

impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources and therefore they will not materially burden the production or use of domestic energy resources.

Dated: October 25, 2017.

Kimberly D. Bose,
Secretary.

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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 24 and 111

[USCBP-2017-0025; CBP Dec. 17-16]

RIN 1515-AE25

Procedures To Adjust Customs COBRA User Fees To Reflect Inflation

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

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with changes, the amendments proposed to the U.S. Customs and Border Protection (CBP) regulations to reflect that customs user fees and limitations established by the Consolidated Omnibus Budget Reconciliation Act (COBRA) will be adjusted for inflation in accordance with the Fixing America's Surface Transportation Act (FAST Act).

DATES: Effective November 1, 2017.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Director—Revenue Division, 317-298-1107, bruce.ingalls@cbp.dhs.gov; or Tina Ghiladi, Director—Fee Strategy, Communications, and Integration, 202-344-3722, tina.ghiladi@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 4, 2015, the Fixing America's Surface Transportation Act (FAST Act, Pub. L. 114-94) was signed into law. Section 32201 of the FAST Act amends section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) by requiring certain customs COBRA user fees and corresponding limitations to be adjusted by the Secretary of the Treasury (Secretary) to reflect certain increases in inflation. The specific fees and corresponding

limitations to be adjusted for inflation are set forth in Appendix A and Appendix B of part 24 in this final rule and include the commercial vessel arrival fees, commercial truck arrival fees, railroad car arrival fees, private vessel arrival fees, private aircraft arrival fees, commercial aircraft and vessel passenger arrival fees, dutiable mail fees, customs broker permit user fees, barges and other bulk carriers arrival fees, and merchandise processing fees as well as the corresponding limitations. (19 U.S.C. 58c(a) and (b)). Further, the FAST Act includes a particular measure of inflation for these purposes and special rules when considering adjustments.

According to the FAST Act, the customs COBRA user fees and limitations were to be adjusted on April 1, 2016, and at the beginning of each fiscal year to reflect the percent increase (if any) in the Consumer Price Index (CPI) for the preceding 12-month period compared to the CPI for fiscal year 2014. The statute permits the Secretary to ignore any CPI increase of less than one (1) percent from the time of the previous adjustment. As a result, if the increase in the CPI since the previous adjustment is less than one (1) percent, the Secretary has discretion to determine whether the fees should be adjusted.

On June 15, 2016, CBP published a notice in the *Customs Bulletin* announcing the April 2016 determination that no adjustment to the customs COBRA user fees and limitations was necessary based on the FAST Act provision as the increase of the CPI was less than one (1) percent. (*Customs Bulletin*, Vol. 50, No. 24, p. 13). CBP published a second notice in the *Customs Bulletin* on December 7, 2016, announcing that, based on a less than one (1) percent increase in inflation, no adjustment was necessary for fiscal year 2017. (*Customs Bulletin* Vol. 50, No. 49, p. 4).

Proposed Rule

On July 17, 2017, CBP published a notice of proposed rulemaking (NPRM) in the **Federal Register** (82 FR 32661) proposing to amend title 19 of the Code of Federal Regulations (19 CFR) to set forth the methodology for determining the required adjustments. The FAST Act specifies that the customs COBRA user fees and corresponding limitations should be adjusted to reflect the percentage of the increase (if any) in the average of the CPI for the preceding 12-month period compared to the CPI for fiscal year 2014. CBP determined that the 12-month period for comparison will be June through May. This timeframe was proposed to allow for

sufficient notice to the public of any adjustments prior to any changes becoming effective for each fiscal year.

The FAST Act further requires the Secretary to round the amount of any increase in the CPI to the nearest dollar. The rounding requirement applies to the difference in the CPI from the comparison year to the current year when determining whether an adjustment is necessary. As written, the rounding requirement does not apply to the fee amount resulting from any adjustment. As noted above, if the difference in the CPI since the last adjustment is less than one (1) percent, the Secretary may elect not to adjust the fees and limitations. The statute requires CBP to use the Consumer Price Index—All Urban Consumers, U.S. All items, 1982-84 (CPI-U) which can be found on the U.S. Department of Labor, Bureau of Labor Statistics Web site: www.bls.gov/cpi/. The proposed rule provided that CBP's Office of Finance will determine annually whether an adjustment to the fees and limitations is necessary and a notice specifying the amount of the fees and limitations will be published in the **Federal Register** for each fiscal year at least 30 days prior to the effective date of the new fees and limitations.

Technical Corrections

In addition, CBP proposed technical updates to paragraph (g) of 19 CFR 24.22 to reflect the elimination of the user fee exemption for passengers arriving from Canada, Mexico or one of the adjacent islands pursuant to the United States—Colombia Trade Promotion Agreement Implementation Act. (Colombia TPA, Pub. L. 112-42, October 21, 2011). Section 601 of the Colombia TPA amended 19 U.S.C. 58c(b)(1)(A)(i) to limit the fee exemption exclusively to passengers whose journey originated in a territory or possession of the United States, or originated in the United States and was limited to the territories and possessions of the United States. (19 U.S.C. 58c(b)(1)(A)(i)). Since the law became effective on November 5, 2011, CBP has been collecting only the non-exempt user fees. In accordance with the statute, CBP is removing the exemption for passengers arriving from Canada, Mexico, or one of the adjacent islands, from the regulations found in paragraphs (g)(1)(i), (g)(1)(i)(A), (g)(1)(i)(B), (g)(1)(ii), (g)(1)(iii), (g)(2)(i), the chart in paragraph (g)(2)(iv), and the collection procedures in paragraphs (g)(4)(ii)(A), (g)(4)(ii)(B), (g)(4)(ii)(C), (g)(4)(iii)(A), (g)(4)(iii)(B), and (g)(4)(iii)(C). (19 CFR 24.22(g)). CBP is also removing the definition of “adjacent islands” from paragraph

(g)(1)(iii) as references to adjacent islands have been removed from paragraph (g). (19 CFR 24.22(g)). Additionally, CBP is amending paragraph (g)(2)(iii) to clarify that journeys between ports in the United States are not subject to the fee. (19 CFR 24.22(g)(2)(iii)).

Upon further review, CBP determined that certain technical corrections that were proposed needed further clarification.

Specifically, CBP has determined that paragraph (g)(1)(i) needs to be revised to more clearly identify when a fee is charged based on the arrival of a passenger aboard a commercial vessel or aircraft from one of the territories or possessions of the United States. Paragraph (g)(1)(i) is re-organized for clarity to provide for the three exceptions to the general rule stated in paragraph (g)(1)(i).

In paragraph (g)(1)(ii), CBP has determined that its proposed wording was incorrect. Instead, CBP is retaining current paragraph (g)(1)(ii) with revisions to remove the references to Canada, Mexico and the adjacent islands and adding the phrase that the fee amount is subject to adjustment by the terms of paragraph (k) of this section.

Further, the user fee chart in paragraph (g)(2) is intended as a tool to assist readers understand the application of the fee structure laid out in 19 U.S.C. 58c and 19 CFR 24.22(g)(1). The chart as proposed in the NPRM contained two errors and did not accurately reflect the existing statutory and regulatory rules. The chart is being amended to reflect “No fee” for aircraft arriving from a specified location regardless of where the journey originates. Additionally, the chart found in paragraph (g)(2) is corrected as the fees for vessels arriving from a specified location with a journey either originating in a place other than a specified location or the United States, or originating in the United States including travel to at least one place other than a Specified Location, were mistakenly changed from \$1.93 to \$5.50. These two fees will remain at \$1.93 but will include the amendments adding the reference to paragraph (k).

In paragraph (g)(4)(ii)(A), the words “in and arrives” are no longer being removed because they are necessary to prevent charging for passengers whose journey may not have originated from a territory or possession of the United States but who are arriving from a territory or possession. Paragraph (g)(4)(ii)(B) is amended for greater clarity and accuracy by replacing the phrase at the end of the proposed text,

“outside the United States” with “other than the territories and possessions of the United States.” This also makes the language consistent with that found in the following paragraph (g)(4)(ii)(C). Paragraph (g)(4)(ii)(C) is also amended for clarity by replacing the proposed phrase “outside the United States, unless that passenger’s journey originated” with “other than one of the territories or possessions of the United States, is processed by CBP, and the journey does not originate.”

In paragraph (g)(4)(iii)(A), the word “from” after the words “the customs territory of the United States” is retained and the proposed new phrase “that originated in” will not be included. This retains the existing regulatory text while removing the references to Canada, Mexico and the adjacent islands. Similar changes are made to paragraph (g)(4)(iii)(B), so that the existing regulatory text is retained and only the references to Canada, Mexico and the adjacent islands are removed.

In paragraph (g)(4)(iii)(C), CBP will not adopt the proposed new text reading, “a place outside the United States and that passenger’s journey originated in” and will instead retain the existing regulatory text while removing the references to Canada and Mexico or adjacent islands.

Finally, in the chart found in new Appendix A to Part 24, the description of the Commercial Vessel Passenger Arrival Fee is amended by removing the references to Canada and Mexico or adjacent islands from the parenthetical.

The notice of proposed rulemaking requested public comments. The public comment period closed on August 16, 2017, and five comments were received.

Discussion of Comments

Five comments were received in response to the notice of proposed rulemaking.

Comment: Two commenters requested additional notice time beyond the 30 days proposed stating that 30 days notice would be insufficient to make the necessary internal operational adjustments.

CBP Response: In response to the commenters’ concern over the amount of time necessary to operationally prepare for adjusted fees, CBP will increase the notice time from 30 days to 60 days in the final rule.

Comment: One commenter questioned a step in CBP’s methodology for calculating the inflation adjustment, specifically, that the agency proposed to round the difference between the CPI for the current year and the CPI for the comparison year. The commenter

disagrees with CBP’s methodology because 19 U.S.C. 58c(l)(2)(A) directs the Secretary to “round the amount of any increase in the Consumer Price Index to the nearest dollar[.]” According to the commenter, CBP’s methodology is incorrect because the CPI is not expressed in dollars. As a result, the commenter concludes that Congress must have intended for the actual fee and limitation amounts to be rounded to the nearest dollar instead.

CBP Response: CBP disagrees. Congress makes its intent known through the statutory text and here expressly instructed the Secretary to round the amount of any increase in the *Consumer Price Index* to the nearest dollar. See 19 U.S.C. 58c(l)(2)(A). Moreover, the statute clearly states that the Secretary may ignore any *such increase* of less than 1 percent. See 19 U.S.C. 58c(l)(2)(B). “Such increase” plainly refers to the increase in the CPI referenced in the sentence above. There is nothing in the statute that explicitly states that Congress intended for the actual fee and limitation amounts to be rounded. More broadly, throughout the statute, the terms “fees and limitations” and “CPI” are used in different locations, which ordinarily means that they are to be given distinct meanings and are not interchangeable terms.

In addition, the overarching intent of this statutory provision was to keep the COBRA fee and limitation amounts consistent with inflation. Rounding the fees and limitations to the nearest whole dollar amount would in some cases result in fee and limitation amounts that would far exceed the pace of inflation.

Lastly, while CBP acknowledges that the CPI is typically expressed as an index number rather than a dollar amount, as the CPI measures changes in prices, it is closely related to dollars and the Bureau of Labor Statistics has published materials explaining how to interpret the CPI in dollars. See, e.g., United States Department of Labor, Bureau of Labor Statistics, BLS Handbook of Methods, Chapter 17, CPI Publication, Indexes, available at <https://www.bls.gov/opub/hom/pdf/homch17.pdf> (last visited August 18, 2017) (explaining that, in the case of an increase in the CPI from 100 to 233.596, “[o]ne interpretation of this is that a representative set of consumer items that cost \$100 in 1982–84 would have cost \$233.60 in July 2013.”); United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index—July 2017, Technical Note, available at https://www.bls.gov/news.release/archives/cpi_08112017.pdf (last visited August 18, 2017) (explaining that an increase in the CPI

from 100 to 107 “can also be expressed as the price of a base period market basket of goods and services rising from \$100 to \$107”).

Therefore, consistent with basic tenets of statutory interpretation, CBP’s reading as articulated in the NPRM gives meaning to the plain language of the text. As Congress chose not to direct CBP to round the fees, but rather to round the CPI, and since the CPI is closely related to dollars, CBP believes that this interpretation is the best way to give meaning to the text as written. There is no need to render irrelevant Congress’s explicit direction to round the difference in the CPI and to express such a difference in dollars, as urged by the commenter.

Finally, while CBP believes that the language of the FAST Act pertaining to rounding does not apply to the fee amounts, CBP has determined that it has separate authority to adjust the fee amount in the unique situation of the commercial truck fee for efficient processing purposes for both the public and the agency. The statute requires only that the fee and limitation amounts be adjusted “to reflect” the percentage change in inflation. The ordinary meaning of the word reflect is to “[e]mbody or represent (something) in a faithful or appropriate way.” See *Reflect*, Oxford Dictionaries, <https://en.oxforddictionaries.com/definition/reflect> (Last visited October 2, 2017). Unlike nearly all of the other instances where COBRA user fees are collected, the commercial truck fee is regularly paid in cash at an inspection booth. Cash collection at the port of entry is a manual, burdensome, and time-consuming process. Making change in pennies, given the enormous amount of cash user fee payments made daily at the land border primary inspection booth, would dramatically slow down the clearance of vehicles and increase fuel costs and carbon emissions as a result of idling in long lines. Accordingly, CBP has determined that this fee set forth in paragraph (c) of § 24.22 will be adjusted to the nearest lower nickel (\$0.05). (19 CFR 24.22(c)). Commercial truck fees adjusted to the nearest lower nickel therefore still appropriately reflect the change in inflation as required by the statute but also alleviate the hardship of making change in pennies at the primary inspection booth and allow for faster processing and clearance of commercial trucks.

Comment: One commenter noted that the Bureau of Labor Statistics (BLS) may revise the CPI-U figures periodically. As such, stating a definite figure in the CBP regulations may result in an incorrect

calculation if the CPI-U for FY14 is subsequently adjusted. The commenter suggested replacing the numeric figure with a reference to the arithmetic average of the CPI-U for FY14.

CBP Response: CBP agrees and will make the suggested change to paragraph (k)(2)(ii) of § 24.22 in the final rule. (19 CFR 24.22(k)).

Comment: Two commenters requested that CBP reconsider the index used to measure the change in inflation. Both suggested that CBP use the “All items less food and energy” index as opposed to the CPI-U. The basis for their suggestion is that food and energy prices are relatively volatile and that the index excluding them represents the “core” or “underlying” rate of inflation and better reflects the costs of business administration activities.

CBP Response: CBP agrees that the commenters’ suggested measure of inflation would lead to less volatility in fee amounts. However, the statutory language specifically requires that we use the CPI-U, so we are not able to revise the methodology according to the commenters’ suggestion.

Comment: Two commenters viewed the proposal as an opportunity to correct what they view as the double assessment of processing fees when express consignment carrier and centralized hub facilities are used. Both acknowledged that the language at issue found in § 24.23(b)(4)(i) of the CBP Regulations (19 CFR 24.23) is only revised to reflect the addition of the reference to new paragraph (k); however, they argue that assessing the \$1 express consignment carrier and centralized hub facilities fee adjusted by inflation for formal entries amounts to double assessment of the merchandise processing fee. They state that if a formal entry is presented to CBP, the \$1 express consignment carrier and centralized hub facilities fee should not be assessed as the importer will pay the appropriate MPF with the entry summary as required and that paying the \$1 express consignment carrier and centralized hub facilities fee and the ad valorem MPF assesses the same fee twice on a single entry.

CBP Response: The fee set forth in paragraph 24.23(b)(4)(i) of section 24 is required by statute. (19 U.S.C. 58c(b)(9)(A)(ii)). Any changes to the fees themselves are beyond the scope of this rulemaking.

Conclusion

Based on the comments received and further review of the proposed technical corrections, CBP has decided to adopt as final the proposed amendments published in the **Federal Register** (82

FR 32661) on July 17, 2017, with the following three changes as well as the changes to the proposed technical changes discussed above. Specifically, in the introductory paragraphs to §§ 24.22 and 24.23 (19 CFR 24.22 and 24.23) and in paragraph (k)(1) of § 24.22 (19 CFR 24.22(k)(1)), CBP extended the timeframe for publishing notice specifying the amount of the fees and limitations from at least 30 days prior to the effective date to at least 60 days prior to the effective date of the new fees and limitations. Second, in paragraph (k)(2)(ii) of § 24.22, CBP removed the figure 236.009, stated to be the arithmetic average of the CPI-U for FY 2014 and replaced it with an instruction to calculate the arithmetic average of the CPI-U for FY 2014. Finally, in paragraph (c)(1) of § 24.22, CBP inserted language to adjust the fee for commercial trucks down to the nearest lower \$0.05 in order to minimize the burden of making change in the primary inspection booth at the port of entry.

Announcement of Adjusted Fees

In accordance with this final rule, CBP is also publishing a separate notice in the **Federal Register** announcing the customs COBRA user fees and limitations as adjusted for fiscal year 2018.

Inapplicability of Delayed Effective Date

Section 553(d) of the Administrative Procedure Act (APA) generally provides that a rule may not take effect earlier than thirty (30) days after it is published in the **Federal Register**. One of the exceptions from this general rule is when there is good cause to make the rule effective sooner. As this rule provides that CBP will publish a separate notice in the **Federal Register** providing 60 days-notice before inflation adjustments to the fees required by the FAST Act are imposed, there is a self-contained delayed effective date within the rule. Accordingly, CBP finds good cause in accordance with 5 U.S.C. 553(d)(3) to waive the 30-day delayed effective date requirement for the rule.

Executive Orders 12866, 13563 and 13771

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 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed this rule. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

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).

This rule will affect a combination of individuals and businesses. While most of the businesses that pay the customs COBRA user fees are large corporations, the rule affects all businesses that pay these fees, so this rule will affect a substantial number of small entities. However, the impact will be small and in line with inflation; for example, with the current inflation since the base year, the commercial truck fee will increase by 15 cents. Therefore, CBP certifies that this rule will not have a significant economic impact on a substantial number of small entities.

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. This rule does not involve any collection of information.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury’s authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Harbors, Reporting and recordkeeping requirements, Taxes.

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Penalties, Reporting and recordkeeping requirements

Amendments to the CBP Regulations

For the reasons stated above, parts 24 and 111 of title 19 of the Code of Federal Regulations (19 CFR parts 24 and 111) are amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 1. The general authority citation for part 24 continues to read as follows, the specific authority citation for § 24.22 is added, and the specific authority citation for § 24.23 is revised to read as follows

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

* * * * *

Section 24.22 also issued under Sec. 892, Pub. L. 108–357, 118 Stat. 1418 (19 U.S.C. 58c); Sec. 32201, Pub. L. 114–94, 129 Stat. 1312 (19 U.S.C. 58c).

Section 24.23 also issued under 19 U.S.C. 3332; Sec. 892, Pub. L. 108–357, 118 Stat. 1418 (19 U.S.C. 58c); Sec. 32201, Pub. L. 114–94, 129 Stat. 1312 (19 U.S.C. 58c).

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■ 2. In § 24.22:

- a. Add introductory introductory text;
- b. Paragraph (b)(1)(i) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section,” after the words “amount of \$437”;
- c. Paragraph (b)(1)(ii) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section,” after the words “total of \$5,955 in fees”;
- d. Paragraph (b)(2)(i) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section,” after the words “fee of \$110”;
- e. Paragraph (b)(2)(ii) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section,” after the words “\$1,500 in fees”;
- f. Paragraphs (c)(1) and (2) are revised;
- g. Paragraph (c)(3) is amended by adding the words “of the \$100 CBP fee,

as adjusted in accordance with the terms of paragraph (k) of this section, and the APHIS/AQI fee set forth in 7 CFR 354.3” between the words “Prepayment” and “must be made” in the second sentence;

■ h. Paragraph (d)(1) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section,” after the words “fee of \$8.25”;

■ i. Paragraph (d)(2) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section,” after the words “prepayment of \$100”; and

■ j. Paragraph (d)(3) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section,” after the words “fee of \$100”;

■ k. Paragraph (e)(1) is amended by adding the words, as adjusted in accordance with the terms of paragraph (k) of this section,” after the words “sum of \$27.50; and

■ l. Paragraph (e)(2) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section” to the end of the first sentence after the word “section”;

■ m. Paragraph (f) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section” after the words “amount of \$5.50”;

■ n. Paragraph (g)(1)(i) through (iii) are revised;

■ o. Paragraph (g)(2)(i) is amended by removing the text “Canada, Mexico, any” between the words “means” and “territories”, and removing the text “, and any adjacent islands” after the words “United States”;

■ p. Paragraph (g)(2)(iii) is amended by adding the words “and/or the United States” after the words “Specified Location”;

■ q. The table in paragraph (g)(2)(iv) is revised;

■ r. Paragraph (g)(4)(ii)(A) is amended by removing the words “Canada, Mexico,” between the words “other than” and “one of the territories, and removing the words “, or an adjacent island” from the end of the sentence;

■ s. Paragraphs (g)(4)(ii)(B) and (C) are revised;

■ t. Paragraph (g)(4)(iii)(A) is amended by removing the words “Canada, Mexico,” between the words “United States” and “one of the territories”, and removing the comma and the words “or an adjacent island” from the end of the paragraph;

■ u. Paragraph (g)(4)(iii)(B) is amended by removing the words “Canada, Mexico,” between the words “from” and “one”, and removing the comma

and the words “or an adjacent island” following the words “United States” at the end of the sentence;

- v. Paragraph (g)(4)(iii)(C) is revised;
- w. Paragraph (g)(5)(v) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section,” after the words “vessel passenger fee” in each place that they appear;
- x. Paragraph (h) is revised;
- y. Paragraph (i)(7) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section” after the words “commercial aircraft passengers”;
- z. Paragraph (i)(8) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section” after the words “commercial vessel passengers”; and
- aa. Paragraph (k) is added.

The revisions and additions read as follows:

§ 24.22 Fees for certain services.

This section sets forth the terms and conditions for when the fees and corresponding limitations for certain services are required. The specific customs user fee amounts and corresponding limitations that appear in this section are not the actual fees or limitations but represent the base year amounts that are subject to adjustment each fiscal year in accordance with the Fixing America’s Surface Transportation Act (FAST Act) using Fiscal Year 2014 as the base year for comparison. (See Appendix A to part 24 for a table setting forth the fees and limitations subject to adjustment along with the corresponding statutory authority, the regulatory citation, the name of the fee or limitation, and the Fiscal Year 2014 base amount which reflects the statutory amounts that were adjusted by the American Jobs Creation Act of 2004 (Pub. L. 108–357).) The methodology for adjusting the fees and limitations to reflect the percentage, if any, of the increase in the average of the Consumer Price Index—All Urban Consumers, U.S. All items, 1982–84 (CPI-U) for the preceding 12-month period (June through May) compared to the

Consumer Price Index for fiscal year 2014 is set forth in paragraph (k) of this section. CBP will determine annually whether an adjustment to the fees and limitations is necessary and a notice specifying the amount of the fees and limitations will be published in the **Federal Register** annually for each fiscal year at least 60 days prior to the effective date of the new fees and limitations. The fees and the limitations will also be maintained for the public’s convenience on the CBP Web site at *www.cbp.gov*. If a customs user has pre-paid or met the calendar year limit prior to the effective date of the new fees and limitations, no additional fees will be required for that calendar year. If the customs user has not pre-paid or met the calendar year limit prior to the effective date of the new fees and limitations, the customs user will be subject to the adjusted limitation or prepayment amount.

* * * * *

(c) *Fees for arrival of a commercial truck*—(1) *Fees*. The fees for the arrival of a commercial truck consist of two separate fees. A CBP fee of \$5.50, as adjusted by the terms of paragraph (k) of this section, but if the adjusted amount is not evenly divided by 0.05 (e.g., \$5.74) then adjusted down to the next lower \$0.05 (e.g., \$5.70), and an Animal and Plant Health Inspection Service/Agricultural Quarantine Inspection (APHIS/AQI) fee set forth in 7 CFR 354.3 for the services provided that CBP collects on behalf of APHIS. Upon arrival at a CBP port of entry, the driver or other person in charge of a commercial truck must tender the fees to CBP unless they have been prepaid as provided for in paragraph (c)(3) of this section. The fees will not apply to any commercial truck which, at the time of arrival, is being transported by any vessel other than a ferry. For purposes of this paragraph, the term “commercial truck” means any self-propelled vehicle, including an empty vehicle or a truck cab without a trailer, which is designed and used for the transportation of commercial merchandise or for the

transportation of non-commercial merchandise on a for-hire basis.

(2) *CBP fee limitation*. No CBP fee will be collected under paragraph (c)(1) of this section for the arrival of a commercial truck during any calendar year once a prepayment of \$100, as adjusted by the terms of paragraph (k) of this section, has been made and a transponder has been affixed to the vehicle windshield as provided in paragraph (c)(3) of this section.

* * * * *

- (g) * * *
- (1) * * *

(i) Subject to paragraphs (g)(1)(ii) and (g)(3) of this section, a fee of \$5.50, as adjusted by the terms of paragraph (k) of this section, must be collected and remitted to CBP for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States except:

(A) When the journey of the arriving passenger originates in a territory or possession of the United States;

(B) When the journey of the arriving passenger originates in the United States and was limited to the territories and possessions of the United States; or

(C) When arriving from one of the territories or possessions of the United States.

(ii) Subject to paragraph (g)(3) of this section, a fee of \$1.93, as adjusted by the terms of paragraph (k) of this section, must be collected and remitted to CBP for services provided in connection with the arrival of each passenger aboard a commercial vessel from a territory or possession of the United States, regardless of whether the journey of the arriving passenger originates in a place outside the United States or in the United States.

(iii) For the purposes of this paragraph (g), the term “territories and possessions of the United States” includes American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

* * * * *

- (2) * * *
- (iv) * * *

| Place where journey originates (see (g)(1)(iv)) | Fee status for arrival from SL | | Fee status for arrival from other than SL | |
|---|--|--------------|--|---|
| | Vessel | Aircraft | Vessel | Aircraft |
| SL | \$1.93, as adjusted by the terms of paragraph (k) of this section. | No fee | No fee | No fee |
| Other than SL or U.S. | \$1.93, as adjusted by the terms of paragraph (k) of this section. | No fee | \$5.50, as adjusted by the terms of paragraph (k) of this section. | \$5.50, as adjusted by the terms of paragraph (k) of this section |
| U.S. | \$1.93, as adjusted by the terms of paragraph (k) of this section. | No fee | N/A | N/A |
| U.S. | \$1.93, as adjusted by the terms of paragraph (k) of this section. | No fee | \$5.50, as adjusted by the terms of paragraph (k) of this section. | \$5.50, as adjusted by the terms of paragraph (k) of this section |

* * * * *
 (4) * * *
 (ii) * * *

(B) When a return ticket or travel document is issued (or a receipt or other document that indicates an infant traveling without a return ticket or travel document is issued) in connection with a journey which originates in the United States, includes a stop in a place other than one of the territories and possessions of the United States and the return arrival to the United States is from a place other than the territories and possessions of the United States; and

(C) When a passenger on a journey through the United States to a foreign destination arrives in the customs territory of the United States from a place other than one of the territories or possessions of the United States, is processed by CBP, and the journey does not originate in the territories and possessions of the United States.

(iii) * * *
 (C) When a passenger on a journey through the United States to a foreign destination arrives in the customs territory of the United States from one of the territories and possessions of the United States and is processed by CBP.

* * * * *
 (h) *Annual customs broker permit user fee.* Customs brokers are subject to an annual user fee of \$138, as adjusted by the terms of paragraph (k) of this section, for each district permit and for a national permit held by an individual, partnership, association, or corporation. The annual user fee for each district permit must be submitted to the port through which the broker was granted the permit. The annual user fee for a national permit must be submitted to the port through which the broker's license is delivered.

* * * * *
 (k) *Adjustment for inflation of Customs Consolidated Omnibus Budget Reconciliation Act (COBRA) user fees—*

(1) *Fee amounts.* CBP will determine annually whether an adjustment to the fees and limitations is necessary and a notice specifying the amount of the fees and limitations, as adjusted, will be published in the **Federal Register** annually for each fiscal year at least 60 days prior to the effective date of the new fees and limitations. The fee and limitation amounts will also be maintained for the public's convenience on the CBP Web site at www.cbp.gov.

(2) *Methodology for annual adjustments of fees and limitation amounts for inflation.* CBP will determine the adjustments, if any, by making the following calculations:

(i) Calculate the arithmetic average of the Consumer Price Index—All Urban Consumers, U.S. All items, 1982–84 = 100 (CPI-U) for the current year based on the most recent June-May period. This figure is referred to as (A).

(ii) Calculate the arithmetic average of the CPI-U for FY 2014. This figure is referred to as (B).

(iii) State the arithmetic average of CPI-U for the comparison year which will be either (B) if the fees have never been adjusted in accordance with this paragraph (k), or the arithmetic average of the CPI-U for the last year in which fees were adjusted in accordance with this paragraph (k) as set forth in the **Federal Register** notice that last adjusted the fee. This figure is referred to as (C).

(iv) Calculate the difference between the arithmetic averages of the CPI-U of the comparison year (C) and the current year (A). This difference is referred to as (D). $(D) = (A) - (C)$.

(v) Round the difference (D) to the nearest whole number. This figure is referred to as (E).

(vi) Calculate the percentage change in the arithmetic averages of the CPI-U of the comparison year (C) and the current year (A) which is referred to as (F). $(F) = ((E) \div (C)) \times 100\%$.

(vii) If (F) is one percent or more, proceed to the next step (viii). If (F) is less than one percent, no adjustment will be made.

(viii) Calculate the difference in the arithmetic average of the CPI-U between the current year (the most recent June through May period) and the base year (FY 2014). This difference is referred to as (G). $(G) = (A) - (B)$.

(ix) Calculate the percentage change in the CPI-U from the base year to the current year. This figure is referred to as (H). $(H) = ((G) \div (B)) \times 100\%$.

(x) Increase the fees and limitations that are subject to the rules of this paragraph by (H), calculating fees and limitations to the second decimal.

■ 3. In § 24.23:

■ a. Add introductory text;
 ■ b. Paragraph (b)(1)(i)(A) is amended by adding the words, as adjusted in accordance with the terms of § 24.22(k) of this part," after the words "\$1.00 per individual air waybill or bill of lading fee";

■ c. Paragraph (b)(1)(i)(B) is amended by adding the words ", as adjusted in accordance with the terms of § 24.22(k) of this part," after the amounts "\$485" and "\$25";

■ d. Paragraph (b)(1)(ii) is amended by adding the words ", as adjusted in accordance with the terms of § 24.22(k) of this part," after the words "surcharge of \$3";

■ e. Paragraph (b)(2)(i) is amended by adding the words ", as adjusted in accordance with the terms of § 24.22(k) of this part," after the amount "\$2";

■ f. Paragraph (b)(2)(ii) is amended by adding the words ", as adjusted in accordance with the terms of § 24.22(k) of this part," after the amount "\$6";

■ g. Paragraph (b)(2)(iii) is amended by adding the words ", as adjusted in accordance with the terms of § 24.22(k) of this part," after the amount "\$9"; and

■ h. Paragraph (b)(4) is revised.

The addition and revision read as follows:

§ 24.23 Fees for processing merchandise.

This section sets forth the terms and conditions for when the fees for processing merchandise are required. The specific merchandise processing fee amounts and corresponding limitations that appear in this section are not the actual fees or limitations, but represent the base year amounts that are subject to adjustment each fiscal year in accordance with the Fixing America's Surface Transportation Act (FAST Act) using Fiscal Year 2014 as the base year for comparison. (See Appendix B to part 24 for a table setting forth the fees and limitations subject to adjustment along with the corresponding statutory authority, the regulatory citation, the name of the fee or limitation, and the Fiscal Year 2014 base amount which reflects the statutory amounts that were adjusted by the American Jobs Creation Act of 2004 (Pub. L. 108-357).) The methodology for adjusting the fees and limitations to reflect the percentage, if any, of the increase in the average of the Consumer Price Index—All Urban Consumers, U.S. All items, 1982–84 (CPI-U) for the preceding 12-month period (June through May) compared to the Consumer Price Index for fiscal year 2014 is set forth in § 24.22(k) of this part. CBP will determine annually whether an adjustment to the fees and limitations is necessary and a notice specifying the amount of the fees and limitations will be published in the **Federal Register** annually for each fiscal year at least 60 days prior to the effective date of the new fees and limitations. The fees and the limitations will also be maintained for the public's convenience on the CBP Web site at www.cbp.gov.

* * * * *
 (b) * * *

(4) *Express consignment carrier and centralized hub facilities—*(i) *General.* Each carrier or operator using an express consignment carrier facility or a centralized hub facility must pay to CBP a fee in the amount of \$1.00, as adjusted in accordance with the terms of

paragraph (k) of § 24.22 of this chapter, per individual air waybill or individual bill of lading for the processing of airway bills for shipments arriving in the United States. In addition, if merchandise is formally entered and valued at \$2,500 or less, the importer of record must pay to CBP the ad valorem fee specified in paragraph (b)(1) of this section, if applicable. An individual air waybill or individual bill of lading is the individual document issued by the carrier or operator for transporting and/or tracking an individual item, letter, package, envelope, record, document, or shipment. An individual air waybill is not a consolidation of several air waybills, and is not a master bill or other consolidated document. An individual air waybill or bill of lading is a bill representing an individual shipment that has its own unique bill number and tracking number, where the shipment is assigned to a single ultimate consignee, and no lower bill unit exists. Payment must be made to CBP on a quarterly basis and must cover the individual fees for all subject transactions that occurred during a calendar quarter.

(ii) *Maximum and minimum fees.* Subject to the provisions of paragraph (b)(1)(i)(A) and (b)(4) of this section relating to the express consignment carrier facility or centralized hub facility fee, the fee per individual air waybill or bill of lading charged under paragraph (b)(1)(i)(A) of this section must not exceed \$1, as adjusted in accordance

with the terms of § 24.22(k) of this part, and must not be less than \$0.35, as adjusted by § 24.22(k) of this part.

(iii) *Quarterly payments.* The following additional requirements and conditions apply to each quarterly payment made under this section:

(A) The quarterly payment must conform to the requirements of § 24.1 of this part, must be submitted electronically via Fedwire or *pay.gov*, or mailed to Customs and Border Protection, Revenue Division/Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278, and must be received by CBP no later than the last day of the month that follows the close of the calendar quarter to which the payment relates.

(B) The following information must be included with the quarterly payment:

(1) The identity of the calendar quarter to which the payment relates;

(2) The identity of the facility for which the payment is made and the port code that applies to that location and, if the payment covers multiple facilities, the identity of each facility and its port code and the portion of the payment that pertains to each port code; and

(3) The total number of individual air waybills and individual bills of lading covered by the payment, and a breakdown of that total for each facility covered by the payment according to the number covered by formal entry procedures, the number covered by informal entry procedures specified in §§ 128.24(e) and 143.23(j) of this

chapter, and the number covered by other informal entry procedures.

(C) Overpayments or underpayments may be accounted for by an explanation in, and adjustment of, the next due quarterly payment to CBP. In the case of an overpayment or underpayment that is not accounted for by an adjustment of the next due quarterly payment to CBP, the following procedures apply:

(1) In the case of an overpayment, the carrier or operator may request a refund by writing to Customs and Border Protection, Revenue Division/Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278. The refund request must specify the grounds for the refund and must be received by CBP within one year of the date the fee for which the refund is sought was paid to CBP; and

(2) In the case of an underpayment, interest will accrue on the amount not paid from the date payment was initially due to the date that payment to CBP is made.

(D) The underpayment or failure of a carrier or operator using an express consignment carrier facility or a centralized hub facility to pay all applicable fees owed to CBP pursuant to paragraph (b)(4) of this section may result in the assessment of penalties under 19 U.S.C. 1592, liquidated damages, and any other action authorized by law.

* * * * *

■ 4. Add appendices A and B to read as follows:

APPENDIX A TO PART 24—CUSTOMS COBRA USER FEES AND LIMITATIONS IN 19 CFR 24.22

| 19 U.S.C. 58c | 19 CFR 24.22 | Customs COBRA user fee/limitation | FY14 Base fee/limitation (subject to adjustment in accordance with the FAST Act) |
|-----------------|----------------------|--|--|
| (a)(1) | (b)(1)(i) | Fee: Commercial Vessel Arrival Fee | \$437 |
| (b)(5)(A) | (b)(1)(ii) | Limitation: Calendar Year Maximum for Commercial Vessel Arrival Fees. | 5,955 |
| (a)(8) | (b)(2)(i) | Fee: Barges and Other Bulk Carriers Arrival Fee | 110 |
| (b)(6) | (b)(2)(ii) | Limitation: Calendar Year Maximum for Barges and Other Bulk Carriers Arrival Fees. | 1,500 |
| (a)(2) | (c)(1) | Fee: Commercial Truck Arrival Fee | 5.50 |
| (b)(2) | (c)(2) and (3) | Limitation: Commercial Truck Calendar Year Prepayment Fee. | 100 |
| (a)(3) | (d)(1) | Fee: Railroad Car Arrival Fee | 8.25 |
| (b)(3) | (d)(2) and (3) | Limitation: Railroad Car Calendar Year Prepayment Fee | 100 |
| (a)(4) | (e)(1) and (2) | Fee and Limitation: Private Vessel or Private Aircraft First Arrival/Calendar Year Prepayment Fee. | 27.50 |
| (a)(6) | (f) | Fee: Dutiable Mail Fee | 5.50 |
| (a)(5)(A) | (g)(1)(i) | Fee: Commercial Vessel or Commercial Aircraft Passenger Arrival Fee. | 5.50 |
| (a)(5)(B) | (g)(1)(ii) | Fee: Commercial Vessel Passenger Arrival Fee (from one of the territories and possessions of the United States). | 1.93 |
| (a)(7) | (h) | Fee: Customs Broker Permit User Fee | 138 |

APPENDIX B TO PART 24—CUSTOMS COBRA USER FEES AND LIMITATIONS IN 19 CFR 24.23

| 19 U.S.C. 58c | 19 CFR 24.23 | Customs COBRA user fee/limitation | FY14 Base fee/limitation (subject to adjustment in accordance with the FAST Act) |
|-----------------------|-----------------------|---|--|
| (b)(9)(A)(ii) | (b)(1)(i)(A) | Fee: Express Consignment Carrier/Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee. | \$1 |
| (b)(9)(B)(i) | (b)(1)(i)(B)(2) | Limitation: Minimum Express Consignment Carrier/Centralized Hub Facility Fee. | 0.35 |
| (b)(9)(B)(i) | (b)(1)(i)(B)(2) | Limitation: Maximum Express Consignment Carrier/Centralized Hub Facility Fee. | 1 |
| (a)(9)(B)(i); | (b)(1)(i)(B)(1) | Limitation: Minimum Merchandise Processing Fee | 25 |
| (b)(8)(A)(i) | (b)(1)(i)(B)(1) | Limitation: Maximum Merchandise Processing Fee | 485 |
| (a)(9)(B)(i); | (b)(1)(i)(B)(1) | Limitation: Maximum Merchandise Processing Fee | 485 |
| (b)(8)(A)(i) | (b)(1)(ii) | Fee: Surcharge for Manual Entry or Release | 3 |
| (b)(8)(A)(ii) | (b)(2)(i) | Fee: Informal Entry or Release; Automated and Not Prepared by CBP Personnel. | 2 |
| (a)(10)(C)(i) | (b)(2)(i) | Fee: Informal Entry or Release; Manual and Not Prepared by CBP Personnel. | 6 |
| (a)(10)(C)(ii) | (b)(2)(ii) | Fee: Informal Entry or Release; Automated or Manual; Prepared by CBP Personnel. | 9 |
| (a)(10)(C)(iii) | (b)(2)(iii) | Fee: Informal Entry or Release; Automated or Manual; Prepared by CBP Personnel. | 9 |
| (b)(9)(A)(ii) | (b)(4) | Fee: Express Consignment Carrier/Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee. | 1 |

PART 111—CUSTOMS BROKERS

■ 5. The general authority citation for part 111 and the specific authority citation for § 111.96 continue to read as follows:

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

* * * * *

Section 111.96 also issued under 19 U.S.C. 58c, 31 U.S.C. 9701.

* * * * *

§ 111.19 [Amended]

- 6. In § 111.19(c):
- a. Remove the phrase “100 and 138” in the first sentence; and
- b. Remove the amounts “100” and “138” in each place that they appear.

§ 111.96 [Amended]

- 7. In § 111.96(c):
- a. In the first sentence, remove the words “of 138” and add in their place the words “specified in § 24.22(h) of this chapter”; and
- b. Remove the figure “138” in each place that it appears.

Ronald D. Vitiello,
Acting Deputy Commissioner, U.S. Customs and Border Protection.

Approved: October 30, 2017.

Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 2017-23878 Filed 10-31-17; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA-2017-N-5995]

Medical Devices; Immunology and Microbiology Devices; Classification of the BCR-ABL Quantitation Test

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the BCR-ABL quantitation test into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the BCR-ABL quantitation test’s classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients’ access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective November 1, 2017. The classification was applicable on July 22, 2016.

FOR FURTHER INFORMATION CONTACT: Ryan Lubert, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4545, Silver Spring,

MD 20993-0002, 240-402-6357, ryan.Lubert@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the BCR-ABL quantitation test as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients’ access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as “postamendments devices” because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval.