Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The general authority citation for Part 275 continues to read as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

■ 2. Section 275.206(3)–3T(d) is revised to read as follows:

§ 275.206(3)–3T Temporary rule for principal trades with certain advisory clients.

(d) This section will expire and no longer be effective on December 31, 2010.

Dated: December 23, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–30877 Filed 12–29–09; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 111, 113, 141, 142 and 143

[CBP Dec. 09–47; USCBP–2006–0001]

RIN 1505–AB20

Remote Location Filing

AGENCIES: 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 proposed amendments to title 19 of the Code of Federal Regulations (19 CFR) regarding Remote Location Filing (RLF). RLF is a planned component of the National Customs Automation Program (NCAP), authorized by section 414 of the Tariff Act of 1930, as added by section 631 within the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. RLF allows a participating NCAP filer to electronically file with CBP those consumption entries and related information that CBP can process in a completely electronic data interchange system from a location other than where the goods will arrive in the United States.

DATES: *Effective Date:* January 29, 2010.

FOR FURTHER INFORMATION CONTACT: For systems or automation issues: Tony Casucci, Office of Information Technology, at (703) 650–3053. For operational or policy issues: Cynthia Whittenburg, Trade Policy and Programs, Office of International Trade, at (202) 863–6512 or via e-mail at *remote.filing@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 2007, CBP published in the **Federal Register** (72 FR 13714) a proposal to implement Remote Location Filing (RLF) regulations in a new subpart E to part 143 within title 19 of the Code of Federal Regulations (19 CFR part 143, subpart E).

RLF, which currently operates as a National Customs Automation Program (NCAP) prototype test pursuant to section 414 of the Tariff Act of 1930, as added by section 631 within the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act, allows an RLF filer to electronically file with U.S. Customs and Border Protection (CBP) those consumption entries and related information that CBP can process in a completely electronic data interchange system from a location other than where the goods will arrive in the United States.

As noted in 72 FR 13714, the RLF prototype will terminate upon the effective date of this final rule. RLF prototype participants may continue to participate in the NCAP test program until this date.

CBP solicited comments on the proposed rulemaking.

Discussion of Comments

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

Comment: Proposed § 143.44(c) describes RLF automation requirements as encompassing only those entries and entry summaries that CBP processes completely in an electronic data interchange system. Three commenters requested that, in the final rule, CBP either specifically list the RLF-eligible entry types or cite to a source for such information.

CBP Response: Currently, only electronically transmitted consumption entries—entry types 01 and 11—may be filed using RLF. CBP is presently working to expand the entry types that may be processed via RLF. It is anticipated that upon the total integration of the major cargo and entry summary functionalities into Automated Commercial Environment (ACE), the expansion of RLF will be fully realized and will incorporate most entry types.

As the entry types currently permitted under RLF are expanded in the future, CBP will not list them in the regulatory text; rather, CBP will include a reference in the regulatory text, at § 143.44(c), to the Web site located at *http://www.cbp.gov/xp/cgov/trade/trade_programs/remote_location_filing/* that provides a current listing of permissible RLF entry types.

Comment: Four commenters requested that RLF permit the filing of all entry types (including anti-dumping, countervailing duty, and quota entries), and not be limited to type 01 and 11 consumption entries. One of the commenters also suggested that CBP create a special class of National Permit to allow a broker to file any type of entry in RLF.

CBP Response: As noted in the response to the previous comment, it is anticipated that most entry types will be permitted under RLF at such time as the major cargo and entry summary functionalities are totally integrated into ACE. For this reason, the creation of a special class of National Permit is unnecessary.

Comment: One commenter requested that all brokers meeting the criteria set forth in proposed § 143.43 should have their filer codes centrally ''turned on'' automatically in the Automated Commercial System (ACS) for all eligible RLF ports instead of having their Automated Broker Interface (ABI) Client Representatives enter them as needed.

CBP Response: The current ACS environment does not provide this capability. Coordination with the ABI Client Representative is required to enable a broker to file remotely at a specific port.

Comment: Two commenters requested additional clarification regarding the specific criteria used by CBP in establishing RLF-operational locations.

CBP Response: CBP continually reviews and makes determinations concerning the addition of new ports to the list of RLF-approved processing locations. A prospective port must, at a minimum, have appropriate electronic entry processing capabilities. In determining whether to make a port RLF-operational, CBP may take into consideration factors such as trade interest and whether CBP personnel

have been trained in RLF procedures at a particular location. Filers are encouraged to contact the CBP RLF Program Manager at *remote.filing@dhs.gov* to suggest possible port additions.

Comment: Four commenters advocated that RLF be permanently adopted as a final rule.

CBP Response: CBP concurs.

Comment: Three commenters requested that CBP adopt procedures that would provide the trade with a 90-day advance notice of new RLF-operational ports. The commenters noted that Express Consignment Carrier Facility (ECCF) operators require advance notice to modify automated systems to accept RLF entries and, although the proposed rule notice stated that new RLF locations will be listed in the Automated Broker Interface (ABI) administrative messaging system, the document did not state that advance notice will be provided. The commenters also note that messages sent via ABI will not reach parties such as carriers and ECCF operators who are not part of ABI messaging.

CBP Response: CBP will make every effort to provide advance notice to the trade of new RLF-operational ports and will list new and pending RLF-operational ports on its Web page so that parties who do not participate in the ABI administrative messaging system will be informed in this regard. The agency, however, views adopting a 90-day advance notice regulatory requirement as unnecessarily restrictive as the time it takes to train CBP personnel and ensure that the port is fully RLF operational varies from port to port. As noted above, filers are encouraged to contact the CBP RLF Program Manager at *remote.filing@dhs.gov* for information regarding possible port additions.

Comment: Three commenters requested that CBP publish a list of current RLF operational ports in a manner that is clearly labeled on the CBP Web site and includes the date of last update.

CBP Response: A complete and current list of existing RLF operational ports is set forth at the CBP Web site located at *http://www.cbp.gov/xp/cgov/trade/trade_programs/remote_location_filing/*. A link entitled ''RLF Operational Locations'' directs viewers to the list, which also contains the date of last update. A reference to this Web site is set forth in § 143.42(b).

Comment: One commenter stated that the need for adequate staffing at RLF-operational ports is essential and noted a lack of uniform training at these sites.

CBP Response: CBP is in the process of updating internal RLF standard operating procedures and training materials which will help achieve a higher level of proficiency and uniformity in RLF processing skills at RLF-operational ports.

Comment: One commenter noted that under the terms of the RLF prototype, CBP accepted electronic filings of certain ''other government agency'' (OGA) information and certifications such as Toxic Substances Control Act (TSCA) certificates. The commenter urges CBP to expand RLF in this capacity.

CBP Response: CBP continues to work with OGAs to fulfill documentation requirements electronically through the International Trade Data System (ITDS). Also, as noted above, when the major cargo and entry summary functionalities are totally integrated into ACE, it is anticipated that the expansion of RLF will be fully realized and most OGA information and filings will be able to be filed electronically.

Comment: One commenter suggested that RLF should be expanded to include the Line Release process, prescribed in 19 CFR part 142, subpart D, which exists to facilitate the clearance of repetitive, low-risk transactions.

CBP Response: Line Release provides for advance cargo screening and expedited release at land border ports. The current ACS environment does not provide the capability for RLF to include Line Release. However, as entry processing migrates to ACE and CBP's system capabilities evolve, CBP will explore opportunities to achieve various process objectives based on the expanded automation capabilities.

Comment: One commenter stated that RLF regulations are not necessary because the RLF prototype has been functioning for 13 years and ACE will make RLF redundant. The commenter suggests that RLF should continue as a NCAP prototype until such time as the functionalities of ACE are totally integrated.

CBP Response: Promulgating RLF as a regulatory program will clarify and harmonize RLF requirements and provide the operational groundwork for ACE. ACE will not replace RLF; rather, ACE will be the electronic means necessary to expand RLF.

Comment: One commenter, citing the proposed amendment to 19 CFR 141.61(a)(2) which would allow electronic entry and entry summary documentation to be filed ''by the importer of record or his duly authorized agent, one of whom must be a resident of the United States for the purposes of receiving service of process,'' requested that CBP verify that it is not amending part 141 to allow customs brokers (or any other future authorized agent for an importer) to prepare and file customs entries, entry summaries and/or other ''customs business'' documents from outside the United States on the importer's behalf.

CBP Response: The amendments to 19 CFR 141.61(a)(2) are intended to provide regulatory guidance for RLF regarding the manner by which electronic entry and entry summary documentation are to be prepared. This regulatory package does not address the issue of whether entries can be filed from outside the United States.

Comment: One commenter suggested changes to proposed 19 CFR 141.61(a)(2) which concerns the preparation of electronic entry and entry summary documentation. The commenter notes that the certification of the entry filing is ''customs business,'' as defined in 19 U.S.C. 1641(a) and 19 CFR 111.1, and the person responsible for preparing the electronic filing, not simply the transmitter of the filing, must be the importer self-filer or a licensed U.S. customs broker. Accordingly, the commenter suggests deleting the phrase in proposed § 141.61(a)(2) which states, ''* * * by the importer of record or his duly authorized agent, one of whom must be resident in the United States for purposes of receiving service of process * * *'' and adding in its place the language, ''* * * by the importer of record or the importer's duly authorized customs broker''.

CBP Comment: CBP agrees with the commenter's suggested language and proposed § 141.61(a)(2), as set forth in 72 FR 13714, is amended in this document to state that the entry and entry summary documentation must be certified by the importer of record or the importer's duly authorized ''customs broker.'' This provision is further amended to retain the concept of the importer's ''duly authorized agent'' in a service of process context.

Comment: One commenter noted that RLF pertains only to customs brokers and that importers who are self-filers have no permit restrictions and may file entries of all kinds at all ports in the U.S. In order to maintain the current level playing field, brokers must continue to have the option of offering their clients the same capabilities. To that end, the commenter proposes that a special class of national permit should be created that would allow brokers to file at all ports with no restrictions as to entry types. The commenter posits that creating a new class of permit would provide brokers with the same filing options as self-filing importers.

CBP Response: The legislative intent of the Customs Modernization Act (Pub. L. 103–182, 107 Stat. 2170 (December 8, 1993)), was to allow nationally permitted brokerage firms to file electronically at all ports of entry, and CBP is working toward that objective.

Additionally, and as noted above, when the major cargo and entry summary functionalities are totally integrated into ACE, the expansion of RLF will be fully realized, and it is anticipated that RLF will be able to encompass most, if not all, entry types.

Comment: One commenter inquired whether a broker would be allowed to make entry via RLF even when the broker has an office in the port of entry.

CBP Response: A broker may use CBP's electronic invoice capabilities to facilitate an entry filing when the broker has an office in the port of entry.

Comment: Several commenters noted that express consignment carrier and courier hub facilities (ECCFs) are privately constructed and funded facilities at which ECCF operators are required to pay reimbursement fees to CBP (*see* § 24.23(b)(4)) for services provided by the agency at these facilities. As ECCFs are increasingly used by conventional brokers who do not pay reimbursement fees, the commenters suggested that CBP should impose filer code restrictions and ECCF operators should be able to choose which of their port codes will be RLF-eligible and which brokers will be permitted to file RLF entries at the ECCFs.

CBP Response: With regard to the commenters' request for filer code restrictions at ECCFs, CBP notes that RLF operational ports, including ECCFs, are open to all filers and importers who fulfill the RLF eligibility criteria.

Comment: Several commenters requested that ECCF operators be notified as part of the approval and set-up process to prevent the filing of duplicate entries resulting from situations where an importer retains the services of an outside customs broker to file an entry instead of using the ECCF's designated ''in-house'' broker who typically arranges customs clearance at the facility.

CBP Response: As this issue is substantively outside the scope of the proposed amendments to the CBP regulations set forth in 72 FR 13714, it cannot be addressed in this final rule.

CBP notes, however, that as importers are obligated to use reasonable care in making an entry, the U.S. purchaser and the foreign shipper are obligated to coordinate with each other as to which of them will be responsible for entering the foreign merchandise covered by their transaction. Brokers are obligated to exercise reasonable supervision over the customs business they perform and are obligated to ask whether an entry is being made on behalf of the foreign shipper or the U.S. purchaser. If the parties to the transaction meet their above-described legal obligations, the issue of duplicate entries being made on the same merchandise should not occur. However, where duplicate entries are filed, filers may remedy this through CBP's established entry cancellation procedures. For a further discussion of this issue, the trade is advised to contact the Trade Facilitation and Administration Division, Office of International Trade, Customs and Border Protection, at (202) 863–6000.

Comment: Several commenters note that as an ECCF operator engages in a contractual agreement with a shipper through the terms and conditions of the air waybill, the ECCF operator is contractually obligated to abide by the instructions from the shipper. These terms and conditions include the authority to make clearance arrangements at destination and offer an option under which the shipper can specify that the consignee will make clearance arrangements. The commenters expressed concern that the proposed RLF regulations make no mention of this contractual obligation and thus create the possibility of forced contractual breach by requiring the ECCF operator to accept the entry under arrangements by the consignee.

CBP Response: These comments address a substantive issue that is beyond the scope of the proposed RLF rule and therefore will not be considered in the context of this final rule.

Comment: Several commenters described the PAIRED program as distinct from RLF and suggested that if PAIRED were to be eliminated, as proposed, valuable experience and established relationships between the trade, participating government agencies and CBP will be lost. The commenters noted that PAIRED port entries were designed to facilitate legitimate low risk/repetitive trade throughout the United States and therefore play a significant part in the economic well-being of our nation and the importing companies that use the PAIRED program. The commenters further noted that although Congress stated that the PAIRED program would be eliminated upon implementation of RLF, this presupposed that RLF would provide the same benefits and unique aspects of PAIRED. In this regard, it is noted that AD/CVD entries, quota entries, single bond entries, and paper entry filings required by certain other government agencies are permitted under PAIRED, but not under RLF at this time.

CBP Response: CBP agrees that the PAIRED program is distinct from RLF. RLF is processed in a completely electronic environment while PAIRED, in most cases, still relies on paper filings. The PAIRED program was implemented in 1987 as an alternative process for importers to use the existing ''telecommunications facilities'' that were available at that time to expedite the submission, review, and final disposition of entry documentation.

PAIRED was implemented as an attempt to reduce the costs associated with maintaining the transportation in-bond system. In 1987, CBP did not possess the technological resources for electronic filing, nor did the agency possess the statutory authority to permit brokers to file entries to districts other than those for which they held district permits.

Congress directed the discontinuance of PAIRED entries upon implementation of RLF. *See* House Report No. 103–361(I), page 127. CBP is of the view that elimination of the PAIRED program fulfills Congressional intent by increasing electronic filing (a major impetus of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2170 (December 8, 1993)). The argument that RLF was intended to provide the same benefits as PAIRED is unsubstantiated and, in any event, will be rendered moot in the foreseeable future as ACE modernization development will deliver major release and entry summary processing capabilities in 2009.

Comment: Several commenters request that elimination of the PAIRED program should be phased in until RLF is implemented for all entry types.

CBP Response: CBP does not view an interim continuation of the PAIRED program as conducive to either CBP's homeland security objectives or its customs modernization initiatives.

As noted above, RLF was established under the Customs Modernization Act and provides for the electronic submission of required entry and entry summary data from any location regardless of where the merchandise arrives in the United States or where it is examined. Under RLF, physical examinations are not restricted to either the port of filing or the port of arrival (unlike PAIRED). Examination can also take place at the port nearest the cargo's final destination. RLF supports comprehensive account based processing by allowing filers to electronically manage and control filing

of customs cargo data. RLF also supports the accurate electronic tracking of cargo arrival and required electronic review. The PAIRED program does not support these important security objectives and runs counter to the agency's modernization efforts.

Conclusion

After analysis of the comments and further review of the matter, CBP has determined to adopt as final, with the changes mentioned in the comment discussion, the proposed rule published in the **Federal Register** (72 FR 13714) on March 23, 2007.

This final rule also affects an additional non-substantive change to §§ 143.43(a), 143.44(a) and 143.44(b) to clarify that the importer of record, in addition to a customs broker, may participate in RLF.

The Regulatory Flexibility Act and Executive Order 12866

Because these amendments implement a voluntary program provided for by statute, and have the effect of streamlining the entry process and reducing the overall regulatory burden on the general public, it is certified pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* that these amendments will not have a significant economic impact on a substantial number of small entities. Further, these amendments do not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

As there are no new collections of information proposed in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects

19 CFR Part 111

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

19 CFR Part 113

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Invoices, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 142

Customs duties and inspection, Forms, Reporting and recordkeeping requirements.

19 CFR Part 143

Automated Broker Interface (ABI), Computer technology (Electronic entry filing), Customs duties and inspection, Entry of merchandise, Invoice requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated in the preamble, parts 111, 113, 141, 142 and 143 of title 19 of the CFR (19 CFR parts 111, 113, 141, 142 and 143) are amended as set forth below.

PART 111—CUSTOMS BROKERS

■ 1. The general authority citation for part 111 continues to read as follows:

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

* * * * *

■ 2. Section 111.2(b)(2)(i)(C) is revised to read as follows:

§ 111.2 License and district permit required.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) *Electronic filing.* A broker may electronically file entries for merchandise from a remote location, pursuant to the terms set forth in subpart E to part 143 of this chapter, and may electronically transact other customs business even though the entry is filed, or other customs business is transacted, within a district for which the broker does not have a district permit; and

* * * * *

PART 113—CUSTOMS BONDS

■ 3. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

§ 113.62 [Amended]

■ 4. In § 113.62, paragraph (k)(1) is amended by removing the reference ,'' subpart D,'' and by removing the words ''that subpart'' and adding in their place the words, ''part 143''.

PART 141—ENTRY OF MERCHANDISE

■ 5. The general authority citation for part 141 is revised, and the specific authority citations for subparts F and G and §§ 141.68 and 141.90 continue to read as follows:

Authority: 19 U.S.C. 66, 1414, 1448, 1484, 1624.

Subpart F also issued under 19 U.S.C. 1481;

Subpart G also issued under 19 U.S.C. 1505;

* * * * *

Section 141.68 also issued under 19 U.S.C. 1315;

* * * * *

Section 141.90 also issued under 19 U.S.C. 1487;

* * * * *

■ 6. In § 141.18:

■ a. The introductory sentence is amended by removing the word ''Customs'' and adding in its place the word ''customs'', and by removing the word ''shall'' and adding in its place the word ''may'';

■ b. Paragraph (a) is revised; and

■ c. Paragraph (b) is amended by removing the word ''Customs'' and adding in its place the term ''CBP''.

The revision reads as follows:

§ 141.18 Entry by nonresident corporation.

* * * * *

(a) Has a resident agent in the State where the port of entry is located who is authorized to accept service of process against that corporation or, in the case of an entry filed from a remote location pursuant to subpart E of part 143 of this chapter, has a resident agent authorized to accept service of process against that corporation either in the State where the port of entry is located or in the State from which the remote location filing originates; and

* * * * *

■ 7. In § 141.61:

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

■ b. Paragraph (c) is amended, in the first sentence, by removing the word ''shall'' and adding in its place the word ''must'', and; in the second sentence, by removing the word ''shall'' and adding in its place the word ''will'';

■ c. Paragraph (d) is amended by removing the word ''shall'' each place that it appears and adding the word ''must'', and by removing the words ''Customs Form'' each place they appear and adding the words ''CBP Form'';

■ d. Paragraph (e) is amended:

■ i. In paragraphs (e)(1) through (e)(3), by removing the word ''shall'' each place that it appears and adding the word ''must'', and by removing the words ''Customs Form'' each place they

appear and adding the words ''CBP Form'';

■ ii. In paragraph (e)(4), by removing the word ''shall'' and adding in its place the word ''will'' and by removing the word ''Customs'' and adding in its place the term ''CBP''; and

■ iii. In paragraph (e)(5), by removing the word ''shall'' and adding in its place the word ''will''; and

■ e. Paragraph (f) is amended:

■ i. In paragraph (f)(1), by removing the word ''shall'' and adding in its place the word ''must''; in paragraph (f)(1)(iv), by removing, in the second sentence, the words ''shall represent'' and adding in their place the words ''must represent''; and, in the third sentence, by removing the word ''shall'' and adding in its place the word ''must'' and by removing the word ''Customs'' each place that it appears and adding the term ''CBP'';

■ ii. In paragraph (f)(2)(i), by removing the word ''shall'' each place that it appears and adding the word ''must'' and by removing the word ''Customs'' and adding in its place the term ''CBP'';

■ iii. In paragraph (f)(2)(ii), by removing, in the first sentence, the word ''shall'' and adding in its place the word ''must'', by removing in the second sentence the words ''shall represent'' and adding in their place the words ''must represent''; and, in the third sentence, by removing the word ''shall'' and adding in its place the word ''must''; and, in paragraphs (f)(2)(iii) and (f)(2)(iv), by removing the word ''shall'' each place that it appears and adding the word ''must''.

The revision reads as follows:

§ 141.61 Completion of entry and entry summary documentation.

(a) *Preparation*—(1) *Paper entry and entry summary documentation.* Except when entry and entry summary documentation is filed with CBP electronically pursuant to the provisions of part 143 of this chapter:

(i) Such documentation must be prepared on a typewriter (keyboard), or with ink, indelible pencil, or other permanent medium, and all copies must be legible;

(ii) The entry summary must be signed by the importer (*see* § 101.1 of this chapter); and

(iii) Entries, entry summaries, and accompanying documentation must be on the appropriate forms specified by the regulations and must clearly set forth all required information.

(2) *Electronic entry and entry summary documentation.* Entry and entry summary documentation that is filed electronically pursuant to part 143 of this chapter must contain the information required by this section and must be certified (*see* §§ 143.35 and 143.44 of this chapter) by the importer of record or his duly authorized customs broker as being true and correct to the best of his knowledge. The importer of record, customs broker, or a duly authorized agent must be resident in the United States for purposes of receiving service of process. A certified electronic transmission is binding in the same manner and to the same extent as a signed document.

(b) *Marks and numbers previously provided.* An importer may omit from entry summary (CBP Form 7501) the marks and numbers previously provided for packages released or withdrawn.

* * * * *

§ 141.63 [Amended]

■ 8. In § 141.63:

a. Paragraphs (a)(2) and (b) are amended by removing the word ''shall'' each place that it appears and adding the word ''will''; and

b. Paragraph (c) is removed.

§ 141.68 [Amended]

■ 9. In § 141.68:

■ a. Paragraphs (a) through (e), (g), and (h) are amended by removing the word ''shall'' each place that it appears and adding the word ''will''; and

■ b. Paragraphs (a), (d), and (f) through (h) are amended by removing the word ''Customs'' each place that it appears and adding the term ''CBP''.

■ 10. In § 141.86:

■ a. Paragraphs (a) through (e) are amended by removing the word ''shall'' each place that it appears and adding the word ''must'';

■ b. Paragraph (f) is amended by removing the word ''shall'' and adding in its place the word ''must'', and by removing the word ''Customs'' and adding in its place the term ''CBP'';

■ c. Paragraph (g) is amended by removing the word ''shall'' and adding in its place the word ''must'';

■ d. Paragraph (h) is revised; and

■ e. Paragraph (j) is amended by removing the word ''shall'' and adding in its place the word ''must''.

The revisions read as follows:

§ 141.86 Contents of invoices and general requirements.

* * * * *

(h) *Numbering of invoices and pages.* (1) *Invoices.* Except when electronic invoice data are transmitted to CBP under the provisions of part 143 of this chapter, when more than one invoice is included in the same entry, each invoice with its attachments must be numbered consecutively by the importer on the bottom of the face of each page, beginning with No. 1.

(2) *Pages.* Except when electronic invoice data are transmitted to CBP under the provisions of part 143 of this chapter, if the invoice or invoices filed with one entry consist of more than two pages, each page must be numbered consecutively by the importer on the bottom of the face of each page, with the page numbering beginning with No. 1 for the first page of the first invoice and continuing in a single series of numbers through all the invoices and attachments included in one entry.

(3) *Both invoices and pages.* Except when electronic invoice data are transmitted to CBP under the provisions of part 143 of this chapter, both the invoice number and the page number must be shown at the bottom of each page when applicable. For example, an entry covering one invoice of one page and a second invoice of two pages must be paginated as follows:

Inv. 1, p. 1.
Inv. 2, p. 2.
Inv. 2, p. 3

* * * * *

■ 11. In § 141.90:

■ a. Paragraph (b) is revised;

■ b. Paragraph (c) is amended by removing the word ''shall'' each place that it appears and adding the word ''must'' in its place; and

■ c. Paragraph (d) is revised.

The revisions read as follows:

§ 141.90 Notation of tariff classification and value on invoice.

* * * * *

(b) *Classification and rate of duty.* The importer or customs broker must include on the invoice or with the invoice data the appropriate subheading under the provisions of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and the rate of duty for the merchandise being entered. Except when invoice line data are linked to an entry summary line and transmitted to CBP electronically under the provisions of part 143, that information must be noted by the importer or customs broker in the left-hand portion of the invoice, next to the articles to which they apply.

* * * * *

(d) *Importer's notations in blue or black ink.* Except when invoice line data are linked to an entry summary line and transmitted to CBP electronically under the provisions of part 143, all notations made on the invoice by the importer or customs broker must be in blue or black ink.

PART 142—ENTRY PROCESS

■ 12. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

■ 13. In § 142.3:
■ a. Paragraph (a) is amended by:
■ i. Removing in the introductory sentence the word ''shall'' and adding in its place the word ''must'';
■ ii. By removing in paragraph (a)(1) the word ''Customs'' each place that it appears and adding the term ''CBP'' and by removing the word ''shall'' and adding in its place the word ''must'';
■ iii. By removing in paragraph (a)(5) the word ''Customs'' and adding in its place the term ''CBP'';
■ iv. By removing in paragraph (a)(6) the word ''shall'' and adding in its place the word ''must'' and by removing the term ''CF'' and adding in its place the words ''CBP Form'';
■ b. Paragraph (b) is revised; and
■ c. A new paragraph (d) is added.

The revision and addition read as follows:

§ 142.3 Entry documentation required.

* * * * *

(b) *Entry summary filed at time of entry.* When the entry summary is filed at time of entry in accordance with § 142.12(a)(1) or § 142.13:

(1) CBP Form 3461 or 7533 will not be required; and

(2) CBP Form 7501 or CBP Form 3311 (as appropriate, *see* § 142.11) may serve as both the entry and the entry summary documentation if the additional documentation set forth in paragraphs (a)(2), (3), (4) and (5) of this section and § 142.16(b) is filed.

* * * * *

(d) *Electronic Format.* The entry documentation identified in this section may be submitted to CBP in either a paper or, where appropriate, an electronic format.

PART 143—SPECIAL ENTRY PROCEDURES

■ 14. The authority citation for part 143 is revised to read as follows:

Authority: 19 U.S.C. 66, 1414, 1481, 1484, 1498, 1624, 1641.

■ 15. Section 143.0 is revised to read as follows:

§ 143.0 Scope.

This part sets forth the requirements and procedures for participation in the Automated Broker Interface (ABI), for the clearance of imported merchandise under appraisement and informal entries, and under electronic entry filing and under Remote Location Filing (RLF). All requirements and procedures set forth in this part are in addition to the general requirements and procedures for all entries set forth in part 141 of this chapter. More specific requirements and procedures are set forth elsewhere in this chapter; for example, part 145 concerns importations by mail and part 10 concerns merchandise conditionally free of duty or subject to a reduced rate.

■ 16. In § 143.32, the introductory text and paragraphs (a), (b), (d) through (k), and the first sentence of paragraph (o) are revised to read as follows:

§ 143.32 Definitions.

The following are definitions for purposes of subparts D and E of this part:

(a) *ABI.* ''ABI'' means the Automated Broker Interface and refers to a module of ACS that allows entry filers to transmit immediate delivery, entry and entry summary data electronically to CBP through ACS and to receive transmissions from ACS.

(b) *ACS.* ''ACS'' means the Automated Commercial System and refers to CBP's integrated comprehensive tracking system for the acquisition, processing and distribution of import data.

* * * * *

(d) *Broker.* ''Broker'' means a customs broker licensed under part 111 of this chapter.

(e) *Certification.* ''Certification'' means the electronic equivalent of a signature for data transmitted through ABI. This electronic (facsimile) signature must be transmitted as part of the immediate delivery, entry or entry summary data. Such data are referred to as ''certified''.

(f) *Data.* ''Data'' when used in conjunction with immediate delivery, entry and/or entry summary means the information required to be submitted with the immediate delivery, entry and/or entry summary, respectively, in accordance with the CATAIR (CBP Publication 552, Customs and Trade Automated Interface Requirements) and/or CBP Headquarters directives. It does not mean the actual paper documents, but includes all of the information required to be in such documents.

(g) *Documentation.* ''Documentation'' when used in conjunction with immediate delivery, entry and/or entry summary means the documents set forth in § 142.3 of this chapter, required to be submitted as part of an application for immediate delivery, entry and/or entry summary, but does not include the CBP Forms 7501, 3461 (or alternative forms).

(h) *EDIFACT.* ''EDIFACT'' means the Electronic Data Interchange for Administration, Commerce and Transport that provides an electronic capability to transmit detailed CBP Forms 7501 and 3461, and invoice data.

(i) *Electronic entry.* ''Electronic entry'' means the electronic transmission to CBP of:

(1) Entry information required for the entry of merchandise; and

(2) Entry summary information required for the classification and appraisement of the merchandise, the verification of statistical information, and the determination of compliance with applicable law.

(j) *Electronic immediate delivery.* ''Electronic immediate delivery'' means the electronic transmission of CBP Forms 3461 or 3461 alternate (CBP Form 3461 ALT) data utilizing ACS in order to obtain the release of goods under immediate delivery.

(k) *Electronic Invoice Program (EIP).* ''EIP'' refers to modules of the Automated Broker Interface (ABI) that allow entry filers to transmit detailed invoice data and includes Automated Invoice Interface (AII) and any other electronic invoice authorized by CBP.

* * * * *

(o) *Selectivity criteria.* ''Selectivity criteria'' means the categories of information that guide CBP's judgment in evaluating and assessing the risk of an immediate delivery, entry, or entry summary transaction. * * *

* * * * *

■ 17. Part 143 is amended by adding a new subpart E, consisting of §§ 143.41 through 143.45, to read as follows:

Subpart E—Remote Location Filing

Sec.
143.41 Applicability.
143.42 Definitions.
143.43 RLF eligibility criteria.
143.44 RLF procedure.
143.45 Filing of additional entry information.

Subpart E—Remote Location Filing

§ 143.41 Applicability.

This subpart sets forth the general requirements and procedures for Remote Location Filing (RLF). RLF entries are subject to the documentation, document retention and document retrieval requirements of this chapter as well as the general entry requirements of parts 141, 142 and 143 of this chapter. Participation in the RLF program is voluntary and at the option of the filer.

§ 143.42 Definitions.

The following definitions, in addition to the definitions set forth in § 143.32 of this part, apply for purposes of this subpart E:

(a) *Remote Location Filing (RLF)*—''RLF'' is an elective method of making entry by which a customs broker with a national permit electronically

transmits all data information associated with an entry that CBP can process in a completely electronic data interchange system to a RLF-operational CBP location from a remote location other than where the goods are being entered. (Importers filing on their own behalf may file electronically in any port, subject to ABI filing requirements.)

(b) *RLF-operational CBP location*—''RLF-operational CBP location'' means a CBP location within the customs territory of the United States that is staffed with CBP personnel who have been trained in RLF procedures and who have operational experience with the Electronic Invoice Program (EIP). EIP is defined in § 143.32 of this chapter. A list of all RLF-operational locations is available for viewing on the CBP Internet Web site located at *http://www.cbp.gov/xp/cgov/trade/trade_programs/remote_location_filing/.*

§ 143.43 RLF eligibility criteria.

(a) *Automation criteria.* To be eligible for RLF, a licensed customs broker or importer of record must be:

(1) Operational on the ABI (*see* 19 CFR part 143, subpart A);

(2) Operational on the EIP prior to applying for RLF; and

(3) Operational on the ACH (or any other CBP-approved method of electronic payment), for purposes of directing the electronic payment of duties, taxes and fees (*see* 19 CFR 24.25), 30 days before transmitting a RLF entry.

(b) *Broker must have national permit.* To be eligible for RLF, a licensed customs broker must hold a valid national permit (*see* 19 CFR 111.19(f)).

(c) *Continuous bond.* A RLF entry must be secured with a continuous bond.

§ 143.44 RLF procedure.

(a) *Electronic transmission of invoice data.* For RLF transactions, a customs broker or importer of record must transmit electronically, using EIP, any invoice data required by CBP.

(b) *Electronic transmission of payment.* For RLF transactions, a customs broker or importer of record must direct the electronic payment of duties, taxes and fees through the ACH (*see* 19 CFR 24.25) or any other method of electronic payment authorized by CBP.

(c) Automation requirements. Only those entries and entry summaries that CBP processes completely in an electronic data interchange system will be accepted for RLF. For a listing of entry types that may be filed via RLF, go to *http://www.cbp.gov/xp/cgov/trade/trade_programs/remote_location_filing/.*

(d) Combined electronic entry and entry summary. For RLF transactions using a combined electronic entry and entry summary, a customs broker must submit to CBP, through ABI or any other electronic interface authorized by CBP, a complete and error-free electronic data transmission constituting the entry summary that serves as both the entry and entry summary.

(e) *No line release or immediate delivery entries permitted under RLF.* Line release (*see* 19 CFR, Part 142, Subpart D) or immediate delivery procedures may not be combined with RLF transactions.

(f) *Data acceptance and release of merchandise.* Data that are complete and error free will be accepted by CBP. If electronic invoice or additional electronic documentation is required, CBP will so notify the RLF filer. If no documentation is required to be filed, CBP will so notify the RLF filer. If CBP accepts the RLF entry (including invoice data) under §§ 143.34 through 143.36 of this part, the RLF entry will be deemed to satisfy all filing requirements under this part and the merchandise may be released.

(g) *Liquidation.* The entry summary will be scheduled for liquidation once payment is made under statement processing (*see* 19 CFR 24.25).

§ 143.45 Filing of additional entry information.

When filing from a remote location, a RLF filer must electronically file all additional information required by CBP to be presented with the entry and entry summary information (including facsimile transmissions) that CBP can accept electronically. If CBP cannot accept additional information electronically, the RLF filer must file the additional information in a paper format at the CBP port of entry where the goods arrived.

Approved: December 22, 2009.

Jayson P. Ahern,

Acting Commissioner, U.S. Customs and Border Protection.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. E9–30736 Filed 12–29–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9477]

RIN 1545–BI14

Use of Controlled Corporations To Avoid the Application of Section 304

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 304 of the Internal Revenue Code (Code). The regulations apply to certain transactions that are subject to section 304 but that are entered into with a principal purpose of avoiding the application of section 304 to a corporation that is controlled by the issuing corporation in the transaction, or with a principal purpose of avoiding the application of section 304 to a corporation that controls the acquiring corporation in the transaction. The regulations affect persons treated as receiving distributions in redemption of stock by reason of section 304. The text of the temporary regulations serves as the text of the proposed regulations in the notice of proposed rulemaking on this subject published in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on December 30, 2009.

Applicability Date: These regulations apply to acquisitions of stock occurring on or after *December 29, 2009.*

FOR FURTHER INFORMATION CONTACT: Sean W. Mullaney, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 304 of the Code. Section 304(a)(1) provides generally that, for purposes of sections 302 and 303, if one or more persons are in control of each of two corporations and one such corporation (acquiring corporation) acquires in exchange for property stock of the other corporation (issuing corporation) from the person (or persons) so in control, then, unless section 304(a)(2) applies, the property shall be treated as received in redemption of the stock of the acquiring corporation. Section 304(a)(2) provides generally that, for purposes of sections 302 and 303, if in exchange for property the acquiring corporation acquires stock