

**SUMMARY:** The Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations and other legal requirements in order to ensure the expeditious construction of barriers and roads along the international land border of the United States in California.

**DATES:** This Notice is effective on September 22, 2005.

#### Determination and Waiver

In section 102(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, Div. C, 110 Stat. 3009-546, 3009-554 (Sept. 30, 1996) (8 U.S.C. 1103 note (2000) (IIRIRA)), Congress provided that the Attorney General shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. Pursuant to sections 1511 and 1517 of the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135, 2309, 2311 (Nov. 25, 2002) (HSA) (6 U.S.C. 551, 557), the authorities of the Attorney General contained in section 102 of the IIRIRA were transferred to me. In section 102(c) of the IIRIRA, as amended by section 102 of the REAL ID Act of 2005, Public Law 109-13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (REAL ID Act) 8 U.S.C. 1103 note), Congress granted to me the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads under section 102 of IIRIRA.

In section 102(b) of the IIRIRA, Congress specifically provided for the construction along the 14 miles of the international land border of the United States, starting at the Pacific Ocean and extending eastward, of second and third fences, in addition to the existing reinforced fence, and for roads between the fences. In section 446 of the HSA, Congress expressed its sense that completing the 14-mile border project under section 102(b) of the IIRIRA should be a priority for the Secretary of Homeland Security. Nearly nine years after the passage of the IIRIRA, the project prescribed in section 102(b) of the IIRIRA remains incomplete.

In order to ensure the expeditious construction of the barriers and roads that Congress prescribed in section 102(b) of the IIRIRA, regarding which Congress expressed its support in section 446 of the HSA, 116 Stat. 2195 (6 U.S.C. 256), and which is an area of high illegal entry into the United States,

I have determined that it is necessary that I exercise the authority that was transferred to me by sections 1511 and 1517 of the HSA and that is vested in me by section 102(c) of the IIRIRA as amended by section 102 of the REAL ID Act. Accordingly, I hereby waive in their entirety, with respect to the construction of the barriers and roads prescribed in section 102(b) of the IIRIRA (including, but not limited to, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of fences, roads, supporting elements, drainage, erosion controls, safety features, detection equipment, and lighting), all federal, state, or other laws, regulations and legal requirements of, deriving from, or related to the subject of, the following laws, as amended: The National Environmental Policy Act (Pub. L. 91-190, 83 Stat. 852, (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*)), the Endangered Species Act (Pub. L. 93-205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 *et seq.*)), the Coastal Zone Management Act (Pub. L. 92-583, 86 Stat. 1280 (Oct. 27, 1972) (16 U.S.C. 1451 *et seq.*)), the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) (Act of June 30, 1948, c. 758, 62 Stat. 1155 (33 U.S.C. 1251 *et seq.*)), the National Historic Preservation Act (Pub. L. 89-665, 80 Stat. 915 (Oct. 15, 1966) (16 U.S.C. 470 *et seq.*)), the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*), the Clean Air Act (42 U.S.C. 7401 *et seq.*), and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). I reserve the authority to make further waivers from time to time under the authority granted to me by section 102(c) of the IIRIRA, as amended by section 102 of the REAL ID Act, as I may determine to be necessary to accomplish the provisions of section 102 of IIRIRA.

Dated: September 13, 2005.

**Michael Chertoff,**

*Secretary of Homeland Security.*

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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

#### Automated Commercial Environment (ACE): Elimination of Bond Rider Requirement for Participation in Periodic Monthly Statement Payment Process

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

**ACTION:** General notice.

**SUMMARY:** This notice announces changes in the Bureau of Customs and Border Protection's (CBP) National Customs Automation Program (NCAP) test concerning periodic monthly deposit of estimated duties and fees. Participants in the Periodic Monthly Statement test are no longer required to provide a bond rider covering the periodic payment of estimated duties and fees. Nonpayment or untimely payment of estimated duties and fees, however, may result in action by CBP to impose sanctions on the delinquent importer of record or to allow the surety to terminate its basic importation bond. If the bond principal is a participant in the Periodic Monthly Statement test, sureties will now be allowed, under certain conditions, to terminate bonds with 3 business days notice to the bond principal and CBP.

**EFFECTIVE DATES:** The elimination of the requirement to provide a bond rider covering the periodic payment of estimated duties is effective immediately.

**ADDRESSES:** Comments concerning this notice should be submitted to Robert B. Hamilton via e-mail at [Robert.B.Hamilton@dhs.gov](mailto:Robert.B.Hamilton@dhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 4, 2004, the Bureau of Customs and Border Protection (CBP) published a General Notice in the **Federal Register** (69 FR 5362) announcing the National Customs Automation Program (NCAP) test for Periodic Monthly Payment Statement Process. The test, which is part of CBP's Automated Commercial Environment (ACE), benefits participants by giving them access to operational data through the ACE Secured Data Portal ("ACE Portal"), which provides them the capability to interact electronically with CBP, and by allowing them to deposit estimated duties and fees on a monthly basis based on a Periodic Monthly Statement generated by CBP.

When the test started, only importers were eligible to apply for the test. Eligibility was later expanded to allow brokers to apply if they were specifically designated by an ACE importer.

On September 8, 2004, CBP published a General Notice in the **Federal Register** (69 FR 54302) which invited customs brokers, regardless of whether they were designated by participating importers to make Periodic Monthly Statement payments on their behalf, to apply to participate in the test. That notice set

forth eligibility requirements for both importers and brokers.

On February 1, 2005, CBP published a General Notice in the **Federal Register** (70 FR 5199) announcing that applicants seeking to establish importer or broker accounts so as to access the ACE Portal, or to participate in any ACE test (including the test for Periodic Monthly Payment Statement Process), are no longer required to provide a statement certifying participation in the Customs Trade Partnership Against Terrorism (C-TPAT).

On August 8, 2005, CBP published a General Notice in the **Federal Register** (70 FR 45736) changing the time period allowed for the deposit of the duties and fees from the 15th calendar day to the 15th working day of the month following the month in which the goods are either entered or released. That change was made in order to comply with the provisions of section 2004 of the Miscellaneous Trade and Technical Corrections Act of 2004, Public Law 108-429, which extended the time of deposit of those estimated duties and fees. The document also advised that entries containing Census errors are eligible to be placed on a Periodic Daily Statement and designated for monthly payment. Finally, the document described those situations where liquidated damages would be imposed for failing to pay estimated duties in a timely manner.

As provided in the February 4, 2004 General Notice announcing the test, participants in the Periodic Monthly Statement test are required to schedule entries for monthly payment. A Periodic Monthly Statement will list Periodic Daily Statements that have been designated for monthly payment. The Periodic Monthly Statement can be created on a port basis by the importer or broker, as was the case with existing daily statements in the Automated Commercial System (ACS) (ACE is the successor to ACS). The Periodic Monthly Statement can be created on a national basis by an Automated Broker Interface (ABI) filer. If an importer chooses to file the Periodic Monthly Statement on a national basis he must use his filer code and schedule and pay the monthly statements timely. The Periodic Monthly Statement will be routed under existing CBP procedures. Brokers will only view/receive information that they have filed on an importer's behalf. ACE will not route a Periodic Monthly Statement to a broker through ABI if that statement lists information filed by another broker.

The February 4, 2004, Notice also stated that, in addition to other responsibilities, test participants are

required to provide a bond rider covering the periodic payment of estimated duties.

#### **Elimination of the Periodic Monthly Statement Payment Bond Rider**

In order to open participation in the Periodic Monthly Statement test to the widest number of importers, CBP will no longer require that an applicant, in order to participate in the test, submit a bond rider as required by the Federal Register Notice of February 4, 2004. CBP has determined that the rider is not necessary, inasmuch as the terms and conditions of the basic importation bond under section 113.62 of the CBP Regulations (title 19 Code of Federal Regulations (CFR), section 113.62) require the bond obligors to deposit, in the time period prescribed by law or regulation, any duties, taxes, and charges imposed, or estimated to be due, at the time of merchandise release or withdrawal.

Submission of the bond rider does have the effect of alerting the surety guaranteeing performance that the bond principal is participating in the Periodic Monthly Statement test. CBP agrees that, as a result of elimination of the rider submission requirement, it will notify sureties, electronically, of a bond principal's participation in the test.

#### **Failure To Pay, or To Timely Pay, Estimated Duties and Fees**

A bond principal who fails to meet its obligation to pay estimated duties and fees under the test should not continue to enjoy the benefits of the deferred payment of estimated duties and fees. Such an allowance would further stress the bond amount and place the revenue in jeopardy. As such, CBP, through this notice, suspends those regulations in Part 142 relating to the delinquent payment of CBP bills as they relate to non-payment or late payment of estimated duties and fees made under the Periodic Monthly Statement test. Any bond principal who is late with an estimated monthly statement estimated duty payment by more than 2 business days will be notified by CBP, either electronically or by paper notification, that immediately it shall be required to file entry summary documentation with estimated duties and fees attached before its merchandise may be released from any CBP port. The surety on the affected bond will also be notified. The bond principal will only be released from such a requirement upon full payment of any unpaid estimated duties and fees that have come due under the Periodic Monthly Statement test.

During the test, CBP will retain the right to deny Periodic Monthly

Statement payment privileges to any importer that is repeatedly delinquent in the payment of estimated duties and fees due.

#### **Termination of Bonds**

For purposes of the test, the provisions of 19 CFR part 113 relating to termination of bonds will be suspended, in certain situations, insofar as sureties will be permitted to terminate bonds with 3 business days notice to the bond principal and CBP. Section 113.27(b) of the CBP Regulations (19 CFR 113.27(b)) generally requires a 30-day notice (with exceptions) for surety termination of a bond. Sureties may now terminate bonds with 3 business days notice when termination by the surety occurs because the surety does not accept the risk relating to participation by the bond principal in the Periodic Monthly Statement test. Sureties may also terminate bonds with 3 business days notice when termination is a result of the failure of the bond principal to perform obligations arising as a result of participation in the test; however, a termination under these circumstances can only take place after the surety has satisfied its obligations which have arisen as a result of the principal's failure to perform. The importer whose bond is terminated by a surety will be suspended from participation in the test unless a new surety is obtained. Notification of termination to CBP shall be provided to the Revenue Division, Office of Finance, 6650 Telecom Dr., Suite 100, Attn: Bond Team, Indianapolis, Indiana 46278. Notice of termination to CBP must be in writing and must be delivered by overnight mail, other express delivery service, or fax. Notice of termination to the bond principal must be in writing and must be delivered by overnight mail or other express delivery service. Any notice of termination provided to CBP must include a declaration that the bond principal has been notified of termination.

#### **Suspension of the Regulations**

During the testing of the Periodic Monthly Statement process, CBP will suspend provisions in Parts 24, 141, 142, and 143 of the Customs and Border Protection Regulations (Title 19 Code of Federal Regulations) pertaining to financial, accounting, entry procedures, deposit of estimated duties and fees, and the delinquent payment of CBP bills. CBP will also suspend the provisions of Part 113 of the Customs and Border Protection Regulations with regard to surety termination of bonds only in the manner and for the reasons

discussed in this Notice. All other provisions of Part 113 of the Customs and Border Protection Regulations remain in effect during this test. All of the terms of the test and criteria for participation therein, as announced in the previous notices identified above, continue to be applicable unless changed by this notice.

Dated: September 19, 2005.

**Thomas S. Winkowski,**

*Acting Deputy Assistant Commissioner,  
Office of Field Operations.*

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## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-718 (Second Review)]

### Glycine From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of an expedited five-year review concerning the antidumping duty order on glycine from China.

**SUMMARY:** The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on glycine from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** September 7, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Russell Duncan (202-708-4727), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

### SUPPLEMENTARY INFORMATION:

**Background.**—On September 7, 2005, the Commission determined that the domestic interested party group response to its notice of institution (70 FR 31534, June 1, 2005) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.<sup>1</sup> Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.<sup>2</sup>

**Staff report.**—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on September 30, 2005, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

**Written submissions.**—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,<sup>3</sup> and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before October 5, 2005, and may not contain new factual information. Any person that is neither a party to the review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by October 5, 2005. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, comments (which shall not contain new factual information) on Commerce's final results may be submitted three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the

<sup>1</sup> A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

<sup>2</sup> Commissioner Aranoff did not participate in this determination.

<sup>3</sup> The Commission has found the responses submitted by the Glycine Fair Trade Committee and its individual members Chattem Chemicals, Inc., and Hampshire Chemical Corp., to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 (c) of the Commission's rules.

By order of the Commission.

Issued: September 16, 2005.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

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## INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-345]

### Recent Trends in U.S. Services Trade, 2006 Annual Report

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of 2006 report on Recent Trends in U.S. Services Trade and opportunity for the public to submit information.

**SUMMARY:** The International Trade Commission (ITC) has prepared and published annual reports in this series under investigation No. 332-345 since 1996 (Recent Trends in U.S. Services Trade). The 2006 report, which the Commission plans to publish in June 2006, will cover cross-border trade for the period ending in 2004 and transactions by affiliates based outside the country of their parent firm for the period ending in 2003. The Commission is inviting interested members of the public to furnish information in connection with the 2006 report.

**EFFECTIVE DATE:** September 14, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Questions about the report may be directed to the project leader, Eric Forden, Office of Industries (202-205-3235; [eric.forden@usitc.gov](mailto:eric.forden@usitc.gov)) or to Richard Brown, Office of Industries