-one sessions with the Centers of Excellence and Expertise. The 2019 Trade Symposium agenda can be

found on the CBP website: <http://www.cbp.gov/trade/stakeholder-engagement/trade-symposium>.

Hotel accommodations have been made at the Marriott Marquis at 2121 South Prairie Ave, Chicago, IL 60616. Hotel room block reservation information can be found on the CBP website (<http://www.cbp.gov/trade/stakeholder-engagement/trade-symposium>).

Dated: June 21, 2019.

BRADLEY F. HAYES,  
*Executive Director,*  
*Office of Trade Relations.*

[Published in the Federal Register, June 26, 2019 (84 FR 30212)]



## REQUEST FOR PUBLIC COMMENTS REGARDING THE CONSTRUCTION OF PEDESTRIAN BARRIER WITHIN CERTAIN AREAS IN THE RIO GRANDE VALLEY, TEXAS

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

**ACTION:** Request for comments regarding the location of proposed pedestrian barrier.

**SUMMARY:** U.S. Customs and Border Protection (CBP) is proposing to construct primary pedestrian barrier within the Rio Grande Valley (RGV) in Starr County, Texas, including within the cities of Roma, Escobares, La Grulla, Rio Grande City, and the census-designated place of Salineno, Texas (the Affected Areas). CBP is requesting comments on its proposal to locate and construct primary pedestrian barrier in the Affected Areas as required by section 232(b) of the Consolidated Appropriations Act, 2019. CBP is also seeking input on potential impacts to the environment, historical preservation, culture, quality of life, and commerce, including socioeconomic impacts from the construction of primary pedestrian barrier in the Affected Areas. Comments should be fact-based, including links to supporting data or research, and should provide detailed information on potential impacts to the environment, historical preservation, culture, quality of life, and commerce, including socioeconomic impacts. Following an analysis of comments received, CBP will publish its responses along with its plans for construction.

**DATES:** The public comment period will be 60 days. To ensure consideration, comments must be received by August 26, 2019. Comments may be submitted as set forth in the **ADDRESSES** section of this document.

**ADDRESSES:** Comments may be submitted electronically through the Federal eRulemaking Portal: <http://www.regulations.gov>. Search docket #USCBP-2019-0018 and follow the instructions for sending comments.

*Instructions:* All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments, see the “Request for Public Comments” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Paul Enriquez, Acquisition, Real Estate, and Environmental Director, Border Wall Program Management Office, U.S. Border Patrol at (949) 643-6365 or visit CBP’s website: <http://www.cbp.gov/about/environmental-cultural-stewardship/nepa-documents/docs-review>.

## **SUPPLEMENTARY INFORMATION:**

### **BACKGROUND**

#### *Construction of Primary Pedestrian Barrier in the Rio Grande Valley*

U.S. Customs and Border Protection (CBP) protects the nation’s borders from terrorism, human trafficking, drug smuggling, illegal migration, unsafe/illegal goods, and agricultural pests, while facilitating the flow of legitimate travel and trade. CBP advances its mission by integrating modern technology, deploying highly-trained law enforcement officers, and leveraging public and private sector partnerships.

The Rio Grande Valley’s (RGV) varied terrain includes areas of dense vegetation, agricultural land, and fast vanishing points that can be easily exploited by smugglers, illegal aliens, and traffickers. CBP has identified priority areas in the RGV that require additional resources, including new primary pedestrian barrier. CBP’s preferred design for pedestrian barrier in Starr County is a bollard wall system that includes all-weather roads, surveillance systems, lighting, a 150-foot enforcement zone, and other supporting infrastructure. These resources will help CBP achieve operational control of the southern border commensurate with Executive Order 13767.<sup>1</sup>

Section 232 of the Consolidated Appropriations Act, 2019 (Pub. L. 115-141, 132 Stat. 348 (Feb. 15, 2019) (the “Consolidated Appropriations Act”)) makes funds available for the construction of physical

<sup>1</sup> E.O. 13767, *Border Security and Immigration Enforcement Improvements*, published in the **Federal Register** at 82 FR 8793 (Jan. 30, 2017).

barriers in RGV, including within the Texas cities of Roma, Escobares, La Grulla, Rio Grande City, and the census-designated place of Salineno, Texas (the Affected Areas). The Consolidated Appropriations Act requires that CBP utilize barrier designs that are operationally effective and that have been deployed as of the date of the Consolidated Appropriations Action of 2017 (Pub. L. 115–31, 131 Stat. 135 (May 5, 2017)).

The proposed action in the Affected Areas is one of a number of border infrastructure projects in the RGV that CBP has proposed, including approximately 13 miles of levee wall presently under construction in Hidalgo, County, Texas, funded by Congress through the Consolidated Appropriations Act, 2018 (Pub. L. 115–141, 132 Stat. 348 (March 23, 2018)). CBP collected public feedback for these projects from September 2018 to November 2018. Information gathered from this effort is used to inform CBP on potential impacts to the environment, culture, quality of life, and commerce. A Stakeholder Feedback Report that summarizes the feedback collected from September 2018 to November 2018 is available on CBP's website: <http://www.cbp.gov/about/environmental-cultural-stewardship/nepa-documents/docs-review>.

## **Proposed Action**

### *Construction of Starr County Primary Pedestrian Barrier*

The proposed action would involve the construction of primary pedestrian barrier within the Affected Areas. The Supporting Documents section of docket #USCBP–2019–0018 (available at <http://www.regulations.gov>) includes maps that depict the Affected Areas as well as the location of proposed pedestrian barriers in areas that are adjacent to the Affected Areas. The exact location of the barrier within the Affected Areas will depend on operational requirements, impact to the water flows and other environmental concerns, as well as input from the elected officials of the Affected Areas and from the general public.

CBP's standard design for the primary pedestrian barrier is a border wall system that consists of 30-foot tall steel bollards and includes a 150-foot enforcement zone on the south or river side of the border wall system, detection and surveillance technology, automated vehicle gates, pedestrian gates, an all-weather patrol road that would run parallel to the south or river side of the border wall system, and enforcement zone lighting. Trees and other vegetation within the roadway or construction site would be grubbed or cut back to facilitate safe vehicle passage and construction.

## Request for Public Comments

All interested parties are invited to participate in the comment process. CBP invites agencies, organizations and the general public to provide input on location of the pedestrian barrier and issues related to the environment, historical preservation, culture, quality of life, and commerce, including socioeconomic impacts.

All interested parties are encouraged to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If you cannot submit your material by using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternative instructions. When submitting comments, please include your name and contact information. Comments received in response to this solicitation, including names and contact information of those who comment, will be part of the public record for this proposed action. Documents mentioned in this notice, and all public comments, will be available in our online docket at <http://www.regulations.gov>, and can be viewed by following that website's instructions. Additionally, if you visit the online docket and sign up for email alerts, you will be notified when comments are posted.

After the public comment period is complete and CBP has reviewed the results, a response to the comments received will be published in the **Federal Register** and made available on CBP's website:<http://www.cbp.gov/about/environmental-cultural-stewardship/nepa-documents/docs-review>.

## Next Steps

Following the public comment period, CBP will review all comments. Responses to the comments received will be published in the **Federal Register** within 90 days following the close of the comment period and made available on CBP's website: <http://www.cbp.gov/about/environmental-cultural-stewardship/nepa-documents/docs-review>. Information collected will be taken into consideration in CBP's planning for the proposed barrier, and will inform the review of impacts to the environment, historical preservation, culture, quality of life, and commerce, including socioeconomic impacts.

Dated: June 21, 2019.

LOREN FLOSSMAN,  
*Acting Executive Director,*  
*Program Management Office Directorate,*  
*Border Wall Program Management Office,*  
*U.S. Border Patrol,*  
*U.S. Customs and Border Protection.*

**AGENCY INFORMATION COLLECTION ACTIVITIES:****Holders or Containers Which Enter the United States Duty Free**

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

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

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than July 26, 2019) 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 *dhsdeskofficer@omb.eop.gov*.

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

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 6156) on February 26, 2019, 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 1320.8. Written comments and suggestions from the public and affected agencies should

address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### Overview of This Information Collection

**Title:** Holders or Containers which Enter the United States Duty Free.

**OMB Number:** 1651-0035.

**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 (with no change).

**Affected Public:** Businesses.

**Abstract:** Subheading 9803.00.50 of the Harmonized Tariff Schedule of the United States (HTSUS), codified as 19 U.S.C. 1202, provide for the release without entry of the payment of duty of certain substantial holders or containers pursuant to the provisions of 19 CFR 10.41b.

Section 19 CFR 10.41b eliminates the need for an importer to file entry documents by instead requiring, among other things, the marking of the containers or holders to indicate the HTSUS numbers that provide for duty-free treatment of the containers or holders.

For U.S. manufactured serially numbered holders or containers which may be released without entry or the payment of duty under 9801.00.10 HTSUS, 19 CFR 10.41b requires the owner to place the following markings on the holder or container: 9801.00.10, HTSUS (unless the holder or container has a permanently attached metal tag or plate showing, among other things, the name and address of the U.S. manufacturer); the name of the owner; and the serial number assigned by the owner. For serially numbered holders or containers of foreign manufacture for which may be released without entry or payment of duty under 9803.00.50 HTSUS, 19 CFR 10.41b requires

the owner to place markings containing the following information: 9803.00.50 HTSUS; the district and port code numbers of the port of entry; the entry number; the last two digits of the fiscal year of entry covering the importation of the holders and containers on which duty was paid; the name of the owner; and the serial number assigned by the owner.

**Estimated Number of Respondents:** 20.

**Estimated Number of Responses per Respondent:** 18.

**Estimated Number of Total Annual Responses:** 360.

**Estimated Time per Response:** 15 minutes.

**Estimated Total Annual Burden Hours:** 90.

Dated: June 21, 2019.

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

[Published in the Federal Register, June 26, 2019 (84 FR 30211)]