

APPEAL PANEL DECISION FORM

I. CLAIMANT AND CLAIM INFORMATION

Claimant Name	Last/Name of Business ████████████████████	First ██████████	Middle ██████████
Claimant ID	██████████	Claim ID	██████████
Claim Type	Business Economic Loss		
Law Firm	████████████████████		

II. DECISION

Select the Compensation Amount set forth in either BP's Final Proposal or the Claimant's Final Proposal as the final outcome on the claim and check the appropriate box to signify your decision.

<input checked="" type="checkbox"/> BP's Final Proposal	Compensation Amount	\$111,179.89
	Risk Transfer Premium	.25
	Prior Payment Offset	\$0
<input type="checkbox"/> Claimant's Final Proposal	Compensation Amount	\$111,179.89
	Risk Transfer Premium	1.25
	Prior Payment Offset	\$0

III. PRIMARY BASIS FOR PANELIST DECISION

Please select the primary basis for your decision. You may also write a comment describing the basis for your decision.

- Error in documentation review.**
- Error in calculation.**
- Error in RTP multiplier.**
- Error in Prior Spill-Related Payment Amount.**
- No error.**

Comment *(optional)*:

Claimant, a ██████████ seller of medical scrub wear, appeals this matter on the single basis that the program vendors erred by selecting a NAICS code that disqualified it from automatic eligibility for the higher RTP multiplier granted to Tourism enterprises. Specifically, it argues that its appropriate NAICS code is the one it selected on its Program claim form and used in its tax returns, namely 448150 ("Clothing Accessories Store"), which Code entitles it to automatic Tourism status under Exhibit 2 of the Agreement. Instead, the Program



chose NAICS code 323113 ("Commercial Screen Printing"), and found that under the circumstances, Claimant did not qualify for Tourism. Claimant adds that its primary business is in scrub wear sales, which are a type of clothing accessories, entitling it to the former NAICS code. It attaches as an exhibit to its memorandum a price list showing that its inventory is, indeed, largely medical scrub wear. BP replies that almost exactly half of Claimant's sales volume is devoted to silk screening of said scrubs, and that a significant percentage of its sales are online, qualifying Claimant for the alternative non-Tourism NAICS code of 454111 ("Electronic Shopping"). Section 4.4.7.1 of the Agreement grants the Administrator the authority and discretion to select a NAICS code for a given entity. Although one of the factors allowed in consideration is the entity's designation in its 2010 tax return, that factor alone is not controlling. Indeed, another important factor is any other evidence of the entity's business activity. See also Policy 480v2 concerning the discretion allowed the Administrator in selecting the proper NAICS code. Especially given the fact that almost half of Claimant's revenue is derived from silk screening, this panelist cannot undermine the selection of that NAICS code as the appropriate one. The inquiry, however, does not end here, since a Claimant may still endeavor to qualify for a Tourism designation even if its given NAICS does not merit that automatic status under Exhibit 2. Herein, this panelist is mindful of Exhibit 2 of the Agreement which defines Tourism entities as those businesses which cater to the needs of those who travel from outside their home communities. See also Policy 289v2 .Given the significant volume of Claimant's sales as online, and further given that the core of its sales (medical scrubs) is anything but tourism-related, this panelist must conclude that the rejection of Tourism status under the circumstances was entirely appropriate.