Bureau of Customs and Border Protection

General Notices

AIRPORT AND SEAPORT INSPECTIONS USER FEE ADVISORY COMMITTEE

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

ACTION: Notice of meeting.

SUMMARY: The Customs and Border Protection ("CBP") Airport and Seaport Inspections User Fee Advisory Committee ("Advisory Committee") will meet in open session.

DATE: Tuesday, August 22, 2006, 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at Conference Room B 1.5–10, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC.

If you desire to submit comments, they must be submitted by August 8, 2006. Comments must be identified by USCBP–2006–0060 and may be submitted by one of the following methods:

- Federal Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- E-mail: Roberto.M.Williams@dhs.gov. Include docket number in the subject line of the message.
- Mail: Mr. Roberto Williams, Cost Management Division, 1300 Pennsylvania Avenue NW, Suite 4.5A, Customs and Border Protection, Department of Homeland Security, Washington, DC 20229.
- Facsimile: 202–344–1818.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at www.regulations.gov, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the CBP Advisory Committee, go to http://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Roberto Williams, Cost Management Division, 1300 Pennsylvania Avenue NW, Suite 4.5A, Customs and Border Protection, Department of Home-

land Security, Washington, DC 20229, telephone 202–344–1101; facsimile 202–344–1818; e-mail: Roberto.M.Williams@dhs.gov.

SUPPLEMENTARY INFORMATION: The fourth meeting of the CBP Advisory Committee will be held at the date, time and location specified above. This notice also announces the expected agenda for the meeting (see below).

The Advisory Committee was established pursuant to section 286(k) of the Immigration and Nationality Act (INA), codified at title 8 U.S.C. 1356(k), which references the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.). With the merger of the Immigration and Naturalization Service into the Department of Homeland Security, the Advisory Committee's responsibilities were transferred from the Attorney General to the Commissioner of CBP pursuant to section 1512(d) of the Homeland Security Act of 2002.

The Advisory Committee held its first meeting under the direction of CBP on October 22, 2003 (see 68 Federal Register 56301, September 30, 2003). Among other things, the committee is tasked with advising the CBP Commissioner on issues related to CBP inspection services. This advice includes, but is not limited to, the level and the appropriateness of the following fees assessed for CBP services: the immigration user fee pursuant to 8 U.S.C. 1356(d), the customs inspection user fee pursuant to 19 U.S.C. 58c(a)(5), and the agriculture inspection user fee pursuant to 21 U.S.C 136a.

This meeting is open to the public. Public participation in the deliberations is welcome; however, please note that matters outside of the scope of this committee will not be discussed.

Since seating is limited, all persons attending this meeting must provide notice, preferably by close of business Tuesday, August 8, 2006, to Mr. Roberto Williams, Cost Management Division, 1300 Pennsylvania Avenue NW, Suite 4.5A, Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202–344–1101; facsimile 202–344–1818.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Roberto Williams as soon as possible.

Draft Agenda

1. Introduction of Committee members and CBP Personnel.
2. Discussion of activities since last meeting held on November 30, 2005.
3. Discussion of operational initiatives and programs.
4. Discussion of workload issues and traffic trends.
5. Discussion of funding levels.
6. Discussion of user fee initiatives.
7. Discussion of specific concerns and questions of Committee members.

8. Discussion of relevant written statements submitted in advance by members of the public.

9. Discussion of Committee administrative issues and scheduling of next meeting.

10. Adjourn.

Dated: July 5, 2006

RICHARD L. BALABAN,
Assistant Commissioner, Office of Finance,
Customs and Border Protection.

[Published in the Federal Register, July 10, 2006 (71 FR 38891)]

AGENCY INFORMATION COLLECTION ACTIVITIES: Deferral of Duty on Large Yachts Imported for Sale

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Deferral of Duty on Large Yachts Imported for Sale. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (71 FR 25599) on May 1, 2006, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before August 14, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget Desk Officer at Nathan.Lesser@omb.eop.gov.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other

(5) forms of information technology, e.g., permitting electronic submission of responses.

Title: Deferral of Duty on Large Yachts Imported for Sale
OMB Number: 1651–0080
Form Number: N/A
Abstract: Section 2406(a) of the Miscellaneous Trade and Technical Corrections Act of 1999 provides that an otherwise dutiable "large yacht" may be imported without the payment of duty if the yacht is imported with the intention to offer for sale at a boat show in the U.S.
Current Actions: This submission is being submitted to extend the expiration date with a change to the burden hours.
Type of Review: Extension (with change)
Estimated Number of Respondents: 100
Estimated Time Per Respondent: 60 minutes
Estimated Total Annual Burden Hours: 100
Estimated Total Annualized Cost on the Public: N/A

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202–344–1429.

Dated: July 10, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, July 14, 2006 (71 FR 40140)]

19 CFR PARTS 4 and 122

USCBP–2005–0003

RIN 1651–AA62

PASSENGER MANIFESTS FOR COMMERCIAL AIRCRAFT ARRIVING IN AND DEPARTING FROM THE UNITED STATES; PASSENGER AND CREW MANIFESTS FOR COMMERCIAL VESSELS DEPARTING FROM THE UNITED STATES

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend existing Bureau of Customs and Border Protection regulations concerning electronic manifest transmission requirements relative to passengers, crew members, and non-crew members traveling onboard international commercial flights and voyages. Under current regulations, air carriers must transmit to the Bureau of Customs and Border Protection (CBP), Department of Homeland Security (DHS), passenger manifest information for aircraft en route to the United States no later than 15 minutes after the departure of the aircraft. This proposed rule implements the Intelligence Reform and Terrorism Prevention Act of 2004 requirement that such information be provided to the government before departure of the aircraft. This proposed rule provides air carriers a choice between transmitting complete manifests no later than 60-minutes prior to departure of the aircraft or transmitting manifest information on passengers as each passenger checks in for the flight, up to but no later than 15 minutes prior to departure. The rule also proposes to amend the definition of "departure" for aircraft to mean the moment the aircraft is pushed back from the gate. For vessel departures from the United States, the rule

proposes transmission of passenger and crew manifests no later than 60 minutes prior to departure of the vessel.

DATE: Written comments must be received on or before August 14, 2006.

ADDRESSES: You may submit comments, identified by docket number USCBP–2005–0003, by one of the following methods:

(1) Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

(2) Mail: Comments by mail are to be addressed to the Bureau of Customs and Border Protection, Office of Regulations and Rulings, Regulations Branch, 1300 Pennsylvania Ave., N.W. (Mint Annex), Washington, D.C. 20229.

(3) Hand delivery/courier: 799 9th Street, N.W., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Charles Perez, Program Manager, Office of Field Operations, Bureau of Customs and Border Protection (202–344–2605).

SUPPLEMENTARY INFORMATION:

The Supplementary Information section is organized as follows:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and docket number for this rulemaking (USCBP–2005–0003). All comments received will be posted without change to http://www.regulations.gov, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to http://www.regulations.gov. Submitted comments may also be inspected at the Bureau of Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. 20220. To inspect comments, please call (202) 572–8768 to arrange for an appointment.

II. Background and Purpose

The Advance Passenger Information System (APIS) is a widely utilized electronic data interchange system approved by DHS for use by international commercial air and vessel carriers to transmit electronically to CBP certain data on passengers, crew members, and non-crew members, as required under CBP regulations. APIS was developed by the former U.S. Customs Service (Customs) in 1988, in cooperation with the former Immigration and Naturalization Service (INS) and the airline industry. Although initially voluntary, APIS participation grew, making it nearly an industry standard. Requirements governing the electronic transmission of passenger, crew member, and non-crew member (cargo flights only) manifests for commercial aircraft and/or vessels involved in international travel operations were established in accordance with several statutory mandates, including, but not limited to: section 115 of the Aviation

and Transportation Security Act (ATSA; Public Law 107–71, 115 Stat. 623; 49 U.S.C. 44909), section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (abbreviated here to Enhanced Border Security Act or EBSA; Public Law 107–173, 116 Stat. 557; 8 U.S.C. 1221), and certain Transportation Security Administration (TSA) laws and regulations (49 U.S.C. 114; 49 CFR 1544, 1546, 1550). A more detailed description of the histories of electronic manifest information requirements, and of these authorities, is set forth in a final rule published by CBP on April 7, 2005 at 70 FR 17820.

The information transmitted by carriers using APIS consists, in part, of information that appears on the biographical data page of travel documents, such as passports issued by governments worldwide. Many APIS data elements (such as name, date of birth, gender, country of citizenship, passport or other travel document information) have been collected routinely over the years by governments of countries into which a traveler seeks entry (by requiring the traveler to present a government-issued travel document). CBP uses this biographical data to perform enforcement and security queries against various multi-agency law enforcement and terrorist databases in connection with, as appropriate, international flights to, from, continuing within, and overflying the United States and international voyages to and from the United States.

Current CBP regulations require air carriers to electronically transmit passenger arrival manifests to CBP no later than 15 minutes after the departure of the aircraft from any place outside the United States (19 CFR 122.49a(b)(2)) and passenger departure manifests no later than 15 minutes prior to departure of the aircraft from the United States (19 CFR 122.75a(b)(2)). Manifests for crew members on passenger and all-cargo flights and non-crew members on all-cargo flights must be electronically transmitted to CBP no later than 60 minutes prior to the departure of any covered flight to, continuing within, or overflying the United States (19 CFR 122.49b(b)(2)) and no later than 60 minutes prior to the departure of any covered flight from the United States (19 CFR 122.75b(b)(2))(a covered flight being one covered by these regulations).

Current CBP regulations require vessel carriers to electronically transmit arrival passenger and crew member manifests at least 24 hours and up to 96 hours prior to the vessel's entry at a U.S. port or place of destination, depending on the length of the voyage (for voyages of 24 but less than 96 hours, transmission must be prior to departure of the vessel from any place outside the United States)(19 CFR 4.7b(b)(2)). Also, a vessel carrier must electronically transmit passenger and crew member departure manifests to CBP no later than 15 minutes prior to the vessel's departure from the United States (19 CFR 4.64(b)(2)).

These CBP regulations, referred to as the "APIS regulations" (19 CFR 4.7b, 4.64, 122.49a – 122.49c, 122.75a, and 122.75b), established a framework for requiring that manifest information for passengers, crew members, and non-crew members, as appropriate, be electronically transmitted for these arrivals and departures, and for requiring crew and non-crew member manifest information for flights continuing within and overflying the United States. These regulations serve to provide the nation, the carrier industries, and the international traveling public, additional security from the threat of terrorism and enhance CBP's ability to carry out its border enforcement mission.

The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA); Public Law 108–458, was enacted on December 17, 2004. Sections 4012 and 4071 of the IRTPA require DHS to issue regulations and procedures to allow for pre-departure vetting of passengers onboard aircraft arriving in and departing from the United States and of passengers and crew onboard vessels arriving in and departing from the United States. This proposed rule is designed to implement these important IRTPA requirements and to further enhance national security and the security of the air and vessel travel industries in accordance with the ATSA and EBSA (both of which formed the statutory basis for the APIS regulations).

This proposed rule would require transmission of, as appropriate, passenger and/or crew member information early enough in the process to prevent a high-risk passenger from boarding an aircraft and to prevent the departure of a vessel with such a passenger or crew member onboard. CBP's purpose in proposing this change is to place itself in a better position to: (1) fully vet passenger and crew member information with sufficient time to effectively secure the aircraft or vessel, including time to coordinate with carrier personnel and domestic or foreign government authorities in order to take appropriate action warranted by the threat; (2) identify high-risk passengers and prevent them from boarding aircraft bound for or departing from the United States; and (3) identify high-risk passengers and crew members to prevent the departure of vessels from the United States with a high-risk passenger or crew member onboard. Achieving these goals would permit CBP to more effectively prevent an identified high-risk traveler from becoming a threat to passengers, crew, aircraft, vessels, or the public and would ensure that the electronic data transmission and screening process required under CBP regulations comports with the purposes of ATSA, EBSA, and IRTPA.

III. Proposed Rule

Under the manifest transmission time requirements of the existing APIS regulations, which mandate transmission of passenger manifests no later than 15 minutes after departure of an aircraft en route to the United States, CBP has the ability to fully vet commer-

cial aircraft passenger information after the aircraft has departed. The identification of a high-risk passenger soon after the aircraft becomes airborne may result in the diversion of the aircraft to a U.S. port other than the original destination or the return of the aircraft to the port of departure (referred to as a "turnback"). This action could prevent the hijacking of the aircraft and the potential use of the plane as a weapon of mass destruction against U.S. or other targets, and would enable CBP to detain, or arrange for the detention of, the high-risk passenger. The same results could be obtained with respect to aircraft departing from the United States when identification of a high-risk passenger occurs after the aircraft is airborne. This post-departure identification could occur since the APIS regulations require the transmission of manifests only 15 minutes prior to departure.

However, high-risk passengers allowed to board before they have been fully vetted may pose a security risk for aircraft en route to or departing from the United States. A boarded high-risk passenger would have the opportunity to plant or retrieve a disassembled improvised explosive device or other weapon. The detonation of an explosive device could have devastating consequences, both in terms of human life and from an economic perspective (damage to aircraft and airport infrastructure and any ripple effects on the airport's and the carrier's business and across the U.S. economy). Thus, requiring the collection and vetting of passenger information before the boarding of passengers on flights en route to or departing from the United States would allow CBP to identify high risk passengers before such passengers could pose a threat to fellow passengers or to the aircraft and airport.

Therefore, CBP has concluded that the prevention of a high-risk passenger from boarding an aircraft is the appropriate level of security in the commercial air travel environment. Manifest data received and vetted prior to passenger boarding will enable CBP to attain this level of security. Further, this vetting of passengers on international flights should eliminate the need for passenger carriers to conduct watch list screening of these passengers, upon publication and implementation of a final rule. Accordingly, with this proposed rule, CBP is proposing two transmission options for air carriers to select from at their discretion: (i) the submission of complete manifests no later than 60 minutes prior to departure or (ii) transmitting passenger data as individual, real-time transactions, i.e., as each passenger checks in, up to but no later than 15 minutes prior to departure. Under both options, the carrier will not permit the boarding of a passenger unless the passenger has been cleared by CBP.

With respect to the commercial vessel travel environment, CBP has determined that the appropriate level of security for departing vessels is to prevent vessel departures with a high-risk passenger or

crew member onboard. Thus, the proposed rule requires vessel carriers to transmit complete manifests no later than 60 minutes prior to departure. An alternative procedure based on individual passenger/crew transactions, as is provided in the air travel environment to address a need for flexibility, is not offered given the generally less time-critical nature of the commercial vessel travel environment.

Finally, with this rule, CBP also is proposing to change the definition of "departure," as discussed immediately below.

A. Change Regarding Definition of "Departure" for Aircraft

Under the existing APIS regulations, the departure of an aircraft occurs at the moment an aircraft is "wheels-up," meaning that the landing gear is retracted into the aircraft after liftoff and the aircraft is en route to its destination (19 CFR 122.49a(a)). In practice, wheels-up can occur as much as 15 to 25 or more minutes after an aircraft leaves the gate (which is referred to as "push-back"). This meaning of "departure," applied under either the existing regulations or the proposed regulations, would result in CBP receiving manifest data later in the process than is sufficient to perform full vetting and prevent high-risk boardings. CBP believes that departure for aircraft, as applied to manifests for passengers, crew members, and non-crew members under the APIS regulations, should mean the moment when an aircraft pushes-back from the gate. This change would assist in providing CBP with sufficient time to complete the full vetting process. Therefore, this rule proposes to revise the definition of "departure" in 19 CFR 122.49a(a) accordingly (which will be applicable to other APIS aircraft provisions as well: 19 CFR 122.49b, 122.75a, 122.75b).

B. Proposed Options for Transmission of Manifest Data by Air Carriers

To provide maximum flexibility for the air travel industry and aircraft passengers while improving the ability of DHS to safeguard air travel, CBP is proposing two options for the electronic transmission of manifest information by air carriers. The two transmission options proposed in this rule differ to some degree in timing, programming, and procedures. Nevertheless, both are equally effective in obtaining the advance information needed to achieve the appropriate level of security necessary for aircraft (prevent a high-risk boarding) and thereby to ensure that the purposes of the governing statutes are met. An air carrier's election of either option would depend on the individual carrier's particular operations and its capability to electronically transmit the manifest data to CBP. CBP also notes that the current APIS regulations providing for electronic transmission of manifest data 60 minutes prior to departure for crew and non-crew on flights to, from, continuing within, and overflying the United States are unchanged (19 CFR 122.49b and 122.75b).

Under one option, air carriers would transmit all required passenger data to CBP in batch form (all passenger names and associated data at once) no later than 60 minutes prior to departure of the aircraft. This option, known as APIS 60, is similar to the current electronic transmission process to the extent that manifest data would be transmitted in batch form and CBP would perform security vetting against all data at once. Under the other option, known as APIS Quick Query (AQQ), air carriers would transmit required passenger data to CBP individually as each passenger checks in for the flight, from the beginning of the check-in process up to 15 minutes prior to departure. CBP would perform its security vetting as it receives the data.

The electronic transmission system employed under these options would be "interactive," allowing the carrier to electronically receive return messages from CBP that can be sent within seconds or minutes, as opposed to the capability of the APIS manifest transmission process as implemented under the current regulation where any communication by CBP with the carrier is performed by telephone. Thus, the term "interactive" is used in this document to refer to or describe the electronic communication system employed under the APIS 60 option and the AQQ option described further below.

CBP believes that both APIS 60 and AQQ provide sufficient time to achieve the appropriate level of security sought in the commercial air travel environment, i.e., to prevent a high-risk boarding. These options are offered because the unique "just in time" nature of the commercial air travel environment, characterized by busy airports, tight arrival and departure schedules, the carriers' need to minimize time aircraft spend at the gate, and the immense focus on timeliness as a performance measure, justifies flexibility in this environment.

CBP anticipates that both options will be well-utilized, and the comment period is expected to provide an indication of which option the carriers are likely to select. However, CBP expects that the AQQ option would be selected by those carriers that have pre-existing reservations control systems, whereas smaller or charter carriers may be more likely to use the APIS 60 option. A subset of air carriers would not be able to adopt either option; this is discussed further below.

Throughout the period that these proposed amendments were in development, CBP consulted with various industry associations and considered their comments concerning the impact various manifest transmission alternatives would have on business processes, operating costs, and legitimate passengers who might experience travel delays and miss connecting flights. The dual-option approach for air carriers described above is responsive to those comments and is designed to balance the security and facilitation goals of government with the needs of the industry.

CBP submits that these options, if adopted in a final rule, will result in CBP and the air carriers achieving a far higher success rate in keeping high-risk passengers from boarding aircraft than is possible under the current regulations. With this change, instances of diversions and turnbacks will be greatly reduced, if not eliminated, due to the increased effectiveness of the process. Further, the impact on the industry will be substantially less than would be the case with other alternatives due to the greater flexibility provided by the dual-option approach.

CBP notes that there is a subcategory of air carriers that would be unable to adopt either the APIS 60 option or the AQQ option as described in this document. These carriers, typically unscheduled air carrier operators that employ eAPIS (Internet method) for manifest data transmission, such as seasonal charters, air taxis, and air ambulances, would not be able to adopt the interactive communication functionality that the APIS 60 and AQQ options employ. Consequently, CBP would manually (i.e., by email or telephone) communicate vetting results to these carriers. These carriers, however, would be bound by the requirement proposed in this rule to transmit passenger manifest data no later than 60 minutes prior to departure. The proposed regulation treats these carriers as a subset of air carriers that will transmit complete manifests, as opposed to carriers that will transmit manifest data per individual passenger as passengers check in for the flight. This document discusses primarily the two major options that will be available to the air carriers that will employ an interactive communication system for manifest data transmission, as set forth in this section (Section B of Part III)(but see subsection (4) of this section further below).

1. *APIS 60 (Interactive Batch Transmission) Option*

APIS 60 would apply as one option to transmit passenger manifests prior to departure for aircraft arriving in and departing from the United States, and as the sole requirement for transmitting passenger and crew manifests for vessels departing from the United States (see Section C of this part for these vessels). The APIS 60 procedure is, with some exception relating to transmission time requirements and interactive communication between carriers and CBP, similar to the APIS procedure currently employed to implement the current APIS regulations. For arriving and departing aircraft, air carriers would be required to transmit passenger manifests in batch form (all names and associated data at once) to CBP no later than 60 minutes prior to departure of the aircraft (as defined under this proposed rule) at which time the vetting process would begin.

Under APIS 60, the vetting of aircraft passenger data would be performed in two stages. The first would be an initial automated vetting of passenger data against appropriate law enforcement (including terrorist) databases. The second would be the further vetting of

names identified as a match or possible match during the initial automated vetting stage, as well as names associated with incomplete or inadequate transmitted data.

When the initial automated vetting process identifies a match between an individual passenger's data and data on a terrorist watch list, a close possible match, or an incomplete or inadequate passenger record, CBP would send by electronic return message a "not-cleared" instruction to the carrier within minutes of CBP's receipt of the manifest data (CBP return messages relative to not-cleared instructions based on an inadequate record would also instruct the carrier to retransmit complete/corrected data). Since boarding usually commences 30 to 45 minutes prior to departure (as defined in this proposed rule), a not-cleared instruction relative to a match or possible match, or an inadequate record, would ensure, in most cases, that the associated passenger will not be allowed to board the aircraft (subject to the occasional instance of unexpected results due to error, technical anomaly, etc., or a carrier beginning the boarding process outside the 60-minute vetting window.) The manifest transmission requirements under the current regulations - no later than 15 minutes after departure for flights en route to the United States and no later than 15 minutes prior to departure for flights departing from the United States - do not achieve this critical result (even if departure were defined as push-back). An aircraft en route to the United States is already airborne before CBP even receives the manifest. For flights departing from the United States, no manifest information is received by CBP until — at the earliest — 15 minutes, and often 30 minutes or more, after boarding begins (CBP notes that under the current procedure, only a passenger who is a match or possible match would be subject to further vetting).

The further vetting of passengers who generate a not-cleared instruction during the initial vetting stage would be handled by an analyst with access to additional data resources. During this stage, CBP would be able to confirm or correct matches and resolve possible matches and incomplete or inadequate passenger records, enabling most passengers who are eventually cleared to make their flights. CBP would notify a carrier by return message where the results of further vetting clear a passenger for boarding.

When the initial automated vetting procedure results in CBP's returning not-cleared instructions to the air carrier, the carrier's personnel would have to ensure that the identified passenger is not permitted to board with other passengers and that the passenger's baggage is not loaded onto, or is removed from, the aircraft. In rare instances, the carrier may have to remove the passenger from the aircraft (which may occur in the case of an oversight or other error in the boarding process or should a carrier begin the boarding process outside the 60-minute vetting window). When further vetting con-

firms a not-cleared passenger as high-risk, the next step in the process would include CBP communicating to the appropriate authorities the results of the vetting and any action to be taken to secure the confirmed high-risk passenger. In some circumstances, during the further vetting process, either the carrier, CBP, or other appropriate domestic or foreign government official would have to interview the passenger to complete the confirmation (or further vetting) process, a step that would take additional time.

The further vetting process, the communication step that follows, and the taking of appropriate action are the steps that, together, would consume the most time under the APIS 60 procedure. With passenger data being transmitted in a batch, CBP could have several names that require further vetting. Each query pursued in further vetting is unique and some queries will take more time than others. Further, the communication and appropriate action steps of the process are subject to additional complexities, especially when foreign carriers or government personnel are involved or an interview is required. Thus, the full process and related steps described above require more time than the current regulation provides to meet the appropriate level of security sought.

While the not-cleared instruction after the initial automated vetting stage would prevent a high-risk or potential high-risk passenger from boarding the aircraft when the carrier begins the boarding process, thereby achieving CBP's security goal, completion of the further vetting process is necessary to make a final determination regarding the passenger subject to the not-cleared instruction. This final resolution is especially critical with respect to possible matches and incomplete or inadequate passenger records. A required transmission time frame of 60-minutes prior to departure would provide the time necessary to accommodate this process and thereby effectively achieve the appropriate level of security. CBP notes that further vetting, in most cases, would be completed in time for the passenger to make his intended flight; however, in some circumstances, further vetting could take longer than normally expected, resulting in the passenger having to be rebooked on a later flight (if ultimately cleared for flight by CBP).

As a final step in the process, the air carrier would have to transmit to CBP a list, referred to as a close-out message, consisting of a unique passenger identifier for each passenger who checked in for the flight but was not boarded for any reason. The close-out message must be transmitted as soon as possible after departure and in no instance later than 30 minutes after departure.

CBP is committed to having the APIS 60 option for pre-departure interactive electronic transmission fully available for industry use prior to publication of a final rule.

2. *APIS Quick Query (Interactive Real-time Transmission) Option*

Under the AQQ option, which is applicable only to aircraft arrival and departure passenger manifests, air carriers would transmit passenger data to CBP in real time, i.e., as individual passengers check in, up to but no later than 15 minutes prior to departure of the aircraft; data received by CBP less than 15 minutes prior to departure would not meet the requirement.

Under the AQQ procedure, the carrier would be able to transmit data relative to a passenger as soon as passengers begin checking in for the flight, as early as 2 hours or more prior to departure (as defined in this document). Since passengers on international flights are routinely advised to arrive as much as 2 hours before departure for check-in, manifest data for most passengers would be transmitted to CBP well before departure of the flight. Moreover, fewer names and associated data would be transmitted to CBP at one time than would be the case with the batch transmissions made under the APIS 60 procedure. Under APIS 60, over 200 passenger records may be included in one batch transmission, while under AQQ, a transmission would contain the name and data for one passenger (or up to 10 passengers traveling on one itinerary).

Also, under AQQ, the messaging for CBP vetting results could be returned directly to the carrier's reservation system, reducing the time needed for human intervention. Thus, CBP would be able to respond within seconds of the carrier's transmission of data. Carriers then would have to return a message to CBP confirming receipt of any not-cleared instructions and would not issue a boarding pass to any passenger unless cleared by CBP. As with the APIS 60 option, any passenger data generating a match, possible match, or inadequate record would be forwarded to an analyst for further vetting. CBP would electronically notify the carrier as soon as possible if, upon additional analysis, a change to the not-cleared instruction is warranted (such as would be the case if a match or possible match was determined during further vetting to be cleared for boarding).

At its discretion, a carrier would be able to use a dedicated telephone number provided by CBP to seek a resolution of a not-cleared instruction by providing additional information relative to the not-cleared passenger if available, such as a physical description. CBP would consider the additional information as it proceeds with the further vetting of the passenger already in progress. In some instances, CBP would instruct the carrier to retransmit data (as in the case of inadequate data). In any case, CBP would return a message to the carrier to clear a passenger for boarding if warranted by the results of additional analysis.

Where CBP is unable to complete its additional analysis prior to departure, the carrier would be bound by the not-cleared instruction and would not be permitted to issue a boarding pass for that passenger. This could result in a passenger not making his flight and hav-

ing to be rebooked should the not-cleared instruction eventually be corrected and the passenger be cleared for flight. Alternatively, and at its sole discretion, the carrier could delay the flight until CBP could clear the passenger for boarding. Finally, as with the APIS 60 option, the carrier would have to transmit to CBP, no later than 30 minutes after departure, a close-out message consisting of a unique passenger identifier for each passenger who checked in for the flight but was not boarded for any reason.

Under the AQQ procedure, carrier real-time manifest data transmission would provide sufficient time for CBP to perform an effective vetting of the passengers. Most passengers check in well before departure of international flights, so very late arrivals are likely to be comparatively few. These facts enable CBP to propose a transmission time frame that some carriers will find more compatible with their business operations.

For passengers checking in early, there generally would be ample time for completion of the vetting process. For the few passengers checking in late, CBP would be able to quickly vet the data in most instances. Thus, CBP expects that no identified high-risk passenger will receive a boarding pass and, for most flights, any passengers subject to further vetting and cleared for flight will make the flight. Also, more connecting passengers would be able to check in, be vetted, and make their flights than is anticipated under the APIS 60 procedure. This is a major advantage over the APIS 60 procedure for air carriers with connecting flight operations.

Accordingly, AQQ would achieve the appropriate level of security sought in a way that some airlines may prefer to the APIS 60 method. In addition, this procedure would prevent a high-risk passenger from gaining access to the security area, since access for domestic and most international airports is restricted to those with boarding passes. Also, a high-risk passenger's baggage would not be loaded onto the aircraft which avoids the necessity of having it removed, as may sometimes be necessary under the APIS 60 procedure.

There is, however, one exception to the foregoing: connecting passengers arriving by aircraft at the departure airport, for a flight en route to or departing from the United States, who were issued boarding passes (for the flight to or from the United States) prior to arrival at that departure airport and whose data was not previously transmitted to CBP for vetting. These passengers will already be within the security area as they transit the airport from the gate they arrived at to the gate of the connecting flight. For this unique group of passengers, CBP, in implementing AQQ, would consider the boarding passes they possess as provisional and would require that carriers obtain required data from these passengers in a manner compatible with their procedures and transmit such data to CBP as required. The carrier would be required to wait for CBP to clear any

such passengers before validating the boarding passes or permitting the passengers to board the aircraft.

CBP currently is developing user requirements for the programming necessary to implement the AQQ transmission procedure. CBP will have to make adjustments to its automated systems to offer this data transmission option to the carriers, as will carriers who elect to use this option. CBP will consider these factors, as well as others identified during the comment period, in structuring an implementation plan and schedule that coincides with the readiness of CBP's IT infrastructure to support the AQQ option. CBP is committed to having the AQQ option for pre-departure interactive electronic transmission fully available for industry use prior to publication of a final rule.

3. *System Certification and Delayed Effective Date*

Prior to a carrier's commencement of manifest transmission using either of the above-described APIS 60 or AQQ options, the carrier would receive a "system certification" from CBP indicating that its electronic transmission system is capable of interactively communicating with CBP's APIS system as configured for these options. Carriers already operating under the APIS procedure (under the current APIS regulation which requires batch manifest transmission but under different time requirements and a less interactive process) who opt to employ the APIS 60 option for their manifest transmissions would obtain certification only for new functionalities (relating to system interactivity) and would not undergo a full system certification.

To accommodate carriers who choose the interactive system for manifest transmission under either the APIS 60 option or the AQQ option, CBP, in this rule, is proposing that the effective date of a final rule be delayed for 180 days from the date of its publication. This should provide all such carriers sufficient time to make any necessary program changes or system modifications and to obtain system certification and implementation. CBP strongly encourages carriers to begin efforts to obtain system interactivity and certification by contacting CBP as soon as possible.

4. *Carriers Opting Out; Non-Interactive Batch Transmission Process*

As stated previously, some carriers, notably those currently using the eAPIS Internet method of transmitting required manifest data (typically, small, unscheduled air carrier operators, such as seasonal charters, air taxis, and air ambulances), may not be able to adopt either the APIS 60 option or the AQQ option. These carriers do not seek an interactive electronic communication method to make transmissions, as such a system does not fit their operations, technical capabilities, or budgets. Nonetheless, these carriers would be bound by

a requirement to transmit manifest data no later than 60 minutes prior to departure, as proposed in this rule. The proposed rule contains a subparagraph that accommodates these carriers as transmitters of batch manifest data without interactive electronic communication capability. These carriers would not have to seek system certification. CBP will employ a manual process using email or telephone communication (by which CBP would send not-cleared messages) to accommodate these carriers. This manual procedure may slow the vetting process to some extent, but CBP believes that the goal of preventing a high-risk boarding would be achieved, as carriers would not board passengers subject to a not-cleared instruction unless cleared by CBP.

C. Proposed Change for Transmission of Manifests by Departing Vessels

Typically, vessel carriers allow boarding several hours (typically 3 to 6 hours) prior to departure. Thus, a manifest transmission requirement designed to prevent the possibility of a high-risk vessel-boarding likely would require substantial adjustments to the carriers' operations. This would frustrate CBP's intent, and the purpose of various requirements governing Federal rulemaking, to achieve the agency's goal (enhanced security) without imposing an unreasonable burden on affected parties.

CBP believes that, under this circumstance, the appropriate level of security sought in this scenario is to prevent the departure of a vessel with a high-risk passenger or crew member onboard. The change proposed in this rule is designed to achieve this level of security for vessels departing from the United States and to thereby meet the purposes of the governing statutes. Thus, for vessels departing from the United States, the proposed amendment provides for transmission of passenger and crew manifests 60 minutes prior to departure. CBP notes that the electronic system for transmission of required vessel manifest data (arrival and departure) is the U.S. Coast Guard's (Internet based) eNOA/D system. This is not an interactive system, and, unlike air carriers operating under the APIS 60 or AQQ options described above, vessel carriers would not have to obtain system certification.

After transmission of the manifest data, the initial automated vetting would result in a not-cleared instruction for matches, possible matches, and incomplete/inadequate passenger records or crew data. Carriers would attempt to prevent the boarding of such persons if it had not already occurred due to the very early boarding allowed. CBP notes that a not-cleared message returned to the carrier by CBP for an inadequate record would instruct the carrier to retransmit complete/corrected data.

During further vetting, passengers and crew for whom not-cleared instructions were sent during the initial automated vetting proce-

dure would be either confirmed as high-risks or resolved and cleared. CBP would communicate with the carrier where further vetting resulted in the clearing of a passenger. In some instances, CBP would communicate with the carrier and other CBP personnel to take necessary action to verify (by conducting an interview if necessary) the high-risk status of passengers or crew and, as needed, secure a confirmed high-risk passenger or crew member. In this process, a confirmed high-risk passenger or crew member likely would have to be located and removed from the vessel before departure, in which case his baggage would be removed as well. Whether a further search of the vessel is warranted would be determined by CBP on a case-by-case basis. (The carrier would be free to undertake a further search at its discretion.)

The current requirement for batch manifest transmission no later than 15 minutes prior to a vessel's departure does not provide enough time to fully vet passengers or crew members or allow, where necessary, for the removal of a confirmed high-risk passenger or crew member from a vessel prior to departure. In contrast, the proposed APIS 60 procedure is expected to provide CBP the time it needs to fully vet not-cleared passengers and crew members and to remove those confirmed as a high-risk from the vessel prior to departure. The APIS 60 procedure therefore would achieve the appropriate level of security sought by CBP.

In addition to preventing a high-risk departure, this procedure would enhance CBP's capability, in some circumstances (where carriers allow already checked-in passengers to board within 60 minutes of departure), to prevent high-risk vessel boardings, as compared to what is achievable under the current regulation. An alternative option (such as AQQ or something similar) is not as necessary, given the less time-critical nature of the commercial vessel travel environment.

For vessels departing from foreign ports destined to arrive at a U.S. port, CBP is retaining the requirement to transmit passenger and crew manifest data at least 24 hours and up to 96 hours prior to a vessel's entering the U.S. port of arrival. This requirement is consistent with the U.S. Coast Guard's "Notice of Arrival" (NOA) requirements. (Under 33 CFR 160.212, arriving vessel carriers transmit manifest data to the U.S. Coast Guard (USCG) to meet its NOA requirement. The data is then forwarded to CBP, permitting additional compliance with CBP's APIS requirement with the one carrier transmission.) Moreover, the threat posed by a high-risk passenger or crew member once onboard a vessel is different from that posed by a high-risk passenger onboard an aircraft. A hijacked vessel's movements over the water and its range of available targets could be more readily contained than those of an aircraft, thus reducing the opportunity for a terrorist to use the vessel as a weapon against a U.S. port or another vessel.

IV. Rationale for Change

A. Terrorist Threat

In proposing this rule, as discussed above, CBP points to the primary impetus for this entire rulemaking initiative (including the April 7, 2005 final rule and previous rulemaking efforts as explained in the final rule): to respond to the continuing terrorist threat facing the United States, the international trade and transportation industries, and the international traveling public since the terrorist attacks of September 11, 2001. Under the governing statutes and regulations, DHS and the air and vessel carrier industries must take steps to alleviate the risk to these vital industries and the public posed by the threat of terrorism, while also increasing national security. Ensuring security is an ongoing process, and CBP is endeavoring to put in place a regulatory scheme that includes electronic information transmission and pre-departure transmission time requirements. Together, these requirements are intended to serve as a layer of protection against high-risk travelers while facilitating lawful travel. While progress has been made, CBP continues its efforts to achieve the level of security mandated by Congress (under ATSA, EBSA, and IRTPA). CBP notes that this rulemaking initiative also would enhance CBP's ability to carry out its more traditional, but equally important, border enforcement mission.

With regard to commercial aviation, the terrorist threat has been a constant presence on the international stage since the hijackings of the 1970s. More recently, Al Qaeda and other terrorist groups have shown a consistent interest in exploiting civil aviation both as a potential target and as a means of attack. This interest has been highlighted in advanced planning, such as the thwarted plot of former Al Qaeda leader Khalid Shaikh Mohammed to explode 12 commercial airliners over a 48-hour period in 1996, as well as other attempted and successful attacks. Al Qaeda's interest in attacking civil aviation came to grim fruition in the attacks of September 11, 2001—the most costly terrorist attack in U.S. history. Even after September 11, 2001, terrorists continue to demonstrate an interest in attacking civil aviation. In August 2003, specific credible intelligence led DHS to suspend the Transit Without Visa (TWOV) program due to concerns that it might be exploited to conduct a terrorist attack. *See* 68 FR 46926 (Aug. 7, 2003); 68 FR 46948 (Aug. 7, 2003). About four months later, during the 2003 holiday period, international flights destined for the United States faced cancellations and delays based on threat information. The necessity of this rule is underscored further by repeated instances of higher threat levels over time, such as the higher alerts announced during the summer of 2004 for financial centers in New York City and Washington D.C., and during the period prior to the 2004 U.S. Presidential election. It is noted also that terrorists seek targets of opportunity and, as such, the terrorist

threat extends beyond civil aviation, as evidenced by past terrorist acts against passenger vessels. Therefore, efforts made to increase security for commercial vessels also would contribute to foreclosing an opportunity for terrorist exploitation.

It is important to note that the threat from terrorist activity is not just to human life, but also to the economic well-being of the commercial air and vessel carrier industries – two industries of great importance to the U.S. and world economies. Since the Fall of 2004, there have been several instances when the identification of a high-risk passenger by CBP or the Transportation Security Administration (TSA) after departure of an aircraft en route to the United States resulted in the diversion of the aircraft to a different U.S. port or a turnback (the return of the aircraft to the foreign port of departure). Those security measures, while necessary to safeguard the passengers on the aircraft as well as national security, are costly to the affected carriers. Accordingly, CBP proposes to collect and vet required APIS passenger data before passengers board aircraft bound for or departing from the United States, and to collect and vet earlier than is permitted under existing regulations required passenger and crew APIS data in order to achieve the maximum ability reasonably attainable for detecting high-risk persons before they can perpetrate a terrorist act.

B. IRTPA

With the passage of IRTPA, Congress expressly recognized the need to fully perform vetting of manifest information prior to the departure of commercial aircraft and vessels traveling to and from the United States. Section 4012(a)(2) of IRTPA directs DHS to issue a proposed rule providing for the collection of passenger information from international flights to or from the United States and comparison of such information with the consolidated terrorist watch list maintained by the Federal Government before departure of the aircraft. Section 4071(1) of IRTPA requires DHS to compare vessel passenger and crew information with information from the consolidated terrorist database before departure of a vessel bound for or departing from the United States. Section 4071(2) permits DHS to waive (based on impracticability) the requirement of section 4071(1) for vessels bound for the United States from foreign ports. CBP has determined that requiring the data comparison before departure of such vessels is impracticable because the requirement would conflict, in some instances, with the current APIS manifest data transmission requirements for vessel arrivals (which are to be retained in the regulations)(cited previously) and the current USCG NOA requirements (cited previously). Accordingly, DHS has elected to implement the waiver provided for in this section for arriving vessels.

The Terrorist Screening Center (TSC) and use of the consolidated terrorist watch list required by IRTPA provide the means to vet passenger and crew manifest data for known and suspected terrorists, including for flights to and from the United States and for cruise vessels subject to this regulation.

V. Impact on Parties Affected by the Proposed Rule

Should the proposed rule become final and effective, large air carriers (i.e., those with over 1,500 employees) will bear the greatest percentage of the regulatory burden of the proposed rule due to the number of international travelers these entities carry and their method of transmitting APIS data.

If carriers exercise the APIS 60 option, it is anticipated that any adverse impact on passengers would fall disproportionately on connecting passengers (those arriving from a foreign airport and continuing on to a foreign destination and those making a connecting foreign flight en route to the US), rather than on originating passengers.

Passengers conducting foreign travel, either coming to or leaving the United States, are instructed to check in for international flights well in advance, usually at least 2 hours prior to departure. Thus, 60 minutes prior to departure, most originating passengers' APIS data will have been collected and verified by the carriers and could thus be transmitted. Connecting passengers, however, may not have a full 2 hours between flights. Partnering airlines will likely share APIS information for an entire trip, but non-partner airlines may not. We believe, therefore, that under the APIS 60 option, a small number of connecting passengers may not make their flights, will be delayed, and will have to be rerouted. Alternatively, if large carriers use the AQQ option, delays to travelers will be minimized, but carriers will need to develop and implement their systems to support AQQ.

Under the proposed rule, small carriers may still use "eAPIS," a web-based application designed to electronically transmit manifests between small carriers and CBP. CBP does not believe that small carriers will develop and implement AQQ because they will not find it cost effective given their operations and their current utilization of eAPIS. Thus, small carriers will probably choose the APIS 60 option rather than the AQQ option.

While large carriers have connecting flights where affected passengers could face short layover times, small air carriers operate predominantly on charter schedules and make point-to-point trips without connecting flights. Accordingly, very few passengers traveling on small carriers will be delayed or rerouted as a result of this proposed rulemaking.

CBP does not know which carriers will choose which regulatory option. The Regulatory Assessment, summarized below in the "Executive Order 12866" section, presents two endpoints of the likely

range of costs. For the "high cost estimate," CBP assumes that all carriers will employ the APIS 60 regulatory option (the 60-minute transmission requirement). For the "low cost estimate," CBP assumes that large carriers will employ the AQQ regulatory option.

The impacts on carriers, travelers, and others potentially affected by this rule are examined in detail in the "Regulatory Assessment" which is available in the docket for this rulemaking (http://www.eparegulations.gov; see also http://www.cbp.gov). CBP is soliciting comments on the assumptions and estimates made in the economic analysis.

VI. Regulatory Requirements

A. Executive Order 12866 (Regulatory Planning and Review)

This rule is considered to be an economically significant regulatory action under Executive Order 12866 because it may result in the expenditure of over $100 million in any one year. Accordingly, this proposed rule has been reviewed by the Office of Management and Budget (OMB). The following summary presents the costs and benefits of the proposed rule plus a range of alternatives considered. The complete "Regulatory Assessment" can be found in the docket for this rulemaking (http://www.regulations.gov; see also http://www.cbp.gov). Comments regarding the analysis may be submitted by any of the methods described under the "Addresses" section of this document.

Summary

Should the proposed rule become final and effective, air carriers and air passengers will be the parties primarily affected by the proposed rule. For APIS 60, costs will be driven by the number of air travelers that will need to arrive at their originating airports earlier and the number of air travelers who miss connecting flights and require rerouting as a result. For AQQ, costs will be driven by implementation expenses, data transmission costs, and a small number of air travelers who miss connecting flights.

CBP estimates a range of costs in this analysis. For the high end of the range (i.e., under the APIS 60 procedure), CBP anticipates that passengers will provide APIS data upon check-in for their flights and that all carriers will transmit that data, as an entire passenger and crew manifest, to CBP at least 60 minutes prior to departure of the aircraft. CBP estimates that this will result in 2 percent of passengers on large carriers and 0.25 percent of passengers on small carriers missing connecting flights and needing to be rerouted, with an average delay of 4 hours. Additionally, we estimate that 15 percent of passengers will need to arrive at the airport an average of 15 minutes earlier in order to make their flights. For the low end of the range (under the AQQ procedure), we assume that all large air

carriers will implement AQQ to transmit information on individual passengers as each checks-in. CBP estimates that this will significantly drive down even further the percentage of passengers requiring rerouting on large carriers to 0.5 percent. Travelers will not need to modify their behavior to arrive at the airport earlier. The percentage on small carriers remains 0.25 percent because we assume that small carriers will not implement AQQ; rather, they will continue to submit manifests at least 60 minutes prior to departure through eAPIS, CBP's web-based application for small carriers. Thus, costs for small air carriers are the same regardless of the regulatory option considered.

The endpoints of this range are presented below. As shown, the present value (PV) costs of the proposed rule are estimated to range from $612 million to $1.9 billion over the next 10 years (2006–2015, 2005 dollars, 7 percent discount rate).

Costs of the Proposed Rule
($Millions, 2006–2015, 2005 dollars)

	High Estimate (60-Minute Option)			Low Esimate (AQQ Option)		
	Large Carriers	**Small Carriers**	**Total**	**Large Carriers**	**Small Carriers**	**Total**
First-Year Costs	$245	$5	**$250**	$184	$5	$189
Average Recurring Costs	$268	$6	**$274**	$66	$6	$72
10-Year PV Costs (7%)	$1,865	$39	**$1,904**	$573	$39	$612
10-Year PV Costs (3%)	$2,279	$48	**$2,327**	$677	$48	$726

We estimate four categories of benefits, or costs that could be avoided, under the APIS 60 procedure: 1) costs for conducting interviews with identified high-risk individuals upon arrival in the United States; 2) costs for deporting a percentage of these individuals; 3) costs of delaying a high-risk aircraft at an airport; and 4) costs of rerouting aircraft if high-risk individuals are identified after takeoff. Monetizing the benefits of avoiding an actual terrorist incident has proven difficult because the damages caused by terrorism are a function of where the attack takes place, the nature of the attack, the number of people affected, the casualty rates, the psychological impacts of the attack, and, perhaps most importantly, the "ripple effects" as damages permeate throughout our society and economy far beyond the initial target. One limited scenario is presented below.

The average recurring benefits of the proposed rule are an estimated $15 million per year. This is in addition to the non-quantified security benefits, which are the primary impetus for this rule. Over

the 10-year period of analysis, PV benefits are an estimated $105 million at a 7 percent discount rate ($128 million at a 3 percent discount rate).

Given the quantified costs and benefits of the proposed rule, we can determine how much non-quantified security benefits would have to be for this rule to be cost-beneficial. The 10-year costs range from $612 million to $1.9 billion, and the benefits are an estimated $103 million (all at the 7 percent discount rate). Thus, the non-quantified security benefits would have to be $509 million to $1.8 billion over the 10-year period in order for this proposed rule to be cost-beneficial. In one hypothetical security scenario involving only one aircraft and the people aboard, estimated costs of an incident could exceed $790 million. This rule may not prevent such an incident, but if it did, the value of preventing such a limited incident would outweigh the costs at the low end of the range. See the Regulatory Assessment at http://www.regulations.gov or http://www.cbp.gov for details of these calculations.

Regulatory Alternatives

CBP considered a number of regulatory alternatives to the proposed rule. Complete details regarding the costs and benefits of these alternatives can be found in the "Regulatory Assessment" available in the docket for this rulemaking (http://www.regulations.gov; see also http://www.cbp.gov). The following is a summary of these alternatives:

(1) Do not promulgate any further manifest transmission requirements (No Action)—the baseline case where carriers would continue to submit APIS manifests for arriving aircraft passengers 15 minutes after departure and, for departing aircraft passengers, 15 minutes prior to departure. There are no additional costs or benefits associated with this alternative. High-risk passengers would continue to board aircraft both destined to and departing from the United States, and instances of such aircraft departing with a high-risk passenger onboard would continue. As explained previously in this document, these results are inconsistent with the protective security objectives of ATSA, EBSA, and IRTPA. Because this is the status quo, and therefore has no additional costs or benefits, it is not analyzed further.

(2) A pre-departure transmission requirement—this would require carriers to submit manifests earlier than is required under the status quo requirements for flights to and from the United States. Transmission of manifest information would be made at least 30 minutes prior to departure. CBP concludes that 1 percent of passengers on large carriers would be delayed while no passengers on small carriers would be affected. We assume small carriers would not need to reroute any passengers under a pre-departure transmission requirement; accordingly, this alternative is a no-cost option for small

carriers. We assume that 5 percent of travelers would need to arrive at the airport 15 minutes earlier than normal in order to make their flights.

For large carriers, transmission of manifest data at this time would not provide enough of a window for CBP to respond to a hit on the watch lists, regardless of the boarding time. Benefits of this alternative would be largely negated when compared to the proposed rule because the ability to intercept a high-risk individual before the boarding process begins would be severely limited. Because in many instances the high-risk passenger is likely to board under this alternative, the individual and his bags would have to be removed from the plane; in some circumstances, depending on the level of the threat, all remaining passengers and bags would have to be removed and re-screened and, in particularly urgent circumstances, the aircraft would have to be "re-sterilized" prior to re-boarding.

First-year costs are $111 million, average recurring costs are $122 million per year, and 10-year present value costs are $845 million (7 percent discount rate) and $1.0 billion (3 percent discount rate).

Benefits are slightly higher than the No Action alternative because while the boarding of a high-risk passenger would not be prevented, a high-risk individual would be identified prior to the departure of a flight to or from the United States in most instances. Benefits are lower than under the proposed rule because CBP would be unable to plan and coordinate a response before boarding begins, and thus the high-risk passenger could still board the aircraft. As explained previously in this document, these results would be inconsistent with the protective security objectives of ATSA, EBSA, and IRTPA.

(3) A 60-minute transmission requirement only during periods of heightened threat conditions—this rule would require carriers to submit manifest data 60 minutes prior to departure only during periods of heightened threat conditions. For this analysis, CBP assumes that the threat level could be elevated twice a year for 3 weeks per instance. Because foreign travelers coming to the United States may not be aware of the threat level prior to entering the country, CBP further assumes that the impacts of the alert would extend beyond the return to the lower threat level. Thus, the effects would last a total of 2 months a year. This alternative would probably cause a great deal of disruption due to the unanticipated need to provide information earlier at irregular intervals. Additionally, the threat of terrorism is continuous, and specific threat information on flights may not emerge. Thus, the risks would not likely be diminished sufficiently to justify the costs. Finally, an alternating system of manifest transmission timing would likely affect carrier performance, with performance ratings suffering during the infrequent, non-routine elevations in threat level, the more critical period.

In this scenario, the percentage of passengers delayed on large carriers is an estimated 10 percent and on small carriers is 2.5 percent. The average length of delay is 6 hours. We estimate that 15 percent of passengers would need to arrive at the airport 15 minutes early in order to make their flights. First-year costs are $225 million, average recurring costs are $246 million per year, and 10-year present value costs are $1.7 billion (7 percent discount rate) and $2.1 billion (3 percent discount rate).

Benefits are potentially the same as the "No Action" alternative most of the time because a high-risk individual could be identified prior to boarding only during those very limited periods when the threat level is elevated and the 60-minute requirement is in effect. Benefits are potentially lower than under the proposed rule most of the time because high-risk passengers would be able to board the aircraft, and aircraft would depart with a high-risk passenger onboard, under the status quo procedure in effect during most of the year. Again, these results would be inconsistent with the protective security objectives of ATSA, EBSA, and IRTPA.

(4) A 60-minute transmission requirement or implementation of AQQ—this is the proposed rule, which requires carriers to elect to transmit, via an interactive communication system, passenger data under one of the two proposed options: by submitting manifests no later than 60 minutes prior to departure or, alternatively, by implementing APIS Quick Query. As explained previously in this document, the proposed rule provides sufficient time for fully vetting travelers, and achieving the appropriate levels of security desired, to be consistent with the protective security objectives of ATSA, EBSA, and IRTPA.

(5) A 120-minute transmission requirement—this rule would require carriers to submit manifests 120 minutes prior to departure. The costs would be higher than under the proposed rule because originating passengers, not just connecting passengers, would now be affected. High-risk passengers would be prevented from boarding aircraft. CBP would be able to more easily coordinate and plan a response to a hit on the watch lists well before the boarding process began.

This alternative would be quite disruptive because even though passengers and carriers would have the predictability of a predetermined transmission time, passenger check-in at the original departure airport would be greatly affected. Instead of passengers checking in 2 hours prior to departure, carriers would have to advise passengers to arrive even earlier to assure timely manifest transmission.

We assume that 20 percent of passengers on large carriers and 5 percent of passengers on small carriers will be delayed an average of 6 hours and will need to be rerouted. We assume that 30 percent of passengers would need to arrive at the airport 1 hour earlier than

previously. First-year costs are $3.2 billion, average recurring costs are $3.5 billion per year, and 10-year present value costs are $24.2 billion (7 percent discount rate) and $29.5 billion (3 percent discount rate).

Benefits are higher than the No Action alternative because a high-risk individual would be prevented from boarding or departing on an aircraft destined to or departing from the United States. Benefits are slightly higher than under the proposed rule because in some instances, the high-risk passenger's baggage would not reach the aircraft. Otherwise, the results achieved do not change appreciably given the extra time. Nonetheless, this procedure would be consistent with the protective security purposes of ATSA, EBSA, and IRTPA.

The following table summarizes the costs and benefits of the regulatory alternatives:

Comparison of Costs and Benefits of the Proposed Rule and Regulatory Alternatives

			Proposed Rule		
	Pre-Departure Requirement	60-Minute Requirement Only at Elevated Alert	60-Minute Requirement	AQQ	120-Minute Requirement
First-Year Costs	$111 million	$225 million	$250 million	$189 million	$3.2 billion
Average Recurring Costs	$122 million	$246 million	$274 million	$72 million	$3.5 billion
10-Year PV Costs (7%)	$845 million	$1.7 billion	$1.9 billion	$612 million	$24.2 billion
10-Year PV Costs (3%)	$1.0 billion	$2.1 billion	$2.3 billion	$726 million	$29.5 billion
Average Cost per Passenger	$0.36-$1.55	$0.91-$3.11	$1.37-$3.45	$1.01-1.37	$17.39-$43.81
Benefits Comparison to "No Action"	Slightly higher (risk identified prior to take-off)	Comparable (risk may be identified prior to boarding and take-off if under elevated alert)	Higher (risk identified prior to boarding)	Higher (risk identified prior to boarding)	Higher (risk identified prior to boarding)
Benefits Comparison to Pre-Boarding APIS Rule	Lower (high-risk passenger may still board aircraft); CBP cannot coordinate or plan response	Lower (high-risk passenger may still board aircraft)	Security benefits ± $15 million in costs avoided annually	Risk identified prior to check-in (higher benefits than 60-minute option)	Comparable (security benefits ± $15 million in costs avoided annually)

CBP requests comments on the above analysis of the regulatory alternatives.

Accounting Statement

As required by OMB Circular A–4 (available at http://www.whitehouse.gov/omb/circulars/index.html, CBP has prepared an accounting statement showing the classification of the expenditures associated with this rule. The table provides our best estimate of the dollar amount of these costs and benefits, expressed in 2005 dollars, at three percent and seven percent discount rates. We estimate that the cost of this rule will be approximately million annualized (7 percent discount rate) and approximately $166.0 million annualized (3 percent discount rate). Quantified benefits are $15.0 million annualized. The non-quantified benefits are enhanced security.

Accounting Statement: Classification of Expenditures, 2006 through 2015 (2005 Dollars)

Three Percent Annual Discount Rate	
BENEFITS	
Annualized monetized benefits	$15.0 million
(Un-quantified) benefits	Enhanced security
COSTS	
Annualized monetized costs	$179.1million
Annualized quantified, but un-monetized costs	
Qualitative (un-quantified) costs	
Seven Percent Annual Discount Rate	
BENEFITS	
Annualized monetized benefits	$15.0 million
(Un-quantified) benefits	Enhanced security
COSTS	
Annualized monetized costs	$178.9million
Annualized quantified, but un-monetized costs	
Qualitative (un-quantified) costs	

In accordance with the provisions of E.O. 12866, this regulation was reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Act

We have examined the impacts of this proposed rulemaking on small entities as required by the Regulatory Flexibility Act. 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).

CBP has identified 773 small U.S. air carriers that could be affected by the proposed rule. We do not expect these carriers to experience great economic impacts as a result of the proposed rule. Small carriers do not need to modify their reservation systems nor do they have many connecting passengers who may miss their flights and require rerouting. We estimate that 0.25 percent of passengers on small carriers will be affected by this rule annually. In the April 2005 final rule (70 FR at 17846), CBP estimated that small carriers each transport an average of 300 passengers annually. Thus, less than 1 passenger per carrier per year will be affected by the proposed APIS 60 option. We calculate that the total cost of delay per passenger is $61.77, and only $4.57 of this is incurred by the air carrier. The aggregate costs of this rule's APIS option would not exceed $3,500 annually for each of the 773 small US-based carriers.

We conclude, therefore, that this rule will not have a significant impact on a substantial number of small entities.

The complete analysis of impacts to small entities is available on the CBP Web site at: http://www.regulations.gov; see also http://www.cbp.gov. Comments regarding the analysis may be submitted by any of the methods described under the "Addresses" section of this document.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a "significant intergovernmental mandate." A "significant intergovernmental mandate" under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon state, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the UMRA, 2 U.S.C. 1533, which supplements section 204(a), pro-

vides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule, if adopted as a final rule, would not impose any cost on small governments or significantly or uniquely affect small governments. However, as stated in the "Executive Order 12866" section of this document, CBP has determined that the rule would result in the expenditure by the private sector of $100 million or more (adjusted annually for inflation) in any one year and thus would constitute a significant regulatory action. Consequently, the provisions of this proposed rule constitute a private sector mandate under the UMRA. CBP's analysis of the cost impact on affected businesses, summarized in the "Executive Order 12866" section of this document and available for review by accessing http://www.regulations.gov; see also http://www.cbp.gov, is incorporated here by reference as the assessment required under Title II of the UMRA. CBP is requesting information from the public and the carriers regarding the costs this rule would impose on the private sector.

D. Executive Order 13132 (Federalism)

This proposed rule, if adopted as a final rule, would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Executive Order 12988 (Civil Justice Reform)

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988. That Executive Order requires agencies to conduct reviews, before proposing legislation or promulgating regulations, to determine the impact of those proposals on civil justice and potential issues for litigation. The Order requires that agencies make reasonable efforts to ensure the regulation clearly identifies preemptive effects, effects on existing federal laws and regulations, identifies any retroactive effects of the proposal, and other matters. DHS has determined that this regulation meets the requirements of Executive Order 12988 because it does not involve retroactive effects, preemptive effects, or other matters addressed in the Order.

F. National Environmental Policy Act

CBP has evaluated this proposed rule for purposes of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 et seq.). CBP has determined that an environmental statement is not required, since this action is non-invasive and there is no potential impact of any kind. Record of this determination has been placed in the rulemaking docket.

G. Paperwork Reduction Act

In connection with the final rule recently published by CBP in April 2005, and discussed in this proposed rule, a Paperwork Reduction Act (PRA) analysis was set forth concerning the information collection involved under that rule (see OMB No. 1651–0088). This proposed rule, which proposes to amend the regulation as amended by the April 2005 final rule, has no effect on that analysis, as it does not impose an additional information collection burden or affect the information collected under the regulation in any relevant manner. This proposed rule affects only the timing and manner of the submission of the information already required under the regulation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. The collection of information relative to the provisions of the regulation proposed to be amended in this proposed rule, under 19 CFR §§ 4.64, 122.49a, and 122.75a, is recorded with the Office of Management and Budget (OMB) under OMB No. 1651–0088.

H. Signing Authority

This amendment to the regulations is being issued in accordance with 19 CFR § 0.2(a) pertaining to the authority of the Secretary of Homeland Security (or his delegate) to prescribe regulations not related to customs revenue functions.

I. Privacy Statement

A Privacy Impact Assessment (PIA) was published in the Federal Register (70 FR 17857) in conjunction with the April 7, 2005, APIS final rule (70 FR 17820). As the changes proposed in this rule do not impact the data collected or the use and storage of the data, and only affect the timing of data transmission, the existing System of Records Notice (SORN)(the Treasury Enforcement Communications System (TECS) published at 66 FR 53029) and the PIA continue to cover the collection, maintenance, and use of APIS data. CBP is preparing a separate SORN for APIS which will be published before a final rule is implemented following this proposed rule.

LIST OF SUBJECTS

19 CFR Part 4

Aliens, Customs duties and inspection, Immigration, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Commercial aircraft, Customs duties and inspection, Entry procedure, Reporting and recordkeeping requirements, Security measures.

PROPOSED AMENDMENTS TO THE REGULATIONS

For the reasons stated in the preamble, parts 4 and 122 of the CBP Regulations (19 CFR parts 4 and 122) are proposed to be amended as follows:

PART 4 – VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the specific authority citation for section 4.64 continue to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 2071 note; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.64 also issued under 8 U.S.C. 1221;

* * * * *

2. Section 4.64 is amended in paragraph (b)(2)(i) by removing the words "no later than 15 minutes" and replacing them with the words "no later than 60 minutes".

PART 122 – AIR COMMERCE REGULATIONS

3. The general authority citation for part 122 and the specific authority citations for sections 122.49a and 122.75a continue to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

Section 122.49a also issued under 8 U.S.C. 1221, 19 U.S.C. 1431, 49 U.S.C. 44909.

* * * * *

Section 122.75a also issued under 8 U.S.C. 1221, 19 U.S.C. 1431.

* * * * *

4. Section 122.49a is amended by:

A. revising the definition of "departure" in paragraph (a), and

B. revising paragraphs (b)(1) and (b)(2), such revisions to read as follows:

§ 122.49a Electronic manifest requirement for passengers onboard commercial aircraft arriving in the United States.

(a) * * * * *

Departure. "Departure" means the moment at which the aircraft is pushed back from the gate for the purpose of commencing its approach to the point of take off.

* * * * *

(b) Electronic arrival manifest. (1) General. (i) Basic requirement. Except as provided in paragraph (c) of this section, an appropriate official of each commercial aircraft (carrier) arriving in the United States from any place outside the United States must transmit to Customs and Border Protection (CBP), by means of an electronic data interchange system approved by CBP, an electronic passenger arrival manifest covering all passengers checked in for the flight. A passenger manifest must be transmitted separately from a crew member manifest required under § 122.49b if transmission is in US EDIFACT format. The passenger manifest must be transmitted to CBP at the place and time specified in paragraph (b)(2) of this section, in the manner set forth under either paragraph (b)(1)(ii)(A), (b)(1)(ii)(B), or (b)(1)(iii) of this section.

(ii) Complete manifest option. (A) Interactive process A carrier operating under this paragraph (b)(1)(ii)(A) must transmit a complete manifest setting forth the information specified in paragraph (b)(3) of this section for all passengers checked in for the flight. After receipt of the manifest information, CBP will electronically send to the carrier a "not-cleared" instruction for passengers identified during security vetting as requiring additional security analysis. A carrier must not board any passenger subject to a "not-cleared" instruction, or any other passenger, or their baggage, unless cleared by CBP. Upon completion of the additional security analysis, CBP will electronically contact the carrier to clear a passenger for boarding should clearance be warranted by the results of that analysis. Where CBP is unable to complete the additional security analysis or respond to the carrier prior to departure of the aircraft, the carrier is bound by the "not-cleared" instruction. No later than 30 minutes after departure, the carrier must transmit to CBP a unique identifier for each passenger that checked in but did not board the flight. Before operating under this paragraph, a carrier must receive a system certification from CBP indicating that its electronic system is capable of interactively communicating with CBP's system for effective transmission of manifest data and receipt of appropriate messages.

(B) Manual (non-interactive) prcoess. A carrier operating under this paragraph (b)(1)(ii)(B) must transmit a complete manifest setting forth the information specified in paragraph (b)(3) of this section for all passengers checked in for the flight. After receipt of the manifest information, CBP will send to the carrier by a non-interactive manual transmission method a "not-cleared" instruction for passengers identified during security vetting as requiring additional security analysis. A carrier must not board any passenger subject to a "not-cleared" instruction, or any other passenger, or their baggage, unless cleared by CBP. Upon completion of the additional security analysis, CBP will contact the carrier to clear a passenger for boarding should clearance be warranted by the results of that analysis. Where CBP is unable to complete the additional security analysis or respond to the carrier prior to departure of the aircraft, the carrier is bound by the "not-cleared" instruction. No later than 30 minutes after departure, the carrier must transmit to CBP a unique identifier for each passenger who checked in but did not board the flight.

(iii) Individual passenger information option. A carrier operating under this paragraph (b)(1)(iii) must transmit the manifest data specified in paragraph (b)(3) of this section for each individual passenger as passengers check in for the flight. With each transmission of manifest information by the carrier, CBP will electronically send a "cleared" or "not-cleared" instruction, as appropriate, depending on the results of security vetting. A "not-cleared" instruction will be issued for passengers identified during the initial security vetting as requiring additional security analysis. The carrier must acknowledge receipt of a "not-cleared" instruction by electronic return message and must not issue a boarding pass to – or load the baggage of — any passenger subject to a "not-cleared" instruction or to any passenger not cleared by CBP. The carrier, at its discretion, may seek resolution of a "not-cleared" instruction by providing additional information relative to the passenger if available. Upon completion of the additional security analysis, CBP will electronically contact the carrier to clear a passenger for boarding should clearance be warranted by the results of that analysis. Where CBP is unable to complete the additional analysis or respond to the carrier before departure of the aircraft, the carrier will be bound by the "not-cleared" instruction. No later than 30 minutes after departure, the carrier must transmit to CBP a unique identifier for each passenger who checked in but did not board the flight. Before operating under this paragraph, a carrier must receive a system certification from CBP indicating that its electronic system is capable of interactively communicating with CBP's system for effective transmission of manifest data and receipt of appropriate messages.

(2) Place and time for submission. (i) Complete manifests. The appropriate official specified in paragraph (b)(1)(i) of this section (car-

rier) must transmit the complete electronic passenger arrival manifest as required under paragraph (b)(1)(ii) of this section to the CBP Data Center, CBP Headquarters:

(A) For flights not originally destined to the United States but diverted to a U.S. port due to an emergency, no later than 30 minutes prior to arrival; in cases of non-compliance, CBP will take into consideration whether the carrier was equipped to make the transmission and the circumstances of the emergency situation;

(B) For an aircraft operating as an air ambulance in service of a medical emergency, no later than 30 minutes prior to arrival; and

(C) For all flights not covered under paragraphs (b)(2)(i)(A) or (B) of this section, no later than 60 minutes prior to departure of the aircraft.

(ii) Individual passenger information. A carrier must transmit electronic passenger arrival manifest information as required under paragraph (b)(1)(iii) of this section as each passenger checks in for the flight, up to but no later than 15 minutes prior to departure of the aircraft.

* * * * *

5. Section 122.75a is amended by revising paragraphs (b)(1) and (b)(2), to read as follows:

§ 122.75a Electronic manifest requirements for passengers onboard commercial aircraft departing from the United States.

* * * * *

(b) Electronic departure manifest. (1) General. (i) Basic requirement. Except as provided in paragraph (c) of this section, an appropriate official of each commercial aircraft (carrier) departing from the United States en route to any port or place outside the United States must transmit to Customs and Border Protection (CBP), by means of an electronic data interchange system approved by CBP, an electronic passenger departure manifest covering all passengers checked-in for the flight. A passenger manifest must be transmitted separately from a crew member manifest required under § 122.75b if transmission is in US EDIFACT format. The passenger manifest must be transmitted to CBP, at the place and time specified in paragraph (b)(2) of this section, in the manner set forth under either paragraph (b)(1)(ii)(A), (b)(1)(ii)(B), or (b)(1)(iii) of this section.

(ii) Complete manifest option. (A) Interactive process. A carrier operating under this paragraph (b)(1)(ii)(A) must transmit a complete manifest setting forth the information specified in paragraph (b)(3) of this section for all passengers checked-in for the flight. After receipt of the manifest information, CBP will electronically send to the carrier a "not-cleared" instruction for passengers identified during security vetting as requiring additional security analysis. A car-

rier must not board any passenger subject to a "not-cleared" instruction, or any other passenger, or their baggage, unless cleared by CBP. Upon completion of the additional security analysis, CBP will electronically contact the carrier to clear a passenger for boarding should clearance be warranted by the results of that analysis. Where CBP is unable to complete the additional security analysis or respond to the carrier prior to departure of the aircraft, the carrier is bound by the "not-cleared" instruction. No later than 30 minutes after departure, the carrier must transmit to CBP a unique identifier for each passenger who checked in but did not board the flight. Before operating under this paragraph, a carrier must receive a system certification from CBP indicating that its electronic system is capable of interactively communicating with CBP's system for effective transmission of manifest data and receipt of appropriate messages.

(B) Manual (non-interactive) process. A carrier operating under this paragraph (b)(1)(ii)(B) must transmit a complete manifest setting forth the information specified in paragraph (b)(3) of this section for all passengers checked in for the flight. After receipt of the manifest information, CBP will send to the carrier by a non-interactive manual transmission method a "not-cleared" instruction for passengers identified during security vetting as requiring additional security analysis. A carrier must not board any passenger subject to a "not-cleared" instruction, or any other passenger, or their baggage, unless cleared by CBP. Upon completion of the additional security analysis, CBP will contact the carrier to clear a passenger for boarding should clearance be warranted by the results of that analysis. Where CBP is unable to complete the additional security analysis or respond to the carrier prior to departure of the aircraft, the carrier is bound by the "not-cleared" instruction. No later than 30 minutes after departure, the carrier must transmit to CBP a unique identifier for each passenger who checked in but did not board the flight.

(iii) Individual passenger information option. A carrier operating under this paragraph (b)(1)(iii) must transmit the manifest data specified in paragraph (b)(3) of this section for each individual passenger as passengers check in for the flight. With each transmission of manifest information by the carrier, CBP will electronically send a "cleared" or "not-cleared" instruction, as appropriate, depending on the results of security vetting. A "not-cleared" instruction will be issued for passengers identified during the initial security vetting as requiring additional security analysis. The carrier must acknowledge receipt of a "not-cleared" instruction by electronic return message and must not issue a boarding pass to – or load the baggage of — any passenger subject to a "not-cleared" instruction or to any passenger not cleared by CBP. The carrier, at its discretion, may seek resolution of a "not-cleared" instruction by providing additional information about the passenger, if available. Upon completion of

the additional security analysis, CBP will electronically contact the carrier to clear a passenger for boarding should clearance be warranted by the results of that analysis. Where CBP is unable to complete the additional analysis or respond to the carrier before departure of the aircraft, the carrier will be bound by the "not-cleared" instruction. No later than 30 minutes after departure, the carrier must transmit to CBP a unique identifier for each passenger who checked in but did not board the flight. Before operating under this paragraph, a carrier must receive a system certification from CBP indicating that its electronic system is capable of interactively communicating with CBP's system for effective transmission of manifest data and receipt of appropriate messages.

(2) Place and time for submission. (i) Complete manifests. The appropriate official specified in paragraph (b)(1)(i) of this section (carrier) must transmit the complete electronic passenger departure manifest as required under paragraph (b)(1)(ii) of this section to the CBP Data Center, CBP Headquarters, no later than 60 minutes prior to departure of the aircraft from the United States, except that for an air ambulance in service of a medical emergency, the manifest must be transmitted to CBP no later than 30 minutes after departure.

(ii) Individual passenger information The carrier must transmit electronic passenger departure manifest information as required under paragraph (b)(1)(iii) of this section as each passenger checks in for the flight, up to but no later than 15 minutes prior to departure of the aircraft.

* * * * *

DEBORAH J. SPERO,
Acting Commissioner,
Customs and Border Protection.

Approved: July 11, 2006

MICHAEL CHERTOFF,
Secretary.

[Published in the Federal Register, July 14, 2006 (71 FR 40035)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, July 12, 2006,

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
Acting Assistant Commissioner,
Office of Regulations and Rulings.

MODIFICATIONS OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN SKIN CARE PRODUCTS

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of modification of three ruling letters and revocation of treatment relating to the tariff classification of certain skincare products.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying three ruling letters relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain skincare products. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published on May 17, 2006 in the CUSTOMS BULLETIN in Volume 40, Number 21. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 24, 2006.

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Tariff Classification and Marking Branch, at (202) 572–8821.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke New York Ruling Letter (NY) G88456 and NY G88457, both dated April 9, 2001, and NY 801325, dated September 16, 1994, and to revoke any treatment accorded to substantially identical merchandise was published in the May 17, 2006 CUSTOMS BULLETIN, Volume 40, Number 21. No comments were received in response to this notice.

As stated in the notice of proposed revocation, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, Customs and Border Protection is revoking any treatment previously accorded by CBP to substantially identical merchandise. Any person involved with substantially identical merchandise should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not

identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying New York Ruling Letter (NY) G88456 and NY G88457, both dated April 9, 2001, and NY 801325, dated September 16, 1994 and any other rulings not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 967517 and 967518, set forth as Attachments A and B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

DATED: July 5, 2006

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967517
July 5, 2006
CLA–2 RR:TCM:CTF 967517 TMF
CATEGORY: Classification
TARIFF NO.: 3304.99.5000

MR. MARK P. NEUMANN
NU SKIN INTERNATIONAL, INC.
One Nu Skin Plaza
75 West Center
Provo, Utah 84601

RE: Modification of New York Ruling Letter (NY) 801325, dated September 16, 1994; Classification of Nutriol Eyelash Conditioner

DEAR MR. NEUMANN:

In New York Ruling Letter (NY) 801325, issued to you on September 16, 1994, Customs and Border Protection (CBP) classified, among other things, Nutriol Eyelash Conditioner in subheading 3304.20.0000, Harmonized Tariff Schedule of the United States, which provides for "Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Eye make-up preparations." We have reviewed NY 801325, and found it to be in error with regard to the Nutriol Eyelash Conditioner. Therefore, this ruling modifies NY 801325.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification was published on May 17, 2006 in the CUSTOMS BULLETIN in Volume 40, Number 21. No comments were received in response to this notice.

FACTS:

New York Ruling Letter (NY) 801325 describes the Nutriol Eyelash Conditioner as "packaged for retail sale, contains mucopolysaccharides and used to help keep eyelashes thick, healthy and protected."

ISSUE:

What is the classification of the Nutriol Eyelash Conditioner?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. When goods cannot be classified solely on the basis of GRI 1 and if the terms of the headings and any relative section or chapter notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

Additionally, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) are the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 3304 covers beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations. Cosmetics or makeup is defined in the Encyclopedia Britannica as "substances to enhance the beauty of the human body, apart from simple cleaning." Subheading 3304.20.000 provides for eye makeup preparations. Goods classified in this subheading are limited to products that are used to beautify the eye area. In this case, the subject merchandise is used for improving the condition of eyelashes.

Thus, it is the opinion of this office that products such as the instant eyelash conditioner are more appropriately classified with other skincare products that are used for moisturizing the skin within subheading 3304.99.5000, HTSUS, which provides for "Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Other: Other."

HOLDING:

The Nutriol Eyelash Conditioner is classifiable in subheading 3304.99.5000, which provides for "Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Other: Other." The general column one duty rate is FREE.

EFFECT ON OTHER RULINGS:

NY 801325, dated September 16, 1994, is hereby modified. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Trade and Facilitation Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967518
July 5, 2006
CLA–2 RR:CTF:TCM 967518 TMF
CATEGORY: Classification
TARIFF NO.: 3304.99.5000

MS. NATHALIE NUTTING
17 Avenue de l'Epee, #5
Outremont, Quebec H2V 3S8
Canada

Re: Modification of New York Ruling Letters (NY) G88456 and G88457, both dated April 9, 2001

DEAR MS. NUTTING:

In New York Ruling Letters (NY) G88456 and G88457, both issued to you on April 9, 2001, Customs and Border Protection (CBP) classified, among other things, the "Irione and Les Florales" Eye Contour Gel and "*Les Spécifiques*" Eye Make-up Remover Lotion in subheading 3304.20.0000, Harmonized Tariff Schedule of the United States, which provides for "Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Eye make-up preparations." We have reviewed NY G88456 and G88457 and found them to be in error with regard to the classification of these products. Therefore, this ruling modifies both NY G88456 and G88457.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification was published on May 17, 2006 in the CUSTOMS BULLETIN in Volume 40, Number 21. No comments were received in response to this notice.

FACTS:

New York Ruling Letter (NY) G88456 describes the "Irione and Les Florales" product line as consisting of five products: Facial Rejuvenating Cream Irione, Facial Rejuvenating Oil Irione, Eye Contour Gel, Nourishing Cream and Cleansing Bar. All products are packed for retail sale. The subject of this reconsideration is the Eye Contour Gel.

New York Ruling Letter (NY) G88457 describes the "*Les Spécifiques*" product line as consisting of five products: Eye Make-up Remover Lotion, Regenerative Face Mask, Purifying Mask, Cleansing Milk and Tonic Lotion. All products are packed for retail sale. The subject of this reconsideration is the Eye Make-up Remover Lotion.

ISSUE:

What is the classification of the "Irione and Les Florales" Eye Contour Gel and "*Les Spécifiques*" Eye Make-up Remover Lotion?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. When goods cannot be classified solely on the basis of GRI 1 and if the terms of the headings and any relative section or chapter notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

Additionally, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) are the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 3304 covers beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations. Cosmetics or makeup are defined in the Encyclopedia Britannica as "substances to enhance the beauty of the human body, apart from simple cleaning." Subheading 3304.20.000 provides for eye makeup preparations. Goods classified in this subheading are limited to products that are used to beautify the eye area. In this case, the subject eye contour gel is used for improving the condition of the eye area. With regard to the subject eye makeup remover, we find that it is not for beautification, but for removal of makeup.

Thus, it is the opinion of this office that products such as the goods at issue are more appropriately classified with other skincare products that are used for cleansing and moisturizing the skin within subheading 3304.99.5000, which provides, in pertinent part, for skin preparations.

HOLDING:

"Irione and Les Florales" Eye Contour Gel and "*Les Spécifiques*" Eye Makeup Remover Lotion are classifiable in subheading 3304.99.5000, which provides for "Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Other: Other." The general column one duty rate is FREE.

EFFECT ON OTHER RULINGS:

NY G88456 and NY G88457, both dated April 9, 2001, are hereby modified. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Trade and Facilitation Division.

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF A NOVELTY TOP HAT

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

ACTION: Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of a novelty top hat.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is proposing to revoke one ruling letter relating to the tariff classification of a novelty top hat under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before August 25, 2006.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking Branch: (202) 572–8713.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of a novelty top hat. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) A81378, dated April 11, 1996 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY A81378, CBP ruled that a novelty top hat was classified in subheading 9505.90.6020, HTSUS, which provided for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other: Hats: Other." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error. If the novelty top hat is knitted or crocheted or made up of knitted or crocheted fabric, it should be classified in subheading 6505.90.6090, HTSUS, which provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; . . . : Other: Of man-made fibers: Knitted or crocheted or made up from knitted or crocheted fabric: Not in part of braid, Other: Other: Other." If made of felt or other textile fabric, the novelty top hat should be classified in subheading 6505.90.8090, HTSUS, which provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; . . . : Other: Of man-made fibers: Not in part of braid, Other: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY A81378 and to revoke or modify any other ruling not specifically identified, to reflect the proper classification of the novelty top hat according to the analysis contained in proposed Headquarters Rul-

ing Letter (HQ) 968139, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: July 10, 2006

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY A81378
April 11, 1996
CLA–2–95:RR:NC:FC: 225 A81378
CATEGORY: Classification
TARIFF NO.: 9505.90.6020

MR. DENNIS A. SCHLUCKBIER
HAYES SPECIALTIES CORPORATION
1761 East Genesee
Saginaw, Michigan 48601

RE: The tariff classification of a festive hat from Taiwan

DEAR MR. SCHLUCKBIER:

In your letter dated March 14, 1996, you requested a tariff classification ruling.

The submitted "Festive Hat" is intended for use at parties, carnivals, Mardi Gras and the like. The top portion extends almost 11 inches high and its brim measures two inches wide. Made of man-made fiber material, the hat is unlined with single stitching throughout. This style is available in assorted colors and is identified by the following item numbers: 9648, 9649, 9650, 9651, 9652 and 9653.

The applicable subheading for the "Festive Hat", described above, will be 9505.90.6020, Harmonized Tariff Schedule of the United States (HTS), which provides for festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: other: hats: other. The rate of duty will be free.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is im-

ported. If you have any questions regarding the ruling, contact National Import Specialist Alice J. Wong at 212–466–5538.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968139
CLA–2 RR:CTF:TCM 968139 KSH
CATEGORY: Classification
TARIFF NO.: 6505.90

MR. DENNIS A. SCHLUCKBIER
HAYES SPECIALTIES CORPORATION
1761 East Genesee
Saginaw, Michigan 48601

RE: Revocation of New York Ruling Letter (NY) A81378, dated April 11, 1996; Classification of a Novelty Hat.

DEAR MR. SCHLUCKBIER:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) A81378, issued to you on April 11, 1996, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a novelty top hat. The article was classified in subheading 9505.90.6020, HTSUS, which provided for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other: Hats: Other." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY A81378.

FACTS:

The novelty top hat is intended for use at parties, carnivals, Mardi Gras and the like. The top portion of the hat extends almost 11 inches high and its brim measures two inches wide. The hat is made of man-made fiber material. The hat is unlined with single stitching throughout. It is available in assorted colors and is identified by the following item numbers: 9648, 9649, 9650, 9651, 9652 and 9653.

ISSUE:

Whether the novelty top hat is classified in heading 9505, HTSUS, as festive, carnival or other entertainment articles or in heading 6505, HTSUS, as hats and other headgear.

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do

not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. It is Customs and Border Protections' (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Chapter 65, HTSUS, covers headgear and parts thereof. Note 1(c) to chapter 65, HTSUS, states that "This chapter does not cover: Dolls' hats, other toy hats or carnival articles of chapter 95."

Although Note 1(c) excludes toy hats and carnival articles, it does not similarly exclude festive and entertainment articles from its scope.

The Explanatory Notes further identify the class of goods covered by Chapter 65, HTSUS. They read in pertinent part:

> With the **exception** of the articles listed below this Chapter covers hat-shapes, hat-forms, hat bodies and hoods, and hats and other headgear of all kinds, irrespective of the materials of which they are made and of their intended use (daily wear, theatre, disguise, protection, etc.).
>
> * * *
>
> This Chapter **does not include**:
>
> * * *
>
> (f) Dolls' hats, other toy hats or carnival articles (**Chapter 95**).

Among other items, heading 9505, HTSUS, provides for festive, carnival or other entertainment articles.

Subheading 9505.90.6000, HTSUS, provides for "[f]estive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: [o]ther:[o]ther."

> The EN to heading 9505, HTSUS, state, in part, that the heading covers:
>
> (A) **Festive, carnival or other entertainment articles**, which in view of their intended use are generally made of non-durable material. They include:
>
> (1) Festive decorations used to decorate rooms, tables, etc. (such as garlands, lanterns, etc.); decorative articles for Christmas trees (tinsel, coloured balls, animals and other figures, etc); cake decorations which are traditionally associated with a particular festival (e.g., animals, flags).
>
> (2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees, nativity scenes, nativity figures and animals, angels, Christmas crackers, Christmas stockings, imitation yule logs, Father Christmases.
>
> (3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (**not being** articles of postiche - **heading 67.04**), and paper hats. However, the heading **excludes** fancy dress of textile materials, of **Chapter 61** or **62**.

(4) Throw-balls of paper or cotton-wool, paper streamers (carnival tape), cardboard trumpets, " blow-outs ", confetti, carnival umbrellas, etc.

* * * *

CBP has consistently classified novelty hats substantially similar to the hat at issue in subheading 6505.90, HTSUS. See, e.g., HQ 961728, dated April 8, 1999, HQ 962434, dated November 19, 1999, NY G80946, dated September 12, 2000, NY F82865, dated February 22, 2000, NY F89393, dated August 3, 2000, NY G88704, dated April 11, 2001, NY H87806, dated March 15, 2002, NY I82388, dated June 27, 2002 and NY L88538, dated November 25, 2005. In NY B85369, dated June 9, 1997, CBP classified novelty hats of 100% polyester tricot in heading 6505, HTSUS. In so doing, we indicated that hats classifiable in heading 9505, HTSUS, are those which qualify as a costume and are made of non-durable material and flimsy construction. Id.[1]

The Explanatory Notes to Chapter 65, HTSUS, state that the chapter covers all hats irrespective of their use such as daily wear, theatre, disguise or protection. Indeed hats have many functions beyond and in addition to protection from the elements. Among those functions are as a sign of prestige and power, cultural and ethnic identity, religious affirmation, cultural traditions and beliefs or simply adornment. While the hat, with its comical and whimsical appearance, will be a source of enjoyment, humorous diversion and frivolous entertainment, the hat likely will not generate the same type of enjoyment and emotion one derives from actually playing with objects commonly thought of as articles whose primary purpose is amusement.

When an article has both the potential for amusement and utility, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purposes incidental to the amusement (See Ideal Toy Corp. v. United States, 78 Cust. Ct. 28, C.D. 4688 (1977)). As previously noted, the hat is not only amusing but also fully functional. Not all merchandise that amuses is properly classified in an entertainment provision.

We are of the opinion that the hat is specifically provided for as a hat of heading 6505, HTSUS, even if the style of the hat may prevent its use on more than an occasional basis. The hat remains an object used to wear upon the head of the purchaser. As such, it is not described by heading 9505, HTSUS, as a festive, carnival or other entertainment article.

HOLDING:

By application of GRI 1, the novelty top hat is classified in heading 6505, HTSUS. If the novelty top hat is knitted or crocheted or made up of knitted or crocheted fabric, it is classified in subheading 6505.90.6090, HTSUS, which provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; . . . : Other: Of man-made fibers: Knitted or crocheted or made up from knitted or crocheted fabric: Not in part of braid, Other: Other: Other." The rate of duty is 20 cents per kilogram plus

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[1] We acknowledge that witches and santa hats of durable material have been previously classified in heading 9505, HTSUS. See HQ 084288, dated July 6, 1989 and HQ 088410, dated April 18, 1991. However, we may reconsider the classification of these articles in heading 9505, HTSUS, in the future.

7% *ad valorem*. If made up of felt or of other textile fabric, the novelty top hat is classified in subheading 6505.90.8090, HTSUS, which provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; . . . : Other: Of man-made fibers: Not in part of braid, Other: Other: Other." The rate of duty is 18.7 cents per kilogram plus 6.8% *ad valorem*.

Merchandise classified in subheadings 6505.90.6090 and 6505.90.8090, HTSUS, fall within textile category 659. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent negotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas," which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at http://otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

NY A81738, is hereby revoked.

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.