

U.S. Customs and Border Protection



DEPARTMENT OF THE TREASURY

19 CFR PART 165

CBP DEC. 16-11

RIN 1515-AE10

INVESTIGATION OF CLAIMS OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTIES

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

ACTION: Interim final regulations; extension of comment period.

SUMMARY: This document provides an additional 60 days for interested parties to submit comments on the interim final rule that amended the U.S. Customs and Border Protection (CBP) regulations setting forth procedures for CBP to investigate claims of evasion of antidumping and countervailing duty orders in accordance with section 421 of the Trade Facilitation and Trade Enforcement Act of 2015. The interim final rule was published in the **Federal Register** on August 22, 2016, with comments due on or before October 21, 2016. To have as much public participation as possible in the formulation of the final rule, CBP is extending the comment period to December 20, 2016.

DATES: The comment period for the interim final rule published August 22, 2016, at 81 FR 56477, effective August 22, 2016, is extended. Comments must be received on or before December 20, 2016.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2016-0053.

- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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 during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Kevin M. McCann, Chief, Analytical Communications Branch, Office of Trade, U.S. Customs and Border Protection, 202–863–6078.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP in developing these regulations will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See **ADDRESSES** above for information on how to submit comments.

Background

On August 22, 2016, U.S. Customs and Border Protection (CBP) published in the **Federal Register** (81 FR 56477) an Interim Final Rule (CBP Dec. 16–11) that amended the CBP regulations setting forth procedures for CBP to investigate claims of evasion of anti-dumping and countervailing duty orders in accordance with section 421 of the Trade Facilitation and Trade Enforcement Act of 2015. The

document solicited public comments in the interim rule, and requested that submitted comments be received by CBP on or before October 21, 2016.

Extension of Comment Period

With the goal of establishing the most effective and transparent procedures as possible for CBP to employ to investigate claims of evasion of antidumping and countervailing duty orders, CBP believes that it is very important to have as much public participation as possible in the formulation of the final rule that establishes those procedures for CBP. Therefore, CBP has decided to allow additional time for the public to submit comments on the final rule. Accordingly, the comment period is extended to December 20, 2016.

Dated: October 18, 2016.

Alice A. Kipel,
Executive Director,
Regulations and Rulings Office of Trade,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 21, 2016 (81 FR 72692)]

8 CFR PARTS 212, 214, 215, AND 273

CBP DEC. NO. 16-17

**ESTABLISHMENT OF THE ELECTRONIC VISA UPDATE
SYSTEM (EVUS)**

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

ACTION: Final rule.

SUMMARY: This rule amends the Department of Homeland Security's regulations to establish the Electronic Visa Update System ("EVUS"). This system will allow for the collection of biographic and other information from nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category. Nonimmigrant aliens subject to these regulations must periodically enroll in EVUS and obtain a notification of compliance with EVUS prior to travel to the United States. Individuals subject to the EVUS regulations must comply with EVUS in order to maintain the validity of their visas falling within a designated category. The Department of State is publishing a parallel rule to amend its visa regulations to reflect the new EVUS requirements.

EFFECTIVE DATE: This final rule is effective on October 20, 2016.

Compliance Dates: The compliance date is November 29, 2016 or as set forth in § 215.24(c).

Comments must be received on or before January 18, 2017.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2016-0046.
- *Mail:* Border Security Regulations Branch, Office of International Trade, Customs and Border Protection, Regulations and Rulings, Attention: Border Security Regulations Branch, 90 K Street NE., 10th Floor, Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Border Security Regulations Branch, Office of International Trade, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Suzanne Shepherd, Office of Field Operations, Suzanne.M.Shepherd@cbp.dhs.gov or (202) 344-2073.

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I. Public Participation

Interested persons may submit comments on this rulemaking by submitting written data, views, or arguments on all aspects of this final rule. Based on the comments received, DHS may revise this rule in the future.

II. Background

A. Purpose

Congress has conferred upon the Secretary of Homeland Security the authority to establish reasonable conditions on the entry of non-

immigrant aliens into the United States. The Department of Homeland Security (“DHS”), for example, may, by regulation, set conditions for an alien’s admission as a nonimmigrant, *see* Immigration and Nationality Act (“INA”) 214(a)(1), 8 U.S.C. 1184(a)(1), and, more generally, establish reasonable regulations governing aliens’ entry or admission into and departure from the United States, *see* INA 215(a)(1), 8 U.S.C. 1185(a)(1).¹ *See also* INA 103(a)(1), (a)(3), 8 U.S.C. 1103(a)(1), (a)(3); 6 U.S.C. 202(4).

Every alien applying for admission to the United States as a nonimmigrant must establish that he or she is admissible to the United States. *See* INA 235(b)(2)(A), 291, 8 U.S.C. 1225(b)(2)(A), 1361; 8 CFR 214.1(a)(3), 235.1(f), 235.3. Upon application for admission, the alien must present a valid passport and valid visa unless either or both document requirements have been waived. *See* INA 212(a)(7)(B), 8 U.S.C. 1182(a)(7)(B); 8 CFR 212.1; *see also* INA 217, 8 U.S.C. 1187; 8 CFR 217. Nonimmigrant aliens who need a visa to travel to and apply for admission to the United States may be eligible for one of 20 primary nonimmigrant classifications, depending on their specific purposes and qualifications. *See* INA 101(a)(15), 8 U.S.C. 1101(a)(15) (defining nonimmigrant classifications); *see also* U.S. Department of State, Bureau of Consular Affairs, “Directory of Visa Categories” (listing visa categories).² The burden of establishing admissibility and other eligibility to enter the United States lies with the applicant for admission. *See, e.g.*, INA 291, 8 U.S.C. 1361; 8 CFR 235.1(f).

The nonimmigrant visa application process generally requires the alien to fill out an application, pay a visa application fee, and appear for an interview before a consular officer at a U.S. embassy or consulate. Every visa applicant undergoes extensive security checks before a visa is issued. At the U.S. embassy or consulate, officials review the alien’s application, collect the applicant’s fingerprints, and check the applicant’s name against the Department of State’s (“DOS”) Consular Lookout and Support System (CLASS) as well as various other government watchlists. A consular officer reviews the name check results and determines whether additional security checks are required. The consular officer then generally interviews the visa applicant and reviews his or her application and supporting documents.

When all required processing is completed, and if the alien is found eligible, the consular officer issues a nonimmigrant visa to the alien. The validity period of a nonimmigrant visa varies by category and the

¹ The President assigned to the Secretary of Homeland Security (acting with the concurrence of the Secretary of State) the functions under INA 215(a) with respect to noncitizens. E.O. 13323, 69 FR 241 (Dec. 30, 2003).

² This directory is available at <http://travel.state.gov/content/visas/en/general/all-visa-categories.html>.

country that issues the nonimmigrant alien's passport.³ When an alien's visa validity period expires, the alien will need to renew his or her visa in order to travel to the United States. The process is generally the same whether a person is applying for a visa for the first time or renewing an expired visa. This means that to renew a visa the alien must submit a new application, which requires updated information, pay the visa application fee, and undergo another interview by consular officials, unless the interview is waived.⁴ The information updates provided through the visa re-application process include basic biographical and eligibility elements that can change over time (e.g., address, name, employment, criminal history).

Visa validity periods can vary considerably, and some visas are valid for extended periods of up to ten years, and often for multiple entries. Frequent travelers to the United States who hold visas with short validity periods have to reapply more frequently than those who hold visas with longer validity periods. While visas with a longer validity period provide an opportunity for individuals to travel to the United States with greater ease, they do not enable the U.S. Government to receive regularly updated biographic and other information from repeat visitors who travel to the United States multiple times over the span of the visa. As such, aliens traveling on these visas with longer validity periods are screened using traveler information that is not as recent as for aliens who must obtain visas more frequently.

Because changes to biographical and eligibility elements could impact whether an individual may be admissible to the United States, it would be beneficial to have a mechanism for obtaining this updated information in advance of the individual's travel to the United States when the Secretary, in consultation with the Secretary of State, determines that it is warranted with respect to a given country and nonimmigrant visa category. Having a means for regularly collecting updated information, before the alien embarks on travel to the United States and without requiring aliens to apply for a visa on a more frequent basis, would be valuable in contributing to a robust traveler screening and verification process and would cut down on the number of visa holders who are found inadmissible at ports of entry.⁵

³ To determine the validity period of a specific visa category for a given country, a nonimmigrant alien will need to consult the reciprocity schedule for the country that issued his or her passport at www.travel.state.gov/content/visas/en/fees/reciprocity-by-country.html.

⁴ The visa interview can be waived in certain circumstances, including for renewals that meet specific requirements. See INA 222(h)(1)(B), 8 U.S.C. 1202(h)(1)(B); 9 FAM 403.5-4(A), available at <https://fam.state.gov/FAM/09FAM/09FAM040305.html>.

⁵ Consistent with other DHS regulations, the term "port of entry" includes preclearance or immigration preinspection, which are CBP facilities in a foreign location where

Given these concerns and considerations, DHS has developed the Electronic Visa Update System (“EVUS”), which provides a mechanism through which information updates can be obtained from non-immigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category. EVUS will provide for greater efficiencies in the screening of international travelers by allowing DHS to identify subjects of potential interest before they depart for the United States, thereby increasing security and reducing traveler delays upon arrival at U.S. ports of entry. EVUS will aid DHS in facilitating legitimate travel while also ensuring public safety and national security.

In this final rule, DHS is amending its regulations to establish EVUS. In a parallel rule, “Visa Information Update Requirements under the Electronic Visa Update System (EVUS)” (RIN 1400–AD93) (hereinafter “DOS’s EVUS Rule”), also published in this **Federal Register**, DOS is amending its regulations to provide for the automatic provisional revocation of visas held by nonimmigrant aliens subject to the EVUS requirements for failure to comply with those requirements.

DHS and DOS anticipate that EVUS may eventually be expanded to include a number of countries and visa categories. However, as announced in a separate notice being published in this issue of the **Federal Register**, the program will initially be limited to nonimmigrant aliens who hold unrestricted, maximum validity B–1 (business visitor), B–2 (visitor for pleasure), or combination B–1/B–2 visas, which are generally valid for 10 years,⁶ contained in a passport issued by the People’s Republic of China (“PRC”).⁷

B. Legal Authority

DHS and DOS are establishing EVUS primarily under the authorities granted in INA sections 103 (8 U.S.C. 1103), 214 (8 U.S.C. 1184), 215 (8 U.S.C. 1185), and 221 (8 U.S.C. 1201); and sections 402(4) and 428(b) of the Homeland Security Act (“HSA”), 6 U.S.C. 202(4), 236(b). Section 221(a)(1)(B) of the INA authorizes DOS to issue nonimmigrant visas to foreign nationals. Section 221(c) provides that “[a] immigration preinspection, among other things, occurs prior to travel to the United States. See INA 235A, 8 U.S.C. 1225a; 8 CFR 235.5.

⁶ This includes visas issued for more than nine years and all replacement visas issued to correct errors in the original instance.

⁷ B category visas are considered “visitor visas.” Visitor visas are nonimmigrant visas for individuals seeking admission to the United States temporarily for business (visa category B–1), tourism or pleasure, (visa category B–2), or a combination of both purposes (visa category B–1/B–2). Maximum validity for B category visas contained in a passport issued by the People’s Republic of China, is generally ten years, but includes visas issued for more than nine years and all replacement visas issued to correct errors in the original visa.

nonimmigrant visa shall be valid for such periods as shall be by regulations prescribed,” and section 221(i) authorizes the Secretary of State to revoke visas at any time in his or her discretion. *See also* 22 CFR 41.122. Section 214(a)(1) of the INA authorizes DHS to establish by regulation conditions for a nonimmigrant alien’s admission to the United States, 8 U.S.C. 1184(a)(1); and section 215(a)(1) provides DHS with authority to set reasonable rules restricting aliens’ entry into and departure from the United States.⁸ 8 U.S.C. 1185(a)(1). Section 103(a) of the INA authorizes the Secretary of Homeland Security to administer and enforce the INA and other laws relating to the immigration and naturalization of aliens, and to establish such regulations as he deems necessary for carrying out his authority. 8 U.S.C. 1103(a). Sections 402(4) and 428(b) of the HSA generally confers upon the Secretary the authority to establish and administer rules governing the granting of visas. 6 U.S.C. 202(4), 236(b).

These broad authorities allow DHS to set conditions for admission or entry into the United States and DOS to revoke visas subject to the fulfillment of these conditions. Together, these authorities allow DHS to establish an electronic visa information update system to collect periodic biographic and other updates and for DOS to provisionally revoke a nonimmigrant alien’s visa for failure to meet DHS’s conditions for admission or entry as outlined in the EVUS regulations set forth in this final rule and the companion DOS rulemaking.

Through the issuance of these regulations outlined below, DHS is conditioning the admission or entry of nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category on compliance with EVUS. Through the issuance of DOS’s rule on EVUS, as specified in 22 CFR 41.122(b)(3), failure to comply with this condition triggers the automatic provisional revocation of the regulated individual’s visa, which will prevent travel to the United States on that visa. Once the visa holder successfully enrolls in EVUS, the provisional revocation will be automatically reversed and the visa will be valid for travel to the United States. *See* DOS’s EVUS Rule.

C. Amendments to the DHS Regulations To Establish the Electronic Visa Update System

This rule amends 8 CFR by renaming part 215 “Controls of Aliens Departing from the United States; Electronic Visa Update System,” placing the existing §§ 215.1 through 215.9 into a subpart A entitled “Controls of Aliens Departing from the United States” and adding new sections in a subpart B, entitled “Electronic Visa Update Sys-

⁸ *See supra* note 1.

tem.” New subpart B describes the purpose of EVUS, who it applies to, and its requirements. It also contains definitions that apply throughout that subpart.

As provided in part 215, subpart B, EVUS is an online information update system that requires nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category to provide information updates through periodic EVUS enrollment. The Secretary will identify countries (“EVUS countries”) whose passport holders will be subject to the EVUS regulations and designate applicable visa categories. This regulation would potentially apply to both single and multiple use visas. Notice of identified countries and designated visa categories will be published in the **Federal Register**. A nonimmigrant alien who holds a passport issued by an EVUS country containing a U.S. nonimmigrant visa of a designated category is referred to in part 215, subpart B, as a “covered alien.” Each covered alien must comply with EVUS in order to ensure the continued validity of his or her visa. A covered alien will not be allowed to board an air or sea carrier destined for the United States unless he or she complies with EVUS. Failure to enroll in EVUS according to the regulations will result in the automatic provisional revocation of the individual’s visa pursuant to DOS’s regulations in 22 CFR 41.122(b)(3). *See* DOS’s EVUS Rule.

1. Enrollment in EVUS

To enroll in EVUS, the covered alien must go online to *www.EVUS.gov* and provide truthful, accurate, and complete responses to all of the required questions. At this time, the EVUS enrollment may be completed by the covered alien or by a third party, such as a friend, relative, or travel industry professional, at the direction of the covered alien. The third party may submit the required information on the alien’s behalf, although the alien is responsible for the truthfulness and accuracy of all information submitted.

After the enrollment information is submitted, the submitter will receive an electronic status message on the EVUS enrollment Web site stating “enrolled,” “pending,” “unsuccessful,” or “The State Department has revoked your visa.” The U.S. Customs and Border Protection (“CBP”) anticipates that each EVUS enrollment attempt will be adjudicated within 72 hours of submission, although most results will be received shortly after submission. An “enrolled” message indicates that the submission was successful and that the covered alien has a valid notification of compliance. For more details, *see* the section below, “Notification of Compliance.” If a “pending” message is received, the alien will need to return to the Web site at a later time to verify successful enrollment.

In some circumstances, the submitter may receive an “unsuccessful” message. This may occur for reasons including, but not limited to, the alien’s failure to provide adequate responses to the EVUS questions, the alien’s attempt to use an invalid passport or visa, such as an expired document or one reported lost or stolen, or irreconcilable errors discovered relating to the information the alien provided as part of an attempted EVUS enrollment. An unsuccessful EVUS enrollment after November 29, 2016 means that the covered alien’s visa will be automatically provisionally revoked. An unsuccessful enrollment does not cause the underlying visa to be permanently revoked. A covered alien may reattempt enrollment any number of times, subsequent to receiving an “unsuccessful” message.

If the submitter receives a message stating that “The State Department has revoked your visa,” the submitter will not be permitted to travel to the United States on that visa until a new visa application has been submitted to DOS, a new visa has been issued, and the submitter has successfully enrolled in EVUS based on his or her new visa.

2. Notification of Compliance

Upon successful enrollment in EVUS, CBP will issue a notification of compliance to the covered alien. In most cases, this notification of compliance will be issued immediately, appearing on the next page of the EVUS Web site after submission of the EVUS enrollment information. CBP will not send an email or letter to the alien notifying them of their enrollment status. It is the alien’s responsibility to verify whether he or she has a valid notification of compliance. The alien can do this by returning to the EVUS Web site and following the instructions provided there.

The notification of compliance is a positive determination that the individual’s visa is not automatically provisionally revoked and is considered valid for travel to the United States as of the time of the notification. *See* DOS’s EVUS Rule; *see also* 22 CFR 41.122(b)(3).

As explained in the section below, “Duration of Notification of Compliance,” as a general rule, a notification of compliance is valid for a period of two years. For immigration purposes, a covered alien may travel to the United States repeatedly using the same notification of compliance, as long as the notification of compliance and the underlying visa remain valid.

3. EVUS in the Context of Travel to the United States

When a covered alien seeks to board a commercial aircraft or vessel carrier for travel to a U.S. air or sea port of entry, the carrier will

verify that the traveler has a valid notification of compliance before allowing the alien to board. When a covered alien arrives at a U.S. land port of entry, the CBP officer at the port of entry will verify that the traveler has a valid notification of compliance before conducting further assessment on the admissibility of the traveler.

A notification of compliance only allows a covered alien to board a conveyance for travel to a U.S. air or sea port of entry, or to apply for admission at a land port of entry. It does not restrict, limit, or otherwise affect the authority of CBP officers to determine an alien's admissibility to the United States during inspection at a port of entry or the respective authorities of DHS and DOS to refuse or revoke a nonimmigrant visa.

4. Validity Period of Notification of Compliance

As a general rule, a notification of compliance will be valid for a period of two years. If a covered alien's passport or visa will expire in less than two years from the date the notification of compliance is issued, the notification will be valid only until the date of expiration of the passport or visa, whichever is sooner. Individuals who have successfully enrolled in EVUS may return to the EVUS Web site at any time to verify their EVUS status and notification of compliance expiration date.

The Secretary, in consultation with the Secretary of State, may increase or decrease the notification of compliance validity period for any EVUS country. Any changes to the validity period will be done through rulemaking. The EVUS Web site will also be updated to reflect the specific duration of notification of compliance validity periods for each EVUS country.

If a covered alien does not re-enroll in EVUS before his or her notification of compliance expires, his or her visa will be automatically provisionally revoked and the alien may not travel to the United States on that visa unless or until the alien re-enrolls in EVUS and obtains a new notification of compliance. Furthermore, a notification of compliance is not valid unless the alien's passport and designated visa are also valid.

5. Schedule for EVUS Enrollment and Re-Enrollment

As explained below in more detail, EVUS requires each covered alien to initially enroll after receiving his or her designated visa and to re-enroll in the context of travel if the initial or an earlier notification of compliance is no longer valid.

a. Initial Enrollment

Following are the requirements for initial enrollment in EVUS. As explained below, as of November 29, 2016, no covered alien will be permitted to travel to the United States on a visa subject to EVUS, without a valid notification of compliance. Any covered alien who received his or her visa of a designated category prior to November 29, 2016, must initially enroll in EVUS by December 14, 2016, unless the alien intends to travel to the United States before that date. In such case, a covered alien intending to arrive at an air or sea port of entry must have a notification of compliance that is valid prior to boarding a carrier destined for travel to the United States, and an alien intending to arrive at a land port of entry must have a notification of compliance that is valid prior to application for admission.

In contrast, any covered alien who receives his or her visa of a designated category on or after November 29, 2016 must initially enroll in EVUS upon receipt of his or her visa. Enrollment upon receipt of the visa is necessary because, based on CBP's data on crossing history and visa issuance, most visitors to the United States travel within six months of visa issuance. To alleviate the reporting burden, EVUS will pre-populate the data elements that are duplicated on the visa application for recent visa issuances.

Failure to initially enroll in EVUS as described above will result in the automatic provisional revocation of the covered alien's visa. The alien will not be authorized to travel to the United States on that visa unless or until the alien enrolls in EVUS and obtains a notification of compliance.

b. EVUS Re-Enrollment Prior to Travel to the United States

A covered alien must have a valid notification of compliance in order to travel to the United States on his or her visa of a designated category. To comply with this requirement, the individual must re-enroll in EVUS if his or her initial or most recent notification of compliance has expired, or will expire, prior to the following timeframes. A covered alien intending to arrive at an air or sea port of entry must have a notification of compliance that is valid prior to boarding a carrier destined for travel to the United States and that will remain valid through the date when the alien will arrive at the port of entry. A covered alien intending to arrive at a land port of entry must have a notification of compliance that is valid through the date of the alien's application for admission into the United States.

A covered alien may travel to the United States repeatedly using the same notification of compliance, as long as it remains valid

through the timeframe described above and the underlying visa remains valid. If a covered alien needs a new notification of compliance in order to meet the relevant timeframe, DHS recommends that he or she re-enroll in EVUS at least 72 hours in advance of his or her intended departure to the United States.

6. Required EVUS Data Elements

The information required for EVUS enrollment is information that DHS, after consultation with DOS, has deemed necessary to evaluate whether a covered alien's travel to the United States poses a law enforcement or security risk. It includes biographical data such as name, birth date, and passport information, as well as travel information such as travel details and the alien's contact information in the United States. Covered aliens must also answer eligibility questions regarding, for example: Infection with communicable diseases of public health significance, existence of arrests or convictions for certain crimes, and past history of visa or admission denial.

The EVUS enrollment questions will be available in multiple languages, including English and the official language(s) of the covered alien's EVUS country. Although the covered alien must provide responses to most of the data elements in English, some of the information, such as the alien's name and address, can or must also be provided in the official language(s) of the alien's EVUS country.

The information submitted by the alien will be checked by DHS against all appropriate databases, including, but not limited to, lost and stolen passport databases and appropriate watchlists.

7. Events Requiring EVUS Re-Enrollment

Covered aliens must re-enroll in EVUS and obtain a new notification of compliance if any of the following occur:

- (a) The alien is issued a new passport or new nonimmigrant visa of a designated category;
- (b) The alien changes his or her name;
- (c) The alien changes his or her gender;
- (d) There is any change to the alien's country of citizenship or nationality, including becoming a dual national; or
- (e) The circumstances underlying the alien's previous responses to any of the EVUS enrollment questions requiring a "yes" or "no" response (eligibility questions) have changed.

8. Noncompliance, Expiration of Notification of Compliance, and Change in EVUS Status Resulting in Rescission of Notification of Compliance

An individual subject to the EVUS requirements must take affirmative actions to ensure and maintain the validity of his or her visa, pursuant to 22 CFR 41.122(b)(3). Failure to initially enroll in EVUS as described above will result in the automatic provisional revocation of the covered alien's visa. Furthermore, once a covered alien's notification of compliance has expired, his or her visa will be automatically provisionally revoked. In order to prevent the automatic provisional revocation of his or her visa, or to re-instate the validity of the visa after it has been provisionally revoked in these circumstances, the alien must successfully enroll or re-enroll in EVUS and obtain a valid notification of compliance.

In the event that a covered alien's EVUS enrollment is unsuccessful, his or her visa will also be automatically provisionally revoked. Under these circumstances, the alien may re-attempt enrollment or contact CBP for further guidance. Additionally, in the event that irreconcilable errors are discovered after the issuance of a notification of compliance, or other circumstances occur, such as a change in the validity period of the notification of compliance, CBP may rescind the notification of compliance.⁹ If a covered alien's notification of compliance is rescinded, his or her visa will be automatically provisionally revoked. In this circumstance, the alien may re-attempt enrollment or contact CBP for further guidance.

For more information on the automatic provisional revocation of visas in the context of EVUS, please see DOS's EVUS rule.

D. Other Amendments to the DHS Regulations To Reference EVUS

In establishing EVUS, several other sections of the DHS regulations must be amended to reference the new part 215, subpart B, of title 8 of the Code of Federal Regulations ("CFR"). Section 212.1 ("Documentary Requirements for Nonimmigrants") is being revised to specify that when presenting documents for admission, the non-immigrant alien's visa must meet the requirements of part 215, subpart B, if applicable. Section 212.1 is also being revised to remove the phrase "valid for the period set forth in section 212(a)(26) of this Act" as a descriptor of the passport an alien must present upon application for admission. That section of the INA no longer exists, making the reference obsolete. Section 214.1(a)(3) ("Requirements for

⁹ CBP will send an email to the address provided during enrollment to attempt to notify the covered alien about the rescission of his or her notification of compliance.

Admission, Extension, and Maintenance of Status”) is being revised to note that an alien’s admission to the United States as a nonimmigrant is now conditioned on compliance with part 215, subpart B, if applicable.

Lastly, § 273.3, regarding screening procedures, is also being revised to reflect EVUS requirements. Section 273.3 lists the screening procedures that owners, operators, or agents of carriers which transport passengers to the United States must follow to be eligible to apply for a reduction, refund, or waiver of fines imposed under section 273 of the INA, 8 U.S.C. 1323, for bringing aliens to the United States without the required travel documents. Section 273.3(b)(1) is being revised to add a new paragraph that specifies that carrier personnel, when screening passengers prior to boarding, should ensure that covered aliens have complied with EVUS as appropriate. Additionally, a new § 273.3(b)(4) is being added to address the procedures that carriers should follow to ensure that a covered alien has a valid notification of compliance before allowing him or her to board. This provision specifies that carriers should transmit the visa number of any passenger who requires a visa. The carrier should transmit this information using the Advance Passenger Information System (“APIS”).¹⁰ CBP will then use the visa number to ascertain whether the alien requires a notification of compliance with EVUS and if so, whether the alien has a valid notification of compliance. CBP will relay this information back to the carrier, and the carrier should use this information in determining whether to board the passenger.

E. Compliance Dates and Early Enrollment Period for EVUS

As provided in § 215.24(c), covered aliens must initially enroll in EVUS as early as November 29, 2016, depending on the date on which the alien received his or her visa of a designated category and on his or her specific plans to travel to the United States. As of November 29, 2016, no covered alien will be authorized to travel to the United States on his or her visa of a designated category unless or until the alien enrolls in EVUS and obtains a notification of compliance.

As of the effective date of this rule, CBP will allow covered aliens to voluntarily enroll in EVUS prior to the mandatory compliance dates. This will allow covered aliens to familiarize themselves with the online tool and to meet the update requirements associated with EVUS well in advance of the mandatory compliance dates. A notifi-

¹⁰ This provision does not create a new APIS requirement, it only provides that carriers use the APIS system to transmit the visa information.

cation of compliance received during the early enrollment period will generally be valid for two years from the date of issuance, subject to the same limitations as notifications of compliance received after the mandatory compliance dates as provided in § 215.24(b).

The compliance date for the new requirements set forth in § 273.3, regarding carriers' screening procedures, is November 29, 2016.

III. Statutory and Regulatory Requirements

A. *Administrative Procedure Act*

This final rule is excluded from the rulemaking provisions of 5 U.S.C. 553 as a foreign affairs function of the United States because it advances the President's foreign policy goals regarding the issuance of visas, involves a diplomatic arrangement with another country regarding reciprocal changes to temporary visitor for business and pleasure, student, and exchange visitor visas, and directly involves relationships between the United States and its alien visitors. *See* 5 U.S.C. 553(a)(1). This determination was reached after consultation with DOS, which is also asserting the foreign affairs function exception in their parallel rule. Accordingly, DHS is not required to provide public notice and an opportunity to comment before implementing the requirements under this final rule.

B. *Congressional Review Act*

Under the Congressional Review Act, a rule that is likely to result in an annual effect on the U.S. economy of \$100,000,000 or more is considered a major rule. *See* 5 U.S.C. 804. Generally, the effective date of a major rule must be the later of these two dates: 60 days after publication in the **Federal Register**, or 60 days after delivery of the report to Congress. *See* 5 U.S.C. 801(a)(3). DHS has concluded in section III.E that this rule is likely to result in an annual effect on the U.S. economy of \$100,000,000 or more. Therefore, it meets the criteria for a major rule. However, as provided in 5 U.S.C. 808, notwithstanding section 801, any rule which an agency for good cause finds (and incorporates the finding and a brief statement or reasons therefor) that notice and public procedure thereon are impractical, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. As discussed below, DHS finds for good cause that notice and public procedure thereon are impractical and contrary to the public interest.

This rule improves the security of issuing certain visas with longer validity periods to nonimmigrant aliens who hold a passport issued by an identified country. By requiring covered aliens to provide regular updated biographic and other information, DHS is better positioned to obtain updated information from these individuals and to

screen them before they embark on travel to the United States. Implementation of this rule as soon as possible is necessary to protect the national security of the United States and to prevent potential wrongdoers from exploiting visas with longer validity periods when they are issued to nonimmigrant aliens who hold a passport issued by a country identified by the Secretary. Therefore, DHS finds for good cause that notice and public comment are impractical and contrary to the public interest. Accordingly, the effective date pursuant to 5 U.S.C. 808 may be the date the agency determines and DHS has determined that the rule will take effect immediately upon publication, but the compliance date is November 29, 2016, or as set forth in section 215.24(c).

C. *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

D. *Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 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 \$100,000,000 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 proposed “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 \$100,000,000 (adjusted annually for inflation) in any one year. Section 203 of the UMRA, 2 U.S.C. 1533, which supplements section 204(a), provides 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 a meaningful and timely opportunity to provide input in the development of regulatory proposals. This rule would not impose a significant cost or uniquely affect small governments. The rule does have an effect on the private sector of \$100,000,000 or more. This impact is discussed in section III.E. entitled “Executive Order 13563 and Executive Order 12866.”

E. Executive Order 13563 (Improving Regulation and Regulatory Review) and Executive Order 12866 (Regulatory Planning and Review)

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Rules involving the foreign affairs function of the United States are exempt from the requirements of Executive Order 12866. As discussed above, EVUS advances the President’s foreign policy goals regarding the issuance of visas and directly involves relationships between the United States and its alien visitors, and as such, DHS is of the opinion that this rule is exempt from the requirements of Executive Orders 13563 and 12866. However, DHS has nevertheless reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Orders 13563 and 12866. DHS has prepared an economic analysis of the potential impacts of this final rule for public awareness. A summary of the analysis is presented below. The complete analysis can be found in the public docket for this rulemaking at www.regulations.gov.

1. Purpose of Rule

Visa validity periods can vary considerably, and some visas are valid for extended periods of up to ten years, and often for multiple entries. Although these longer-term visas allow individuals to travel repeatedly to the United States with greater ease and at lower cost, they do not enable the U.S. Government to receive regular information about the travelers that could impact whether they are admissible to the United States over the entire span of the visa. Because changes to biographical and eligibility elements could impact whether an individual may be admissible to the United States, it would be beneficial to have a mechanism for obtaining this updated

information in advance of the individual's travel to the United States when the Secretary, in consultation with the Secretary of State, determines that it is warranted with respect to a given country and nonimmigrant visa category. To maintain the needed levels of security when granting longer-term visas, this rule and a corresponding DOS rule will establish EVUS, an electronic mechanism for collecting biographical and other information from nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category. Nonimmigrant aliens subject to these regulations ("covered aliens") must periodically submit up-to-date biographical and other information through an EVUS enrollment request and receive an electronic notification of compliance indicating successful enrollment in advance of travel or admission to the United States. Failure to comply with EVUS will result in the automatic provisional revocation of the covered alien's visa, rendering the covered alien inadmissible to the United States on that visa and barring travel (by air and sea) on that visa until certain requirements are met. Air and sea carriers that offer travel to the United States will be responsible for verifying the EVUS compliance statuses of covered aliens, a condition of visa validity and admissibility, prior to boarding. CBP will continually screen covered aliens with EVUS notifications of compliance, thus providing more frequent enhanced traveler screening than short-term visas provide. This continual screening will ensure that aliens continue to meet U.S. security and admission requirements throughout the validity period of their EVUS notification of compliance and visa.

CBP and DOS anticipate that EVUS may eventually be expanded to include a number of countries and nonimmigrant visa categories. However, as announced in the notice being published in this issue of the **Federal Register**, the program will initially be limited to nonimmigrant aliens holding unrestricted, maximum validity B-1 (business visitor), B-2 (visitor for pleasure), or combination B-1/B-2 visas contained in a passport issued by the People's Republic of China. The following regulatory impact analysis summary and its corresponding full analysis present the costs and benefits of EVUS in two ways: (1) On a per-alien and per-carrier basis and (2) on an aggregate basis for the population of covered aliens initially required to enroll in EVUS—nonimmigrant aliens holding unrestricted, maximum validity B-1, B-2, or B-1/B-2 nonimmigrant visas contained in a passport issued by the PRC and who seek travel to the United States. When analyzing these impacts of the rule, CBP does so against a baseline in which DOS issues one-year B-1, B-2, and B-1/B-2 visas. CBP analyzes the impact of EVUS on a one-year basis because the United States and the PRC agreed to longer-length visa issuances on the condition of EVUS's forthcoming implementation. To the extent that DHS/CBP

and DOS expand EVUS to other countries and visa categories, the impacts of EVUS outlined in this analysis would be higher. CBP also anticipates that currently proposed U.S. legislation establishing an \$8.00 EVUS fee will pass in FY 2017.^{11 12} Such fee legislation would require covered aliens to pay an \$8.00 EVUS fee per enrollment request, while allowing CBP to cover its costs of providing and administering EVUS. CBP includes the EVUS fee revenue in this analysis as a proxy for CBP's expected costs of setting up and administering EVUS.

2. Population Affected by Rule

This EVUS rule will impact covered aliens, air and sea carriers, CBP, and the public.¹³ Due to a myriad of factors that affect travel, CBP used three different projection methods to estimate the population of covered aliens initially affected by this rule—PRC B–1, B–2, and B–1/B–2 visa holders—over a 10-year period of analysis spanning from fiscal years (FYs) 2017 to 2026. Under CBP's primary estimation method, EVUS enrollment requests will measure 56.9 million during the period of analysis, with 56.9 million successful enrollments and about 2,100 unsuccessful enrollments (see Table 1).

TABLE 1—PROJECTED NUMBERS OF EVUS ENROLLMENT REQUESTS
[In millions]

	Fiscal Year										Total
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	
Method 1 (Primary Estimate)—With Rule											
Total EVUS Requests.....	3.6	3.4	3.8	4.2	4.7	5.2	5.7	6.4	9.6	10.5	56.9
Successful.....	3.6	3.4	3.8	4.2	4.7	5.2	5.7	6.4	9.6	10.5	56.9
Unsuccessful....	0.0003	0.0001	0.0001	0.0001	0.0002	0.0002	0.0002	0.0002	0.0003	0.0003	0.0021
Method 2—With Rule											
Total EVUS Requests.....	3.5	3.3	3.6	3.9	4.3	4.7	5.1	5.5	8.5	9.2	51.6
Successful.....	3.5	3.3	3.6	3.9	4.3	4.7	5.1	5.5	8.5	9.2	51.6
Unsuccessful....	0.0003	0.0001	0.0001	0.0001	0.0001	0.0002	0.0002	0.0002	0.0003	0.0003	0.0019

¹¹ See Office of Management and Budget. *Budget of the United States Government, Fiscal Year 2017*. Available at <https://www.whitehouse.gov/sites/default/files/omb/budget/fy2017/assets/budget.pdf>. Accessed October 3, 2016.

¹² A detailed study on the EVUS fee calculation, which serves as the basis of the fee proposed in legislation, is available in the public docket for the EVUS rulemaking at www.regulations.gov.

¹³ For the purposes of this analysis, the public includes U.S. residents and visitors.

	Fiscal Year										Total
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	
Method 3—With Rule											
Total EVUS Requests.....	3.7	3.5	4.0	4.5	5.1	5.8	6.5	7.4	10.8	12.0	63.4
Successful.....	3.7	3.5	4.0	4.5	5.1	5.8	6.5	7.4	10.8	12.0	63.3
Unsuccessful....	0.0003	0.0001	0.0001	0.0002	0.0002	0.0002	0.0002	0.0002	0.0004	0.0004	0.0023

Notes: The estimates in this table are contingent upon CBP’s expectations of the population of covered aliens initially affected by this rule. Estimates may not sum to total due to rounding.

On account of this rule’s longer-term visas, PRC B–1, B–2, and B–1/B–2 visa holders will be able to renew their visas on a less frequent basis. In fact, based on coordination with DOS, CBP estimates that DOS will issue 8.5 million fewer B–1, B–2, and B–1/B–2 visas to nonimmigrant aliens holding passports issued by the PRC over the period of analysis with EVUS’s implementation according to CBP’s primary estimation method (see Table 2).

TABLE 2—PROJECTED NUMBERS OF PRC B–1, B–2, AND B–1/B–2 VISAS ISSUANCES WITH AND WITHOUT RULE
[In millions]

	Fiscal Year										Total
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	
Method 1 (Primary Estimate)											
Without Rule—Total PRC B–1, B–2, and B–1/B–2 Visa Issuances.....	2.4	2.8	3.4	4.0	4.7	5.6	6.7	8.0	9.5	11.3	58.5
With Rule—Total PRC B–1, B–2, and B–1/B–2 Visa Issuances.....	2.6	3.0	3.4	3.7	4.1	4.6	5.1	5.7	8.5	9.3	50.0
Difference.....	–0.2	–0.2	0.0	0.3	0.6	1.1	1.6	2.3	1.0	2.0	8.5
Method 2											
Without Rule—Total PRC B–1, B–2, and B–1/B–2 Visa Issuances.....	2.2	2.6	3.1	3.6	4.2	4.9	5.8	6.8	7.9	9.2	50.4
With Rule—Total PRC B–1, B–2, and B–1/B–2 Visa Issuances.....	2.6	2.9	3.2	3.5	3.8	4.1	4.5	4.9	7.6	8.2	45.3
Difference.....	–0.3	–0.3	–0.1	0.1	0.4	0.8	1.3	1.8	0.3	1.1	5.1
Method 3											
Without Rule—Total PRC B–1, B–2, and B–1/B–2 Visa Issuances.....	2.5	3.0	3.6	4.4	5.3	6.5	7.8	9.4	11.4	13.8	67.9
With Rule—Total PRC B–1, B–2, and B–1/B–2 Visa Issuances.....	2.6	3.1	3.6	4.0	4.5	5.1	5.8	6.6	9.6	10.7	55.7
Difference.....	–0.2	–0.1	0.1	0.4	0.8	1.3	2.0	2.9	1.8	3.1	12.2

Note: Estimates may not sum to total due to rounding.

Because this rule presents a new traveler eligibility check for U.S. travel, carriers that offer travel to the United States will need to

modify their APIS systems to allow for EVUS compliance verifications. Based on its similar carrier requirements to the ESTA Air and Sea Final Rule, CBP believes that this rule will initially require 80 carriers to modify their APIS systems to confirm their passengers' compliance with EVUS.¹⁴ In addition to covered aliens and carriers, this rule will affect CBP and the public. EVUS's continual traveler screening and advance inadmissibility determinations will strengthen national security and facilitate legitimate travel, providing important benefits to CBP and the public.

3. Costs of Rule

Covered aliens, CBP, and air and sea carriers will bear all the direct costs of this rule. As stated earlier, this EVUS rule will require covered aliens to periodically submit up-to-date biographical and other information through an EVUS enrollment request and receive a notification of compliance indicating successful enrollment in advance of travel or admission to the United States. Each EVUS enrollment request will take a covered alien an estimated 25 minutes to complete, at an opportunity cost of \$19.21 per request.¹⁵ CBP expects to sustain costs from providing and administering EVUS approximately equal to the \$8.00 EVUS fee that CBP anticipates covered aliens will pay beginning in FY 2017. CBP also anticipates that each covered alien will incur a foreign transaction fee of \$0.02 per enrollment request.¹⁶ Together, CBP and covered aliens will incur undis-

¹⁴ See 80 FR 32267 (June 8, 2015). This rule will apply to any carrier transporting PRC passport holders, which is likely to be the same as the carriers that transport VWP travelers. To the extent that the number of carriers affected by this rule is an overestimate, the costs of this rule would be lower.

¹⁵ CBP bases this calculation on the U.S. Department of Transportation's ("DOT") hourly time value of \$46.10 for all-purpose, intercity air travelers. CBP believes that this DOT wage rate provides the best available time value for covered aliens initially affected by this rule and those affected if EVUS requirements are expanded to include a number of countries and visa categories. CBP posits that those traveling to the United States for temporary leisure or business purposes likely have higher time values and disposable income closer to the DOT rate than reflected by the average wage rate of individuals in their country. CBP acknowledges that this rate may not be entirely representative of the initial population affected by this rule. To the extent that the DOT rate is an overestimate, the costs and benefits of this rule would be lower. CBP adjusted the DOT estimate reported in 2013 U.S. dollars to 2017 U.S. dollars by applying a 1.0 percent annual growth rate to the estimate, as recommended by DOT's value of travel time guidance. Source: U.S. Department of Transportation, Office of Transportation Policy. *The Value of Travel Time Savings: Departmental Guidance for Conducting Economic Evaluations Revision 2 (2015 Update)*. "Table 4 (Revision 2—corrected): Recommended Hourly Values of Travel Time Savings for All-Purpose, Intercity Air and High-Speed Rail Travel" (Apr. 29, 2015), available at <http://www.transportation.gov/sites/dot.gov/files/docs/Revised%20Departmental%20Guidance%20on%20Valuation%20of%20Travel%20Time%20in%20Economic%20Analysis.pdf>.

¹⁶ This \$0.02 foreign transaction fee is based on the fee charged by Unionpay, China's largest bank card provider.

counted opportunity costs and fee or government administration costs totaling \$27.23 per EVUS enrollment request, which will translate to an overall undiscounted cost to the population of covered aliens initially affected by this rule of \$1.6 billion between FY 2017 and FY 2026 under CBP's primary estimation method.

CBP estimates that air and sea carriers will each spend an average of \$1.35 million during this rule's first year of implementation to test and modify their APIS systems to allow for EVUS compliance checks, and \$150,000 in subsequent years on system operation and maintenance related to EVUS verifications. During the 10-year period of analysis, these costs will total \$2.7 million (undiscounted). Using the number of carriers initially affected by this rule and their estimated EVUS-related costs, the overall undiscounted cost of this rule to carriers will measure \$216.0 million over the entire period of analysis. To the extent that carriers use their existing systems for EVUS compliance verifications, the cost of this rule to carriers will be lower.

Collectively, the undiscounted costs of this rule will total \$1.8 billion under CBP's primary estimation method. In present value terms, the overall cost will equal \$1.3 billion to \$1.5 billion, while its annualized cost will measure \$168.9 million to \$173.1 million (using 7 and 3 percent discount rates, respectively; *see* Table 3). These costs vary according to the projection method and discount rate applied.

TABLE 3—TOTAL MONETIZED PRESENT VALUE AND ANNUALIZED COSTS OF RULE, FY 2017–FY 2026
[In millions; 2017 U.S. dollars]

	3% Discount rate		7% Discount rate	
	Present value cost	Annualized cost	Present value cost	Annualized cost
Method 1 (Primary Estimate)—With Rule.....	\$1,520.9	\$173.1	\$1,269.7	\$168.9
Method 2—With Rule.....	1,401.7	159.5	1,176.1	156.5
Method 3—With Rule.....	1,665.0	189.5	1,383.0	184.0

Note: The estimates in this table are contingent upon CBP's expectations of the population of covered aliens initially affected by this rule and the discount rates applied.

4. Benefits of Rule

This rule will offer benefits to covered aliens, the public, air and sea carriers, and CBP, with covered aliens enjoying the most monetized benefits from this rule. The lengthened visa validity periods negotiated based on implementation of this rule will allow PRC B-1, B-2, and B-1/B-2 visa holders to renew their visas on a less frequent basis in the future, saving covered aliens \$430.50 per visa renewal foregone

and a total of \$3.6 billion (undiscounted) over the period of analysis according to this rule's decrease in visa issuances under CBP's primary estimation method (see Table 2).

Through its continual traveler screening and advance inadmissibility determinations, this rule will strengthen national security and facilitate legitimate travel, thereby providing important benefits to the public. Air and sea carriers and CBP will also enjoy benefits from EVUS's advance review of passengers to help avoid problems at ports of entry that could impose burdens on carriers. Each carrier will save an estimated \$1,500 in avoided return trip costs per unsuccessful EVUS enrollment.¹⁷ Such savings will total \$3.1 million (undiscounted) over the entire period of analysis based on the number of unsuccessful EVUS enrollments under CBP's primary estimation method (see Table 1). With an estimated 80 carriers initially affected by this rule, these benefits will average nearly \$39,000 per carrier. For each inadmissible covered alien arrival avoided, CBP will save \$170.94 in avoided processing and inspection time costs. Based on these processing and inspection time cost savings and the total number of potentially inadmissible covered alien arrivals avoided through the EVUS enrollment process, under CBP's primary estimation method (see Table 1—Unsuccessful EVUS Requests), CBP will save between \$325,000 and \$392,000 (undiscounted) with this rule from FY 2017 to FY 2026. Note that these are not budgetary savings, they are savings that CBP will dedicate to other agency mission areas, such as improving security and expediting the processing of other travelers.

Altogether, the undiscounted monetized benefit of this rule will total \$3.7 billion under CBP's primary estimation method. As Table 4 shows, the total benefit of this rule under this method will measure \$2.3 billion to \$3.0 billion in present value terms over the period of analysis and between \$299.6 million and \$336.3 million when annualized (using 7 and 3 percent discount rates, respectively). EVUS will also strengthen national security and facilitate legitimate travel. These benefits vary according to the projection method and discount rate applied.

¹⁷ This cost includes the airfare and any lodging transportation out of the United States. See 80 FR and meal expenses incurred while the alien awaits 32267 (June 8, 2015).

TABLE 4—TOTAL MONETIZED PRESENT VALUE AND ANNUALIZED BENEFITS OF RULE, FY 2017–FY 2026
[In millions; 2017 U.S. dollars]

	3% Discount rate		7% Discount rate	
	Present value benefit	Annualized benefit	Present value benefit	Annualized benefit
Method 1 (Primary Estimate)—With Rule.....	\$2,955.1	\$336.3	\$2,251.5	\$299.6
Method 2—With Rule.....	1,749.3	199.1	1,305.8	173.8
Method 3—With Rule.....	4,254.3	484.2	3,260.4	433.8

Note: The estimates in this table are contingent upon CBP's expectations of the population of covered aliens initially affected by this rule and the discount rates applied.

5. Net Impact of Rule

Table 5 summarizes the monetized and non-monetized costs and benefits of the EVUS rule, covered aliens, the public, air and sea carriers, and CBP. As shown, the total monetized present value net benefit of this rule over ten years is \$981.8 million to \$1.4 billion, while its annualized net benefit totals \$130.6 million to \$163.2 million according to CBP's primary estimation method (using 7 and 3 percent discount rates, respectively). In addition to these benefits, the rule will strengthen national security and facilitate legitimate travel through continual traveler screening and advance inadmissibility determinations. These impacts vary according to the projection method and discount rate applied.

TABLE 5—NET BENEFIT OF RULE, FY 2017–FY 2026
[Monetized values in millions; 2017 U.S. dollars]

	3% Discount rate		7% Discount rate	
	Present value	Annualized	Present value	Annualized
Method 1 (Primary Estimate)—With Rule:				
<i>Total Cost:</i>				
Monetized	\$1,520.9	\$173.1	\$1,269.7	\$168.9.
Non-Monetized, but Quantified.				
Non-Monetized and Non-Quantified.				
<i>Total Benefit:</i>				
Monetized	\$2,955.1	\$336.3	\$2,251.5	\$299.6.
Non-Monetized, but Quantified.				

	3% Discount rate		7% Discount rate	
	Present value	Annualized	Present value	Annualized
Non-Monetized and Non-Quantified	Strengthened national security and legitimate travel facilitation		Strengthened national security and legitimate travel facilitation.	
<i>Total Net Benefit:</i>				
Monetized	\$1,434.2	\$163.2	\$981.8	\$130.6.
Non-Monetized, but Quantified.				
Non-Monetized and Non-Quantified	Strengthened national security and legitimate travel facilitation		Strengthened national security and legitimate travel facilitation.	
Method 2—With Rule:				
<i>Total Cost:</i>				
Monetized	\$1,401.7	\$159.5	\$1,176.1	\$156.5.
Non-Monetized, but Quantified.				
Non-Monetized and Non-Quantified.				
<i>Total Benefit:</i>				
Monetized	\$1,749.3	\$199.1	\$1,305.8	\$173.8.
Non-Monetized, but Quantified.				
Non-Monetized and Non-Quantified	Strengthened national security and legitimate travel facilitation		Strengthened national security and legitimate travel facilitation.	
<i>Total Net Benefit:</i>				
Monetized	\$347.6	\$39.6	\$129.7	\$17.3.
Non-Monetized, but Quantified.				
Non-Monetized and Non-Quantified	Strengthened national security and legitimate travel facilitation		Strengthened national security and legitimate travel facilitation.	
Method 3—With Rule:				
<i>Total Cost:</i>				
Monetized	\$1,665.0	\$189.5	\$1,383.0	\$184.0.
Non-Monetized, but Quantified.				
Non-Monetized and Non-Quantified.				
<i>Total Benefit:</i>				
Monetized	\$4,254.3	\$484.2	\$3,260.4	\$433.8.
Non-Monetized, but Quantified.				

	3% Discount rate		7% Discount rate	
	Present value	Annualized	Present value	Annualized
Non-Monetized and Non-Quantified	Strengthened national security and legitimate travel facilitation		Strengthened national security and legitimate travel facilitation.	
<i>Total Net Benefit:</i>				
Monetized	\$2,589.3	\$294.7	\$1,877.4	\$249.8.
Non-Monetized, but Quantified.				
Non-Monetized	Strengthened national security and legitimate travel facilitation		Strengthened national security and legitimate travel facilitation.	
and Non-Quantified				

Notes: The estimates in this table are contingent upon CBP’s expectations of the population of covered aliens initially affected by this rule and the discount rates applied. Estimates may not sum to total due to rounding.

F. Executive Order 13132

This rule will 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 section 6 of Executive Order 13132, DHS has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988. Executive Order 12988 requires agencies to conduct reviews on civil justice and litigation impact issues before proposing legislation or issuing proposed regulations. The order requires agencies to exert reasonable efforts to ensure that the regulation identifies clearly preemptive effects, effects on existing federal laws or regulations, identifies any retroactive effects of the regulation, 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 the other matters addressed in the Executive Order.

H. Paperwork Reduction Act

The collection of information in this document was submitted to OMB for review in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507). Approval and assigned OMB control number are pending. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless it displays a valid control number assigned by OMB. These regulations provide for a new collection of information for biographic and other information from nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category. Nonimmigrant aliens subject to this regulation will be required to periodically enroll in EVUS and obtain a valid notification of compliance prior to travel to the United States. DHS will use the information collected through EVUS to identify subjects of potential interest before they depart for the United States, thereby increasing security and reducing traveler delays upon arrival at U.S. ports of entry. EVUS will aid DHS in facilitating legitimate travel while also ensuring national security.

The proposed information collection requirements will result in the following estimated burden hours:

Estimated Number of Annual Respondents: 3,595,904.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Responses: 3,595,904.

Estimated Time per Response: 25 minutes (0.417 hours).

Estimated Total Annual Burden Hours: 1,499,492.

I. Privacy

DHS will ensure that all Privacy Act requirements and policies are adhered to in the implementation of this rule and has issued a Privacy Impact Assessment that fully outlines processes that will ensure compliance with Privacy Act protections. This Privacy Impact Assessment is posted on the DHS Web site at <https://www.dhs.gov/publication/dhscbppia-033-electronic-visa-update-system-evus>. DHS has also prepared a System of Records Notice (SORN) which was published in the **Federal Register** on September 1, 2016 (81 FR 60371).

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR part 215

Administrative practice and procedure, Aliens, Travel restrictions.

8 CFR Part 273

Administrative practice and procedure, Air carriers, Aliens, Maritime carriers, Penalties.

Amendments to the Regulations

For the reasons stated in the preamble, we are amending 8 CFR parts 212, 214, 215, and 273 as set forth below.

PART 212—DOCUMENTARY REQUIREMENTS: NON-IMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 1. The general authority citation for part 212 is revised to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); 8 CFR part 2.

* * * * *

§ 212.1 [Amended]

■ 2. In § 212.1, in the introductory text, after the word “visa” add the words “that meets the requirements of part 215, subpart B, of this chapter, if applicable,” and remove the words “, valid for the period set forth in section 212(a)(26) of the Act,” after the word “passport”.

PART 214—NONIMMIGRANT CLASSES

■ 3. The authority citation for part 214 is revised to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Public Law 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

§ 214.1 [Amended]

■ 4. In § 214.1, paragraph (a)(3)(i), third sentence, after the words “or of this chapter” add the words “, as well as compliance with part 215, subpart B, of this chapter, if applicable”.

PART 215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES; ELECTRONIC VISA UPDATE SYSTEM

■ 5. The authority citation for part 215 is revised to read as follows:

Authority: 6 U.S.C. 202(4), 236; 8 U.S.C. 1101, 1103, 1104, 1184, 1185 (pursuant to Executive Order 13323 (Dec. 30, 2003)), 1365a note, 1379, 1731–32; and 8 CFR part 2.

■ 6. Revise the heading for part 215 to read as set forth above.

§§ 215.1 through 215.9 [Designated as Subpart A]

■ 7. Designate §§ 215.1 through 215.9 as subpart A and add a heading for subpart A to read as follows:

Subpart A—Controls of Aliens Departing from the United States

§ 215.1 [Amended]

■ 8. In § 215.1, amend the introductory text by removing the word “part” and adding in its place the word “subpart”.

■ 9. Add subpart B to read as follows:

Subpart B—Electronic Visa Update System

Sec.

215.21 Purpose.

215.22 Applicability.

215.23 Definitions.

215.24 Electronic Visa Update System (EVUS) requirements.

§ 215.21 Purpose.

The purpose of this subpart is to establish an electronic visa update system for nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category.

§ 215.22 Applicability.

This subpart is applicable to nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category. The Secretary, in the Secretary’s discretion and in consultation with the Secretary of State, may identify

countries and designate nonimmigrant visa categories for purposes of this subpart. Notice of the identified countries and designated nonimmigrant visa categories will be published in the **Federal Register**.

§ 215.23 Definitions.

The following definitions apply for purposes of this subpart.

(a) *Covered alien*. A covered alien is a nonimmigrant alien who holds a passport issued by an EVUS country (as defined in paragraph (c) of this section) containing a U.S. nonimmigrant visa of a designated category.

(b) *Electronic Visa Update System (EVUS)*. The Electronic Visa Update System (EVUS) is the electronic system used by a covered alien to provide required information to DHS after the receipt of his or her visa of a designated category.

(c) *EVUS country*. An EVUS country is a country that has been identified for inclusion in EVUS, through publication of a notice in the **Federal Register**, by the Secretary after consultation with the Secretary of State.

(d) *Notification of compliance*. A notification of compliance is a verification from CBP that a covered alien has successfully enrolled in EVUS. A notification of compliance is a positive determination that an alien's visa is:

(1) Not automatically provisionally revoked pursuant to 22 CFR 41.122(b)(3); and

(2) Is considered valid for travel to the United States as of the time of notification.

§ 215.24 Electronic Visa Update System (EVUS) requirements.

(a) *Enrollment required*. Each covered alien must initially enroll in EVUS, in accordance with paragraph (c)(1) of this section, by providing the information set forth in paragraph (d) of this section electronically through EVUS. Each covered alien who intends to travel to the United States must have a valid notification of compliance as set forth in paragraph (c)(2) of this section. Upon each successful enrollment or re-enrollment, CBP will issue a notification of compliance.

(b) *Validity period of notification of compliance*—(1) *General validity period*. A notification of compliance will generally be valid for a period of two years from the date the notification of compliance is issued, except as provided in paragraph (b)(2) or (3) of this section.

(2) *Exception*. If the nonimmigrant alien's passport or nonimmigrant visa will expire in less than two years from the date the notification of compliance is issued, the notification will be valid until the date of expiration of the passport or nonimmigrant visa, whichever is sooner.

(3) *Change in validity period of notification of compliance*. The Secretary, in consultation with the Secretary of State, may increase

or decrease the notification of compliance validity period otherwise authorized by paragraph (b)(1) of this section for an EVUS country. Any such increase or decrease would apply to subsequently issued notifications of compliance. Any changes to the validity period will be done through rulemaking. The EVUS Web site will be updated to reflect the specific duration of notification of compliance validity periods for each EVUS country.

(4) *Relation to nonimmigrant visa validity.* A notification of compliance is not valid unless the alien's nonimmigrant visa also is valid.

(c) *Schedule for EVUS enrollment*—(1) *Initial EVUS enrollment*—(i) *Visas received prior to November 29, 2016.* Each covered alien who received his or her nonimmigrant visa of a designated category prior to November 29, 2016 must initially enroll in EVUS by December 14, 2016, unless the covered alien intends to travel to the United States before that date, in which case the requirements for EVUS enrollment outlined in paragraph (c)(2) of this section apply.

(ii) *Visas received on or after November 29, 2016.* Each covered alien who received his or her nonimmigrant visa of a designated category on or after November 29, 2016 must initially enroll in EVUS upon receipt of such visa.

(2) *EVUS re-enrollment requirements prior to travel to the United States*—(i) *Individuals arriving at air or sea ports of entry.* Each covered alien who intends to travel by air or sea to the United States on a nonimmigrant visa of a designated category must have a notification of compliance that is valid, as described in paragraph (b) of this section, prior to boarding a carrier destined for travel to the United States through the date when the covered alien will arrive at a U.S. port of entry.

(ii) *Individuals arriving at land ports of entry.* Each covered alien who intends to travel by land to the United States on a nonimmigrant visa of a designated category must have a notification of compliance that is valid, as described in paragraph (b) of this section, through the date of application for admission to the United States.

(d) *Required EVUS enrollment elements.* DHS will collect such information from covered aliens as DHS deems necessary in its discretion, after consultation with the Department of State. The required information will be reflected in the EVUS enrollment questions.

(e) *EVUS re-enrollment required.* Each covered alien must re-enroll in EVUS and obtain a new notification of compliance from CBP if any of the following occurs:

(1) The alien is issued a new passport or new nonimmigrant visa of a designated category;

(2) The alien changes his or her name;

(3) The alien changes his or her gender;

(4) There is any change to the alien's country of citizenship or nationality, including becoming a dual national; or

(5) The circumstances underlying the alien's previous responses to any of the EVUS enrollment questions requiring a "yes" or "no" response (eligibility questions) have changed.

(f) *Limitation.* A notification of compliance is not a determination that the covered alien is admissible to the United States. A determination of admissibility is made after an applicant for admission is inspected by a CBP officer at a U.S. port of entry.

(g) *Noncompliance, expiration of notification of compliance, and change in EVUS status resulting in rescission of notification of compliance—*(1) *Initial EVUS enrollment.* Failure to initially enroll in EVUS in accordance with paragraph (c)(1) of this section will result in the automatic provisional revocation of the covered alien's nonimmigrant visa pursuant to 22 CFR 41.122(b)(3), pending enrollment.

(2) *Expiration of notification of compliance.* Upon expiration of a notification of compliance, as described in paragraph (b) of this section, the covered alien's nonimmigrant visa will be automatically provisionally revoked pursuant to 22 CFR 41.122(b)(3), pending re-enrollment. To prevent the automatic provisional revocation of his or her nonimmigrant visa due to the expiration of the notification of compliance, each covered alien must re-enroll in EVUS prior to such expiration.

(3) *Unsuccessful EVUS enrollment.* If a covered alien's EVUS enrollment or re-enrollment is unsuccessful, his or her nonimmigrant visa will be automatically provisionally revoked pursuant to 22 CFR 41.122(b)(3), pending successful enrollment or re-enrollment.

(4) *Change in EVUS status after receipt of a notification of compliance.* In the event that irreconcilable errors are discovered after the issuance of a notification of compliance, or other circumstances occur including but not limited to a change in the validity period of the notification of compliance as provided in paragraph (b) of this section, CBP may rescind the notification of compliance. If a covered alien's notification of compliance is rescinded, his or her nonimmigrant visa will be automatically provisionally revoked pursuant to 22 CFR 41.122(b)(3), pending successful enrollment. CBP will attempt to provide notification of a change in EVUS status to the covered alien through the provided email address.

(h) *Reversal of an automatically provisionally revoked visa and steps to address an unsuccessful EVUS enrollment or rescission of a notification of compliance—*(1) *Reversal of an automatically provisionally revoked visa.* If a covered alien's nonimmigrant visa has been automatically provisionally revoked as described in paragraph (g)(1) or (2) of this section, the revocation of the alien's visa will be automatically reversed, following compliance with EVUS, if the visa remains valid and was not also revoked on other grounds. After a reversal of the revocation the visa will immediately resume the validity provided for on its face, pursuant to 22 CFR 41.122(b)(3), after the alien enrolls in EVUS and receives a notification of compliance.

(2) *Unsuccessful EVUS enrollment.* If a covered alien's EVUS enrollment is unsuccessful per paragraph (g)(3) of this section, the covered alien may re-attempt enrollment or contact CBP.

(3) *Rescission of notification of compliance.* If a covered alien's nonimmigrant visa has been automatically provisionally revoked as described in paragraph (g)(4) of this section, the covered alien may re-attempt enrollment or contact CBP.

PART 273—CARRIER RESPONSIBILITIES AT FOREIGN PORTS OF EMBARKATION; REDUCING, REFUNDING, OR WAIVING FINES UNDER SECTION 273 OF THE ACT

■ 10. The authority citation for part 273 continues to read as follows:

Authority: 8 U.S.C. 1103, 1323; 8 CFR part 2.

§ 273.3 [Amended]

■ 11. Amend § 273.3 as follows:

■ a. In paragraph (b)(1)(ii), remove the word “and”;

■ b. In paragraph (b)(1)(iii), remove the period at the end of the paragraph and add in its place “; and”; and

■ c. Add paragraphs (b)(1)(iv) and (b)(4). The additions read as follows:

§ 273.3 Screening procedures.

* * * * *

(b) * * *

(1) * * *

(iv) Passengers described in part 215, subpart B, of this chapter have complied with EVUS requirements as appropriate.

* * * * *

(4) *Transmitting visa numbers.* Carriers must transmit to U.S. Customs and Border Protection the visa number for any passenger who requires a visa. The visa number must be transmitted using the Advance Passenger Information System, consistent with the procedural requirements for transmission of electronic passenger manifests in 19 CFR parts 4 (vessel) and 122 (aircraft).

JEH CHARLES JOHNSON,
Secretary.

**PROPOSED REVOCATION OF THREE RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF PLASTIC WATER
DISPENSERS**

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

ACTION: Notice of proposed revocation of three ruling letters and revocation of treatment relating to the tariff classification of plastic water dispensers.

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 U.S. Customs and Border Protection (CBP) intends to revoke three ruling letters concerning tariff classification of plastic water dispensers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATES: Comments must be received on or before December 9, 2016.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Nicholai Diamond, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0292.

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) (“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 public 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 to 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 is proposing to revoke three ruling letters pertaining to the tariff classification of plastic water dispensers. Although in this notice, CBP is specifically referring to Headquarters Ruling Letters (“HQ”) H044957, dated August 2, 2011 (Attachment A), HQ H044959, dated August 2, 2011 (Attachment B), and HQ H058924, dated August 2, 2011 (Attachment C), 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 three 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 the 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 is proposing 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 HQ H044957, HQ H044959, and HQ H058924, CBP classified various plastic water dispensers in heading 3926, HTSUS, specifically in subheading 3926.90.99, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to

3914: Other: Other.” CBP has reviewed HQ H044957, HQ H044959, and HQ H058924 and has determined the ruling letters to be in error. It is now CBP’s position that the plastic water dispensers are properly classified, by operation of GRI 1, in heading 3924, HTSUS, specifically in subheading 3924.10.40, HTSUS, which provides for “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Tableware and kitchenware: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke HQ H044957, HQ H044959, and HQ H058924 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H278188, set forth as Attachment D to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing 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: September 13, 2016

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ H044957

August 2, 2011

CLA-2 OT:RR:CTF:TCM H044957 JRB

CATEGORY: Classification

TARIFF NO.: 3926.90.99

Ms. LESA R. HUBBARD
J.C. PENNEY PURCHASING CORPORATION
P.O. Box 10001
DALLAS, TEXAS 75301-0001

RE: Revocation of NY I82366; Classification of a “mini” water dispenser

DEAR Ms. HUBBARD:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) I82366, issued to you on July 5, 2002, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a “mini” water dispenser. The merchandise was classified under heading 8481, HTSUS, which provides for “Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof.” We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY I82366.

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 June 9, 2010, in the *Customs Bulletin*, Volume 44, No. 24. No comments were received in response to this notice.

FACTS:

The merchandise at issue was described as follows in NY I82366:

[A] mini dispenser...comprised of a dispensing base and an inverted water bottle that essentially replicates in miniature a typical bottled water dispenser. You indicate that the dispenser is designed to hold and dispense the eight, eight ounce glasses of water that

are generally recommended for daily drinking. Both the base and bottle are constructed of plastic and are imported shrink-wrapped and packaged together for retail sale. The base incorporates a hand-operated valve with a spout to control the flow of water from the storage bottle.

ISSUE:

Whether the water bottle dispenser is classified in heading 8481, HTSUS, as a valve or heading 3926, HTSUS, as an other article of plastic.

LAW AND ANALYSIS:

Classification of goods under the HTSUS 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 GRIs may then be applied.

The relevant HTSUS provisions are as follows:

- 3926: Other articles of plastics and articles of other materials of headings 3901 to 3914:
- 8481: Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof

The merchandise at issue consists of a plastic water bottle of heading 3926, HTSUS, and a dispensing base with a hand operated valve with a spout, i.e., a tap of heading 8481, HTSUS¹. When goods are, *prima facie*, classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides, in relevant part, as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or

to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

* * * *

In this case, headings 3926 and 8481, HTSUS, each refer to only part of the merchandise. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b) because they are *prima facie* classifiable in more than one heading, are put for the specific activity of dispensing water and are put up for sale without repacking. *See* EN X to GRI 3(b). *Infra*.

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character.

In relevant part, the ENs² to GRI 3(b) state:

(VII) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

¹ The dispensing base with a tap is a composite good because it is “made up of different components,” which are “adapted one to the other and [be] mutually complementary and . . . together . . . form a whole which would not normally be offered for sale in separate parts.” *See* EN IX to GRI 3(b).

² 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 ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP’s practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

- (VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.
- (IX) For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole, but also those with separable components, provided these components are adapted one to the other and are mutually complementary, and that together they form a whole which would not normally be offered for sale in separate parts... As a general rule, the components of these composite goods are put up in a common packing.
- (X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:
- (a) consist of at least two different articles which are, prima facie, classifiable in different headings . . . ;
 - (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
 - (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

* * *

There have been several court decisions on “essential character” for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. See *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), “the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” See also *Conair Corporation v. United States*, 29 Ct. Int’l Trade, 888, 895 (citations omitted) (2005), (discussing “the concept of ‘essential character’ found in GRI 3(b)”).

In this instance, the water bottle performs the necessary role of holding the water. The tap distributes the water but is dependent upon the bottle to provide the water to dispense and will only be used when the consumer dispenses the water. In contrast, the water bottle continuously stores the water. As such, the essential character of the set is provided by the water bottle.

HOLDING:

By application of GRI 3(b), the “mini” water dispenser is classified in heading 3926, HTSUS. It is provided for in subheading 3926.90.99, HTSUS, which provides for: “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The column one, general rate of duty is 5.3% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the world wide web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY I82366, dated July 5, 2002, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H044959

August 2, 2011

CLA-2 OT:RR:CTF:TCM H044959 JRB

CATEGORY: Classification

TARIFF NO.: 3926.90.99

Ms. LORIANNE ALDINGER
RITE AID CORPORATION
P.O. Box 3165
HARRISBURG, PA 17105

RE: Revocation of NY L89010; Classification of a Penguin Water Dispenser

DEAR Ms. ALDINGER:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) L89010, issued to you on December 12, 2005, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a Penguin Water Dispenser. The merchandise was classified under heading 8481, HTSUS, which provides for “Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof.” We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY L89010.

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 June 9, 2010, in the *Customs Bulletin*, Volume 44, No. 24. No comments were received in response to this notice.

FACTS:

The merchandise at issue was described as follows in NY L89010:

The dispenser is comprised of a dispensing base, which is in the shape of a penguin, and an inverted water bottle. Both the base and bottle are constructed of plastic and are imported packaged together for retail sale. The base incorporates a hand-operated valve with a spout to control the flow of water from the storage bottle.

ISSUE:

Whether the Penguin Water Dispenser is classified in heading 8481, HTSUS, as a valve or heading 3926, HTSUS, as an other article of plastic.

LAW AND ANALYSIS:

Classification of goods under the HTSUS 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 GRIs may then be applied.

The relevant HTSUS provisions are as follows:

- 3926: Other articles of plastics and articles of other materials of headings 3901 to 3914:
- 8481: Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof

The merchandise at issue consists of a plastic water bottle and stand of heading 3926, HTSUS, and a tap, i.e., a valve with a spout of heading 8481, HTSUS. When goods are, *prima facie*, classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides, in relevant part, as follows:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

* * * *

In this case, headings 3926 and 8481, HTSUS, each refer to only part of the merchandise. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b) as a set because they are *prima facie* classifiable in more than one heading, are used for the specific activity of dispensing water and are put up for sale without repacking. *See* EN X to GRI 3(b). *Infra*.

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character.

In relevant part, the ENs¹ to GRI 3(b) state:

- (IX) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
- (X) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

¹ 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 ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

- (X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:
- (a) consist of at least two different articles which are, prima facie, classifiable in different headings . . . ;
 - (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
 - (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

* * *

There have been several court decisions on “essential character” for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *See Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), “the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *See also Conair Corporation v. United States*, 29 Ct. Int’l Trade, 888, 895 (citations omitted) (2005), (discussing “the concept of ‘essential character’ found in GRI 3(b)”).

In this instance, the water bottle performs the necessary role of holding the water. The valve distributes the water but is dependent upon the bottle to provide the water and will only be used when the consumer dispenses the water. In contrast, the water bottle continuously stores the water. As such, the essential character is provided by the water bottle.

HOLDING:

By application of GRI 3(b), the Penguin Water Dispenser is classified in heading 3926, HTSUS. It is provided for in subheading 3926.90.99, HTSUS, which provides for: “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The column one, general rate of duty is 5.3% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the world wide web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY L89010, dated December 12, 2005, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT C]

HQ H058924

August 2, 2011

CLA-2 OT:RR:CTF:TCM H058924 JRB

CATEGORY: Classification

TARIFF NO.: 3926.90.99

MR. TODD W. STUMPF
STONEPATH LOGISTICS
1930 6TH AVENUE
SUITE 401
SEATTLE, WA 98134

RE: Revocation of NY R04997; Classification of a water bottle dispenser

DEAR MR. STUMPF:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) R04997, issued to you on behalf of your client Pacific Direct, on October 26, 2006, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a water dispenser. The merchandise was classified under heading 8481, HTSUS, which provides for “Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof.” We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY R04997.

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 June 9, 2010, in the *Customs Bulletin*, Volume 44, No. 24. No comments were received in response to this notice.

FACTS:

The merchandise at issue was described as follows in NY R04997:

[A] water dispenser ... comprised of a plastic water bottle and a plastic stand. The stand incorporates a hand-operated valve to control the flow of water from the bottle.

ISSUE:

Whether the water bottle dispenser is classified in heading 8481, HTSUS, as a valve or heading 3926, HTSUS, as an other article of plastic.

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 GRIs may then be applied.

The relevant HTSUS provisions are as follows:

- 3926: Other articles of plastics and articles of other materials of headings 3901 to 3914:
- 8481: Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof

The merchandise at issue consists of a plastic water bottle and stand of heading 3926, HTSUS, and a stand incorporating a hand operated valve (a tap) of heading 8481, HTSUS. When goods are, *prima facie*, classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides, in relevant part, as follows:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

* * * *

In this case, headings 3926 and 8481, HTSUS, each refer to only part of the merchandise. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b) as set because they are *prima facie* classifiable in more than one heading, are used for the specific activity of dispensing water and are put up for sale without repacking. *See* EN X to GRI 3(b). *Infra*.

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character.

In relevant part, the ENs¹ to GRI 3(b) state:

- (XI) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
- (XII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.
- (X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:

¹ 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 ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP’s practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

- (a) consist of at least two different articles which are, prima facie, classifiable in different headings . . . ;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

* * *

There have been several court decisions on “essential character” for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *See Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), “the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *See also Conair Corporation v. United States*, 29 Ct. Int’l Trade, 888, 895 (citations omitted) (2005), (discussing “the concept of ‘essential character’ found in GRI 3(b)”).

In this instance, the water bottle performs the necessary role of holding the water and provides the greatest bulk. The valve distributes the water but is dependent upon the bottle to provide the water and will only be used when the consumer dispenses the water. In contrast, the water bottle continuously stores the water. As such, the essential character is provided by the water bottle.

HOLDING:

By application of GRI 3(b), the water bottle dispenser is classified in heading 3926, HTSUS. It is provided for in subheading 3926.90.99, HTSUS, which provides for: “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The column one, general rate of duty is 5.3% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the world wide web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY R04997, dated October 26, 2006, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT D]

HQ H278188
CLA-2 OT:RR:CTF:TCM H278188 NCD
CATEGORY: Classification
TARIFF NO.: 3924.10.4000

Ms. LESA R. HUBBARD
J.C. PENNEY PURCHASING CORPORATION
P.O. BOX 10001
DALLAS, TEXAS 75301-0001

RE: Revocation of HQ H044957, HQ H044959, and HQ H058924; Classification of plastic water dispensers

DEAR Ms. HUBBARD:

This is in reference to Headquarters Ruling Letter (HQ) HQ H044957, issued to you by U.S. Customs and Border Protection (CBP) on August 2, 2011. We have reviewed HQ H044957, which involved classification of a “mini” water dispenser under the Harmonized Tariff Schedule of the United States (HTSUS), and determined that it is incorrect. For the reasons set forth below, we are revoking that ruling.

We have additionally reviewed HQ H044959 and HQ H058924, both dated August 2, 2011, which similarly involved classification of plastic water dispensers under the HTSUS. As with HQ H044957, we have determined that HQ H044959 and HQ H058924 are incorrect and, for the reasons set forth below, are revoking those rulings.¹

FACTS:

HQ H044957, which revoked NY I82366, dated July 5, 2002, provides the following description of the “mini” water dispenser at issue:

[A] mini dispenser...comprised of a dispensing base and an inverted water bottle that essentially replicates in miniature a typical bottled water dispenser. You indicate that the dispenser is designed to hold and dispense the eight, eight ounce glasses of water that are generally recommended for daily drinking. Both the base and bottle are constructed of plastic and are imported shrink-wrapped and packaged together for retail sale. The base incorporates a hand-operated valve with a spout to control the flow of water from the storage bottle.

In HQ H044959, which revoked NY L89010, dated December 12, 2005, the subject Penguin Water Dispenser was described as follows:

The dispenser is comprised of a dispensing base, which is in the shape of a penguin, and an inverted water bottle. Both the base and bottle are constructed of plastic and are imported packaged together for retail sale.

¹ We also considered revoking HQ H044956 and HQ H044958, both dated August 2, 2011, in which, respectively, a World Globe Liquor Dispenser consisting of a plastic globe-shaped dispenser with a metal stand and a water tank set consisting of a plastic refillable water bottle, ceramic dispenser pot, and metal stand were classified in heading 3926, HTSUS. However, because the World Globe Liquor Dispenser and water tank set both included items made up of materials other than plastic, they could not be classified in heading 3924, HTSUS, by application of GRI 1. They were therefore appropriately classified in heading 3926, HTSUS, insofar as their plastic water bottle components imparted their essential characters pursuant to GRI 3(b). See HQ H967002, dated February 18, 2005 (classifying plastic sports water bottle in heading 3926).

The base incorporates a hand-operated valve with a spout to control the flow of water from the storage bottle.

HQ H058924, which revoked NY R04997, dated October 26, 2006, provides the following description of the water bottle dispenser at issue:

[A] water dispenser ... comprised of a plastic water bottle and a plastic stand. The stand incorporates a hand-operated valve to control the flow of water from the bottle.

In HQ H044957, HQ H044959, and HQ H058924 alike, the various beverage dispensers at issue were classified in subheading 3926.90.99, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.”

ISSUE:

Whether the subject water dispensers are properly classified as tableware of plastic in heading 3924, HTSUS, or as “other” articles of plastics in heading 3926, HTSUS.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first 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 heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute 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 and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The 2016 HTSUS provisions under consideration are as follows:

3924	Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:
3924.10	Tableware and kitchenware:
3924.10.40	Other
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
	Other:
3926.90.99	Other

As a preliminary matter, the subject water dispensers can only be classified in heading 3926, HTSUS, if they are not more specifically classifiable in heading 3924, HTSUS. *See* EN 39.26 (“This heading covers articles, not

elsewhere specified or included.”); *Container Store v. United States*, 145 F. Supp. 3d 1331, 1341 (Ct. Int’l Trade 2016) (characterizing heading 3926 as a “broad basket provision” that “only cover[s] articles not specified elsewhere”).

Accordingly, we initially consider heading 3924, HTSUS, which provides, *inter alia*, for tableware of plastics. EN 39.24 states, in pertinent part, as follows:

This heading covers the following articles of plastics:

- (A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes and trays of all kinds, coffee-pots, teapots, sugar bowls, beer mugs, cups, sauce-boats, fruit bowls, cruets, salt cellars, mustard pots, egg-cups, teapot stands, table mats, knife rests, serviette rings, knives, forks and spoons.

Among the above-named exemplars in EN 39.24 of “tableware” are several items, such as soup tureens, salad bowls, and fruit bowls, that are designed for placement upon tabletops and the subsequent dispensation of food or beverages from their stationary positions. Thus, the EN 39.24 makes clear that heading 3924 applies to items designed for such use. *See LeMans Corp. v. United States*, 660 F.3d 1311, 1321 (Fed. Cir. 2011) (stating that use of EN exemplars to clarify the scope of a heading is “entirely proper”). Consistent with this, CBP has previously treated plastic beverage and food dispensers consisting of containers set upon stationary bases as tableware for purposes of heading 3924. For example, in HQ 958719, dated February 26, 1998, we classified a candy dispenser consisting of a top “reservoir” designed to hold and dispense candy, as well as a bottom stand upon which the reservoir was set, in heading 3924. Similarly, in NY R04736, dated September 14, 2006, CBP classified a countertop beverage dispenser made up of a plastic cylindrical beverage container and plastic base in heading 3924.

Here, like the products at issue in HQ 958719 and NY R04736, the entirety of the subject merchandise consists of plastic containers set upon plastic bases, the latter of which dispenses the water stored in the containers by operation of attached valves. Insofar as they bear these features, the subject water dispensers are designed for placement upon a tabletop and for dispensation of the stored water once set. As such, they qualify as tableware within the meaning of heading 3924, HTSUS, and are properly classified in that heading.

Lastly, we note that while the subject merchandise in HQ H044957, HQ H044959, and HQ H058924 was classified in heading 3926 by application of GRI 3(b) in those rulings, we need not apply GRI 3(b) because the merchandise is in fact described in whole by heading 3924, and is therefore classified there by application of GRI 1.

HOLDING:

By application of GRI 1, the subject water dispensers are properly classified in heading 3924, HTSUS. They are specifically classified in subheading 3924.10.4000 HTSUSA (Annotated), which provides for: “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Tableware and kitchenware: Other.” The 2016 column one general rate of duty is 3.5% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

Headquarters Ruling Letters H044957, HQ H044959, and HQ H058924, all dated August 2, 2011, are hereby REVOKED in accordance with the above analysis.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

CC: Ms. Lorianne Aldinger
Rite Aid Corporation
P.O. Box 3165
Harrisburg, PA 17105

Mr. Todd Stumpf
Stonepath Logistics
1930 6th Avenue
Suite 401
Seattle, WA 98134



**PROPOSED REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF AN AUTOMATIC STEREO
TURNTABLE SYSTEM FROM CHINA**

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of an automatic stereo turntable system from China.

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 U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of an automatic stereo turntable system from China, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATES: Comments must be received on or before December 9, 2016.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229-1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: George Aduhene, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0184.

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) (“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 public 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 to 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 is proposing to revoke one ruling letter pertaining to the tariff classification of an automatic stereo turntable system from China. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N268674, dated September 30, 2015 (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 the 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 is proposing 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 N268674, CBP classified an automatic stereo turntable system from China in heading 8519, HTSUS, specifically in subheading 8519.30.10, HTSUS, which provides for "Sound recording or reproducing apparatus: Turntables (record-decks): With automatic record changing mechanism." CBP has reviewed NY N268674 and has determined the ruling letter to be in error. It is now CBP's position that the automatic stereo turntable system from China is properly classified, by operation of GRI 3(b), in heading 8519, HTSUS. By application of GRI 6, it is specifically provided for under subheading 8519.89.20, HTSUS, which provides for "Sound recording or reproducing apparatus: Other apparatus: Other: Record players, other than those operated by coins, banknotes, bank cards, tokens or by other means of payment: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N268674 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H271390, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing 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: September 13, 2016

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N268674

September 30, 2015

CLA-2-85:OT:RR:NC:N1:108

CATEGORY: Classification

TARIFF NO.: 8519.30.1000

MR. DAVID RUTT
GENERAL MANAGER, COMPLIANCE
DAMCO CUSTOMS SERVICES, INC.
9300 ARROWPOINT BLVD.
CHARLOTTE, NC 28273

RE: The tariff classification of an automatic stereo turntable system from China

DEAR MR. RUTT:

In your letter dated September 8, 2015, on behalf of Barnes and Nobel Purchasing Inc., you requested a tariff classification ruling.

The merchandise under consideration is an automatic stereo turntable system, which consists of a turntable (part number AT-LP60BK) and two speakers (part number AT-SP121BK), which are imported together packaged for retail sale. The turntable, which reproduces sound from classic vinyl records, has a fully automatic belt-drive. It also has a built-in switchable phone preamp that allows the turntable to be connected directly to the included power speakers, as well as a computer, a home stereo, and other components that have no dedicated turntable input. Furthermore, the subject turntable is supplied with an integral phono cartridge with replaceable stylus. By virtue of General Rule of Interpretation 3 (b), this system is considered a set for tariff classification purposes, with the turntable imparting the essential character of the set.

The applicable subheading for this automatic stereo turntable system will be 8519.30.1000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Sound recording or reproducing apparatus: Turntables (record-decks): With automatic record changing mechanism. The rate of duty will be 3.9 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

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 imported. If you have any questions regarding the ruling, contact National Import Specialist Lisa Cariello at lisa.a.cariello@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H271390
CLA-2 OT:RR:CTF:TCM H271390 GA
CATEGORY: Classification
TARIFF NO.: 8519.89.20

MR. DAVID RUTT
GENERAL MANAGER, COMPLIANCE
DAMCO CUSTOMS SERVICES, INC.
9300 ARROWPOINT BLVD.
CHARLOTTE, NC 28273

RE: Revocation of NY N268674; Classification of an automatic stereo turntable system from China

DEAR MR. RUTT:

This is in reference to New York Ruling Letter (NY) N268674, dated September 30, 2015, issued to you on behalf of your client Barnes and Nobel Purchasing Inc., concerning the tariff classification of an automatic stereo turntable system from China, under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N268674, U.S. Customs and Border Protection (CBP) classified the subject product in subheading 8519.30.1000, HTSUS, which provides for: "Sound recording or reproducing apparatus: Other apparatus: Other: Record players, other than those operated by coins, banknotes, bank cards, tokens or by other means of payment: Other."

We have reviewed NY N268674 and find it to be in error. For the reasons set forth below, we hereby revoke N268674.

FACTS:

In NY N268674, CBP described the merchandise as follows:

The merchandise under consideration is an automatic stereo turntable system, which consists of a turntable (part number AT-LP60BK) and two speakers (part AT-SP121BK), which are imported together packaged for retail sale. The turntable, which reproduces sound from classic vinyl records, has fully automatic belt-drive. It also has a built-in switchable phone preamp that allows the turntable to be connected directly to the included power speakers, as well as a computer, a home stereo, and other components that have no dedicated turntable input. Furthermore, the subject is supplied with an integral phono cartridge with a replaceable stylus. By virtue of General Rule of Interpretation 3 (b), this system is considered a set for tariff classification purposes, with the turntable imparting the essential character of the set.

Your request for reconsideration and the product literature, provided additional facts that clarified that for increased flexibility of use, the turntable also has an internal stereo phono pre-amplifier, which allows it to amplify sound by itself.

ISSUE:

What is the proper classification of the automatic stereo turntable system from China?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods 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 GRIs may then be applied.

There is no dispute that the merchandise is properly classified under heading 8519, HTSUS by virtue of the turntable component imparting the subject set with its essential character per GRI 3(b). At issue is whether the subject turntable component falls under the scope of subheading 8519.30, HTSUS. Therefore, we must apply GRI 6 to determine the correct classification of the merchandise. GRI 6 provides:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

* * * *

The HTSUS provisions under consideration are as follows:

8519	Sound recording or reproducing apparatus
8519.30	Turntables (record-decks):
8519.30.10	With automatic record changing mechanism
	Other apparatus
8519.89	Other
	Record players, other than those operated by coins, banknotes, banks cards, tokens or by other means of payment:
8916.89.2000	Other

* * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HS and are thus useful in ascertaining the proper classification of merchandise. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Explanatory Note 85.19 provides, in relevant part, as follows:

(II) TURNTABLES (RECORD-DECKS)

These apparatus rotate the discs mechanically or electrically. They may or may not incorporate a sound-head, but they do not include an acoustic device nor electrical means of amplifying sound (see "record players" below). They may be fitted with an automatic device enabling a series of records to be played in succession.

A review of the product literature and specifications indicates that the instant product has a “built-in switchable stereo phono/line level pre-amplifier.” Furthermore, its user manual indicates that for “increased flexibility of use, this turntable has an internal stereo phono pre-amplifier.” While the user does have the option to connect to external amplifiers, it is not necessary because the product incorporates its own electrical means of amplifying sound. As shown above, record-decks of subheading 8519.30, HTSUS, specifically covers only “turntables.” Therefore, the component that imparts the subject automatic stereo turntable system with its essential character falls outside the scope of subheading 8519.30, HTSUS, and is thus classified properly under subheading 8519.89.20, HTSUS.

This is consistent with EN 85.19(ii) above, which indicates that the provision for “turntables” “do[es] not include an acoustic device nor electrical means of amplifying sound (see ‘record players below’)”.

HOLDING:

By application of GRI 3(b), we find the subject automatic stereo turntable system is classified heading 8519, HTSUS. By application of GRI 6, it is specifically provided for under subheading 8519.89.20, HTSUS, which provides for “Sound recording or reproducing apparatus: Other apparatus: Other: Record players, other than those operated by coins, banknotes, bank cards, tokens or by other means of payment: Other.” The column one, general rate of duty is 3.9 percent *ad valorem*.

Duty rates are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at <http://www.usitc.gov>.

EFFECT ON OTHER RULINGS:

NY N268274, dated September 30, 2015, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



PROPOSED REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF DECORATIVE PLUSH FIGURES

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of decorative plush figures.

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 Implementa-

tion Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of decorative plush figures under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before December 9, 2016.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations & Rulings, Attn: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Michelle Garcia, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade at (202) 325–1115.

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) (“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 public 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 to provide any other information neces-

sary 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 is proposing to revoke one ruling letter pertaining to the tariff classification of decorative plush figures. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N264243, dated May 22, 2015 (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 the 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 is proposing 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 N264243, CBP classified two examples, the “Halloween Mickey Mouse (#63692)” and “Halloween Minnie Mouse (#59937)” in heading 6307, HTSUS, specifically in subheading 6307.90.9889, HTSUSA (Annotated), which provides for “Other made up textile articles, including dress patterns: Other: Other: Other: Other: Other.” CBP has reviewed NY N264243 and has determined the ruling letter to be in error. It is now CBP’s position that the decorative plush figures are properly classified, by operation of GRI 1, in heading 9503, HTSUS, specifically in subheading 9503.00.00, HTSUS, which provides for “toys.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in the proposed HQ H275175, set forth as Attachment B to this notice.

Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing 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: September 13, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON
Director,

Commercial & Trade Facilitation Division

Attachments

[ATTACHMENT A]

N264243

May 22, 2015

CLA-2-63:OT:RR:NC:N3:351

CATEGORY: Classification

TARIFF NO.: 6307.90.9889

MR. DAVID PRATA
OHL INTERNATIONAL
CVS HEALTH MAIL CODE 1049
1 CVS DRIVE
WOONSOCKET, RI 02895

RE: The tariff classification of decorative plush figures from China

DEAR MR. PRATA:

In your letter dated April 23, 2015, you requested a tariff classification ruling on behalf of your client, CVS/pharmacy.

You have submitted two samples of item number 932257 which you describe as "Halloween Greeters." The Halloween Greeters are plush, decorative figures which will be imported in two styles: Mickey Mouse (#63692) and Minnie Mouse (#59937). Both Halloween Greeters are approximately 22" tall and have textile heads, stuffed hands and firm torsos. The legs have paper-board dowels which extend through the torso and the feet are filled with stone powder to keep the figure upright. You state the material composition of each figure is 55 percent textile, 30 percent stone powder and 15 percent paper.

You state in your letter that the supplier has proposed to classify the items under subheading 9503.00.0073, Harmonized Tariff Schedule of the United States, (HTSUS), which provides for toys. However, the Halloween Greeters are not toys principally designed for amusement. Rather, they are household decorative articles designed and intended to be used as display items near one's door to greet trick-or-treaters. Moreover, the items will be sold in the seasonal aisle of CVS/pharmacy stores. In addition, the item's construction, stone powder in the feet along with hard pillars for legs to maintain an upright position, also distinguish these items from a class or kind of goods classifiable as toys.

Alternatively, you suggest in your letter that the correct classification of these items may be subheading 9505.90.6000, HTSUS, which provides for festive articles. Although you state the figures will be sold during the Halloween selling season, a commonplace pirate motif, assuming these figures can be recognized as such, is not closely associated with a specific festive occasion, nor is the physical appearance of a generic pirate so intrinsically linked to a specific festive occasion that its use at other times would be considered aberrant.

The applicable subheading for the Mickey Mouse (style #63692) and Minnie Mouse (style #59937) decorative Halloween Greeters, item number 932257, will be 6307.90.9889, HTSUS, which provides for "Other made up textile articles, including dress patterns: Other: Other: Other: Other: Other." The rate of duty will be 7 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at <http://www.usitc.gov/tata/hts/>.

The samples will be returned as requested.

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 imported. If you have any questions regarding the ruling, contact National Import Specialist Kim Wachtel at kimberly.a.wachtel@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H275175
CLA-2 OT: RR: CTF: TCM H275175 MG
CATEGORY: CLASSIFICATION
TARIFF NO.: 9503.00.0090

MR. DAVID PRATA
OHL INTERNATIONAL
CVS HEALTH MAIL CODE 1049
1 CVS DRIVE
WOONSOCKET, RI 02895

RE: Revocation of NY N264243; Tariff Classification of decorative plush figures

DEAR MR. PRATA:

U.S. Customs and Border Protection (CBP) issued CVS/Pharmacy New York Ruling Letter (NY) N264243 on May 22, 2015. NY N264243 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of decorative plush figures in two styles: Mickey Mouse and Minnie Mouse. We have since reviewed the tariff classification of the subject decorative plush figures and find it to be in error.

In arriving at this conclusion, this office took into consideration additional product information and marketing materials, which were provided by the manufacturer of the merchandise at issue in NY N264243. Two samples were provided to this office from the manufacturer. One depicted Buzz Lightyear, a character from the movie "Toy Story", and the other depicted the Japanese animated cat "Hello Kitty" holding a jack-o-lantern. NY N264243 classified the two examples, Mickey and Minnie Mouse, from this larger product line, collectively referred to by the manufacturer and counsel as "Greeters". The instant ruling classifies the entire "Greeters" product line, each of which are substantially similar to one another. The Greeters are manufactured by Gemmy Industries (HK) Limited and imported by Gemmy US.

FACTS:

NY N264243 states the following:

You have submitted two samples of item number 932257 which you describe as "Halloween Greeters." The Halloween Greeters are plush, decorative figures which will be imported in two styles: Mickey Mouse (#63692) and Minnie Mouse (#59937). Both Halloween Greeters are approximately 22" tall and have textile heads, stuffed hands and firm torsos. The legs have paperboard dowels which extend through the torso and the feet are filled with stone powder to keep the figure upright. You state the material composition of each figure is 55 percent textile, 30 percent stone powder and 15 percent paper.

You state in your letter that the supplier has proposed to classify the items under subheading 9503.00.0073, Harmonized Tariff Schedule of the United States, (HTSUS), which provides for toys. However, the Halloween Greeters are not toys principally designed for amusement. Rather, they are household decorative articles designed and intended to be used as display items near one's door to greet trick-or-treaters. Moreover, the items will be sold in the seasonal aisle of CVS/pharmacy stores. In addi-

tion, the item's construction, stone powder in the feet along with hard pillars for legs to maintain an upright position, also distinguish these items from a class or kind of goods classifiable as toys.

Alternatively, you suggest in your letter that the correct classification of these items may be subheading 9505.90.6000, HTSUS, which provides for festive articles. Although you state the figures will be sold during the Halloween selling season, a commonplace pirate motif, assuming these figures can be recognized as such, is not closely associated with a specific festive occasion, nor is the physical appearance of a generic pirate so intrinsically linked to a specific festive occasion that its use at other times would be considered aberrant.

The applicable subheading for the Mickey Mouse (style #63692) and Minnie Mouse (style #59937) decorative Halloween Greeters, item number 932257, will be 6307.90.9889, HTSUS, which provides for "Other made up textile articles, including dress patterns: Other: Other: Other: Other: Other." The rate of duty will be 7 percent ad valorem.

ISSUE:

Whether the subject Greeters are classified in the textile provision for other made up articles, in heading 6307, HTSUS, or whether they are classified as toys, of heading 9503, HTSUS, or whether they are classified as festive articles of heading 9505, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods 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 GRIs may then be applied.

The HTSUS headings under consideration are the following:

- | | |
|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6307 | Other made up articles, including dress patterns: |
| 9503 | Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: |
| 9505 | Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: |

Note 1(t) to Section XI, which covers textile articles of heading 6307, HTSUS states:

1. This section does not cover:

- (t) Articles of chapter 95 (for example, toys, games, sports requisites and nets)

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings at the

international level. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN 95.03 states the following, in relevant part:

This heading covers:

(D) Other toys

This group covers toys intended essentially for the amusement of persons (children or adults). ...

These include:

- (i) Toys representing animals or non-human creatures even if possessing predominantly human physical characteristics (e.g., angels, robots, devils, monsters), including those for use in marionette shows.

Note 1(t) to Section XI, which covers Chapter 63, specifically heading 6307, HTSUS, provides that if the subject merchandise is described as an article of Chapter 95, such as a doll or a toy, or a festive article, then it is excluded from Section XI. Therefore, our analysis begins with the scope of heading 9503, HTSUS, and heading 9505, HTSUS, respectively.

The tariff term “toy” is not statutorily defined. The courts and CBP construe statutorily undefined terms in accordance with their common and commercial meaning, which is presumed to be the same. See *E.M. Chems. v. United States*, 920 F.3d 910, 913 (Fed. Cir. 1990). However, the courts, through a series of decisions, have crafted a framework for “toys” of heading 9503, HTSUS, which guides CBP in the instant case.

In *Springs Creative Products Group v. United States*, 35 I.T.R.D. (BNA) 1955, Slip Op. 13–107 (Ct. Int’l Trade Aug. 16, 2013), the Court opined on the tariff classification of a child’s craft kit for making a fleece blanket. In its analysis, the CIT consulted dictionaries, and other reliable sources regarding the meaning of the word “toy.” See *Medline Indus. v. United States*, 62 F.3d 1407, 1409 (Fed. Cir. 1995) (“tariff terms are construed in accordance with their common and popular meaning, and in construing such terms the court may rely upon its own understanding, dictionaries and other reliable sources.”)(citations omitted).

First, the Court consulted *Webster’s Third New International Dictionary of the English Language Unabridged* (1981), at 2419, which provides, in relevant part that “toys” are:

- 3a: something designed for amusement or diversion rather than practical use
- b: an article for the playtime use of a child either representational (as persons, creatures, or implements) and intended esp. to stimulate imagination, mimetic activity, or manipulative skill or nonrepresentational (as balls, tops, jump ropes) and muscular dexterity and group integration.

Next, the Court cited *Merriam Webster’s Collegiate Dictionary* (1998) at page 41, which defines “amusement” in relevant part as, “3: a pleasurable diversion.” Thus, taken together “[t]his common meaning of toy – an object primarily designed and used for pleasurable diversion – is consistent with its judicial interpretation.” *Springs Creative Products Group v. United States*, *supra* at page 15, citing *Processed Plastic Co. v. United States*, 473 F.3d 1164, 1170 (Fed. Cir. 2006) (noting that the principal use of a “toy” is amusement,

diversion, or play value rather than practicality); *Minnetonka Brands, Inc. v. United States*, 24 CIT 645, 651 ¶ 37, 110 F. Supp. 2d 1020, 1026 (2000) (noting that for purposes of Chapter 95, HTSUS, “an object is a toy only if it is designed and used for amusement, diversion, or play, rather than practicality”).

Factoring in the above, heading 9503, HTSUS, is a “principal use” provision governed by Additional U.S. Rule of Interpretation 1 (a), HTSUS, which provides that: In the absence of special language or context which otherwise requires—a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use. *Group Italglass, U.S.A., Inc. v. United States*, 17 CIT 1177, 839 F. Supp. 866 (1993). The Court in *Group Italglass* stressed “that it is the principal use of the class or kind of good to which the imports belong and not the principal use of the specific imports that is controlling under the Rules of Interpretation.” *Group Italglass*, 839 F. Supp. at 867. Principal use is defined as the use “which exceeds any other single use.” *Automatic Plastic Molding, Inc., v. United States*, 26 CIT 1201, 1205 (2002).

The courts have provided factors, which are indicative but not conclusive, to apply when determining whether merchandise is classifiable under a particular “principal use” tariff provision. These include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. See *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979 (1976). While these factors were developed under the Tariff Schedule of the United States (the predecessor to the HTSUS), the courts, and this office have applied and continue to apply them to the HTSUS. See, e.g., *Minnetonka Brands v. United States*, *supra*; *Aromont USA, Inc. v. United States*, 671 F.3d 1310 (Fed. Cir. 2012), and see *Essex Mfg., Inc. v. United States*, 30 C.I.T. 1 (2006).

The Greeters at issue here are in the shape and form of recognizable licensed animated characters which appeal to children, e.g., Buzz Lightyear, Hello Kitty, Mickey and Minnie Mouse, Snoopy and Charlie Brown, and various Star Wars characters. Full-bodied plush figures, whether or not decorative, have limited utilitarian or practical function. Further, products featuring licensed animated characters which have amusing appearances or manipulative play value belong to a class or kind of merchandise that are principally designed for amusement. See NY N257974, dated October 30, 2014 (classifying “Soft Lites” Squish Toys, and other illumination toys) and NY N059599, dated May 12, 2009 (classifying various stuffed animals). The subject Greeters differ slightly from each other in their individual characteristics, such as limb articulation, and they are relatively large in comparison to smaller hand-held stuffed animals. However, neither of these factors is dispositive and on balance, the Greeters’ physical characteristics are that of a plush article of amusement.

The expectation of the ultimate purchaser, the channels of trade, and the environment of sale also weigh in favor of the Greeter’s classification as a toy. The Greeters are sold to myriad retailers that also sell toys, and their displayed location in the stores is alongside other toys. They are pleasing to

the eye, provide amusement to onlookers, and would be a normal addition in a child's bedroom or in a daycare environment.

Gemmy does not sell the subject merchandise direct to consumers, rather, Gemmy sells the Greeters to various retailers for sale to customers. On Gemmy's website the Greeters are alternatively listed under the subcategory "Gifts" or "Décor." However, their decorative function is subservient to their play value. Also, being decorative in nature does not preclude the products' classification as a "toy," as some large dolls are also stiff and decorative in nature.

In information provided to this office, Gemmy stated that the subject Greeters are tested and are in compliance with the Consumer Products Safety Improvement Act of 2008 (CPSIA), which mandates certain texting and certification requirements on imports of products for children. Though the considerations or findings of another agency's statutes, regulations, or administrative interpretations are not binding on CBP for tariff classification purposes, they may be valuable, informative, and persuasive. *See Inabata Specialty Chems. v. United States*, 29 C.I.T. 419, 414 (Ct. Int'l Trade 005), citing *Marubeni Am. Corp. v. United States*, 17 C.I.T. 360, 821 F. Supp. 1521, 1528–29 (1993), *aff'd*, 35 F. 3d 530 (Fed. Cir 1994) (vehicle regulated as a "truck" by other agencies classified for tariff purposes as passenger vehicles). *See also Sabritas v. United States*, 22 C.I.T. 59 (Ct. Int'l Trade 1998). Here, the subject Greeters have been tested and determined to be safe pursuant to multiple tests which include lead content, phthalates content, or bisphenol-A (BPA) content. As the goods are sold in channels of trade which include other toys, (i.e., drug stores or other multi-purpose big box retailers), this is good news as a consumer would expect that the Greeters would be safe because they are tested in a similar manner to other toys for sale nearby¹.

It is worth noting that not every product which depicts a recognizable licensed animated character is a "toy" for tariff classification purposes. If the product does not promote pretend and role play, stimulate imagination, combat a child's ennui, promote mimetic activity or provide the opportunity for children to develop manipulative skill or muscular dexterity, then it is not considered a "toy." *See Springs Creative Prods. Group v. United States, supra*, at *18, citing *Webster's Third New International Dictionary of the English Language Unabridged* (1981) at 2419.

Further, not all goods which have some level of plush or soft interior are "toys" for tariff classification purposes. Products which are household decorations, but have some element of plush in them will not be classified as toys. *See NY N243235*, dated July 15, 2013 (classifying the textile Dancing Minnie Lighted Lawn Ornament); *NY N207258*, dated March 16, 2012 (classifying a textile decorative Mickey Mouse scarecrow, CBP determined that the article was not a toy principally designed for amusement, does not depict a human likeness, and thus is a household decorative article); *NY N210135*, dated April 6, 2012 (classifying a Bunny Lawn Stake, a woven textile fabric with straw coming out of its arms and legs, deemed not a festival, carnival or other

¹ That said, Gemmy also argues that the tariff's citation to 15 U.S.C. § 2052, the statutory definition of "Children's products", means that the Greeters are classified as "toys." But that statutory citation occurs at the statistical 10-digit subheading level. CBP must first determine whether an item is a toy at the heading level, following the GRIs, the Additional Rules of Interpretation, relevant case law and precedent rulings. Only then would a statistical determination at the ten-digit level be made.

entertainment article); NY M80260, dated February 8, 2006 (classifying textile standing bears). Pursuant to the above analysis, the subject Greeters are *eo nomine* “toys” under a GRI 1 analysis.

That said, some of the Greeters are dressed or adorned with details that indicate specific holidays (i.e., the Yoda Valentine Greeter which features the Jedi Master holding a heart that says “Yoda One For Me,” and a Chewbacca Valentine Greeter, with the Wookiee holding a heart that says “Chewy Loves You”). Also, the Mickey and Minnie Mouse Greeters at issue in NY N264243 were dressed in a manner purportedly depicting a Halloween motif). This indicates that the products could be displayed only seasonally or during a specific holiday in order to promote a festive environment in the home or at a business. Pursuant to GRI 3(a), when goods are *prima facie* classifiable under two or more headings, classification shall be that which provides the most specific description. This is preferred to headings providing a more general description. “Under this so-called rule of relative specificity, we look to the provision with requirements that are more difficult to satisfy and that describe the articles with the greatest degree of accuracy and certainty.” *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998).

Here, “toys” are more specific than the “festive articles” heading because the provision for toys covers a narrower set of items. “Toys” is limited to those items which have no utilitarian value, and which promote pretend play for children. “Festive articles” however, need only be closely associated with and used or displayed during a festive occasion. *See Russ Berrie & Company, Inc. v. United States*, 381 F.3d 1334, 1338 (Fed. Cir. 2004).

Because heading 9505, HTSUS, covers a far broader range of items than heading 9503, HTSUS, the latter is more specific than the former. It is also more specific because it describes items by name (“toys”) rather than by class (“festive articles”). *Id.* It therefore follows that the subject Greeters are classifiable under heading 9503, HTSUS.

For all of the aforementioned reasons, the subject decorative plush figures are classified in heading 9503, HTSUS, as toys. This is consistent with CBP rulings of other plush toys, which feature some models depicting holiday motifs. *See* NY N009125, dated April 13, 2007.

As the subject Greeters are classifiable in heading 9503, HTSUS, then they are excluded from classification in heading 6307, HTSUS, pursuant to the exclusionary language found in Note 1(t) to Section XI, which covers Chapter 63.

HOLDING:

By application of GRI 3(a) and GRI 1, the subject “Greeters” are classified in subheading 9503.00.0090, HTSUSA (Annotated), which provides for, “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other.” The column one, general rate of duty is free.

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N264243, dated May 22, 2015, is hereby REVOKED, as regards the tariff classification of the decorative plush figures.

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division


19 CFR PART 177**REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A SPARE PARTS REPAIR KIT**

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

ACTION: Notice of revocation of one ruling letter, and of revocation of treatment relating to the tariff classification of a spare parts repair kit for a mold machine.

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 U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning the tariff classification of a spare parts kit for a mold machine under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 22, on June 1, 2016. No timely comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 9, 2017.

FOR FURTHER INFORMATION CONTACT: Nerissa Hamilton-vom Baur, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0104.

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) (“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 public 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 to 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, a notice was published in the *Customs Bulletin*, Vol. 50, No. 22, on June 1, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of a spare parts kit used to repair or maintain a mold or mold machine. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N050746, dated March 4, 2009, as well as 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 have advised CBP during the comment 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 is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 this notice.

In NY N050746, CBP classified the spare parts kits pursuant to GRI 3(b) as a retail set in heading 8477, HTSUS, specifically in subheading 8477.90.8501, HTSUS, which provides for “Machinery for

working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this chapter; parts thereof: Parts: Other: Of injection-molding machines.” CBP has reviewed NY N050746 and has determined the ruling letter to be in error. Specifically, CBP has determined that the articles that were classified in NY N050746 do not constitute a retail set for purposes of GRI 3(b). It is now CBP’s position that the articles identified in NY N050746 are classified separately according to GRI 1.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N050746 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H249811, set forth as an attachment to this notice. 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: September 12, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H249811

September 12, 2016

CLA-2 OT:RR:CTF:TCM H249811 HvB

CATEGORY: Classification

TARIFF NO.: 4016.93.50, 7318.21.00, 7320.90.50,
8477.90.85, and 9025.19.80

MARK ROMANO

HUSKY INJECTION MOLDING SYSTEMS, INC.

132 CAYUGA DRIVE

SUITE 2B

CHEEKTOWAGA, NY 14225

RE: Revocation of NY N050746; Tariff classification of spare parts/repair kit

DEAR MR. ROMANO:

This letter is in reference to New York Ruling Letter (“NY”) N050746, issued to you on March 4, 2009, concerning the tariff classification of a spare parts repair kit required to repair a mold or a mold machine under the Harmonized Tariff Schedule of the United States (“HTSUS”). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the kit in subheading 8477.90.85, HTSUS, which provides for “Machinery for working rubber or plastics or for the manufacture of products of products from these materials, not elsewhere specified in this chapter; parts thereof.”

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 of the proposed action was published in the Customs Bulletin, Vol. 50, No. 22, on June 1, 2016. No comments were received in response to the notice.

We have learned new information concerning NY N050746, and found it to be incorrect. For the reasons that follow, we hereby revoke NY N050746.

FACTS:

In NY N050746, we wrote:

Each Husky spare part/repair kit is unique and bears a unique identifying number, i.e., the Husky Part Number (“HPN”). Each component within the kit also bears a unique HPN. The kit is assembled with the specific components required to repair the mold/machine for which it was designed. Any one kit can only repair a mold or a machine, not both, as the two assemblies (mold and machine) differ and require different components for repair and maintenance. Each kit consists of the most common wear and replacement components for a specific mold/machine. Components are not interchangeable with other repair kits.

The kit includes approximately 50 components and typically consists of washers, springs, a cam follower, various seals, thermocouples, O-rings, and screws.

Upon reviewing a separate request by Husky involving a substantially similar scenario, we learned that in order to accommodate its customers, Husky may not necessarily ship all parts listed in the Bill of Materials for a particular kit to the customer, because the customer might already have the necessary part on hand. The assortment of components used in any one spare part/repair kit may therefore vary from customer to customer.

ISSUE:

Whether the subject spare part/repair kit is classifiable pursuant to GRI 1 or GRI 3(b) as a retail set?

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context, which requires otherwise, by the Additional U.S. Rules of Interpretation. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order.

The HTSUS provisions under consideration are as follows:

- 4016** Other articles of vulcanized rubber other than hard rubber
- 7318** Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel
- 7320** Springs and leaves for springs, of iron or steel
- 8477** Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this Chapter
- 9025** Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments.

* * *

In NY N050746, dated March 4, 2009, we classified the articles as a retail set, pursuant to GRI 3(b). In order to meet the requirements of a GRI 3(b) retail set, the collection of articles must meet certain factors. These factors are outlined in the EN to GRI 3(b).¹ EN (X) to GRI 3 states, in pertinent part:

For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:

- (a) consist of at least two different articles which are, prima facie, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The courts have also examined what constitutes a retail set, for purposes of GRI 3(b). See *Dell Products LP v. United States*, 714 F. Supp 2d. 1252 (Ct. Int'l Trade 2010) (*Dell Products I*) *aff'd Dell Products LP v. United States*, 642 F.3d

¹ The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute 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 and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

1055 (Fed. Cir. 2011) (*Dell Products II*); See also *Estee Lauder, Inc. v. United States*, 815 F. Supp. 2d 1287 (Ct. Int'l Trade 2012). At issue in the *Dell Products* cases was whether secondary batteries for laptop computers, sold as optional accessories to Dell's retail customers and then packaged with the computer, constituted a "retail set" for purposes of GRI 3(b). The case stems from CBP's decision in HQ 967364, dated December 23, 2004, in which we wrote: "Even in those cases where the listed price includes an additional battery, if the customer does not want to purchase the additional battery, it can be deleted from the order and the price is adjusted accordingly, and the customer can choose other features of the advertised laptop." In HQ 967364, we found that the laptop battery packaged with the laptop did not constitute a retail set because the goods did not satisfy the third requirement of EN (X) to GRI 3(b), above. As we stated, "the offer for retail sale took place before prior to the goods being put up." *Ibid.* In *Dell Products I*, The Court of International Trade (CIT) agreed, finding that the contents of a customized order are determined by an individual customer and that the grouping of the goods was not "fixed" when offered for sale. *Dell Products I*, 714 F. Supp. 2d. 1252 (Ct. Int'l Trade 2010) at 1262. Furthermore, the CIT also determined that the articles did not meet the second requirement of a retail set, as the battery and laptop were not offered or displayed together. *Supra* at 1261.

We are presented with similar facts with respect to the instant spare parts/repair kit. In the present case, a customer orders a spare parts/repair kit from Husky, which then consults with the customer as to which parts in the kit are actually needed—creating a different and customized Bill of Materials for each kit. Depending on the customer's needs, the parts actually shipped therefore varies from kit to kit. Thus, no two kits are alike, as each kit is customized to the repair needs of a particular mold or a mold machine.

In *Dell Products II*, the U.S. Court of Appeals for the Federal Circuit (CAFC) stated that the term "goods put up for retail sale" for purposes of GRI 3(b) "most naturally refers to goods that are offered to customers as a set for purchase rather than to a collection of goods that are assembled into a set after the customer has purchased them." *Dell Products II*, 642 F. 3d. 1055 at 1058. The CAFC therefore concluded that the secondary battery and laptop packaged together did not constitute a retail set, stating "set determinations for purposes of GRI 3(b) turn on the seller's arrangement of good prior to their purchase, not on the seller's arrangement of goods after the purchase is made." *Dell Products II, supra* at 1060. Relevant to the instant kit, the CIT stated: "[t]he contents of a customized order are designated by an individual customer; Dell did not designate which merchandise constituted a set for retail sale." *Dell Products*, 714 F. Supp 2d. 1252 at 1262. Similarly, Husky customizes each kit according to the customer's needs such that no two kits will be the same. As such, GRI 3(b) does not apply. Accordingly, we find that the spare part kit that was classified pursuant to GRI 3(b) in NY N050746 does not qualify as a retail set. Therefore, the components must be classified separately pursuant to GRI 1.

HOLDING:

Under the authority of GRI 1, the individual parts are classified as follows:

The cam follower is classified in subheading 8477.90.85, HTSUS, which provides for "Machinery for working rubber or plastics or for the manufacture

of products from these materials, not specified or included elsewhere in this chapter; parts thereof: Parts: Other.” The column one, general rate of duty is 3.1%.

The lock washer is classified in subheading 7318.21.00, HTSUS, which provides for: Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel (con.): Non-threaded articles: Spring washers and other lock washers.” The column one, general rate of duty is 5.8%.

The springs are classified in subheading 7320.90.50, HTSUS, which provides for: “Springs and leaves for springs, of iron or steel: Other: Other.” The column one, general rate of duty is 2.9%.

The seals are classified in subheading 4016.93.50, HTSUS, which provides for: “Other articles of vulcanized rubber other than hard rubber: Gaskets, washers and other seals: Other”. The column one, general rate of duty is 2.5%.

The thermocouple J-Type is classified in subheading 9025.19.80, HTSUS, which provides for: “Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments; parts and accessories thereof: Thermometers and pyrometers, not combined with other instruments: Other: Other.” The column one, general rate of duty is 1.8%.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N050746, dated March 4, 2009, is hereby REVOKED.

In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF SHOE COVERS

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

ACTION: Notice of revocation of one ruling letter, and revocation of treatment relating to the tariff classification of shoe covers.

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 Implementa-

tion Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking New York Ruling Letter (NY) N239495, dated April 9, 2013, concerning the tariff classification of shoe covers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 18, on May 04, 2016. One comment was received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 9, 2017.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0024.

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) (“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 public 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 to 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, a notice was published in the *Customs Bulletin*, Vol. 50, No. 18, on May 04, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of disposable shoe covers. As stated in the proposed notice, this

action will cover New York Ruling Letter (“NY”) N239495, dated April 9, 2013, as well as 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 have advised CBP during the comment 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 is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 this notice.

In NY N239495, CBP determined that the Super Bootie II was classified in heading 6402, HTSUS, specifically subheading 6402.99.33, HTSUS, as other footwear with outer soles and uppers of rubber or plastics, designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather. CBP has reviewed NY N239495 and has determined the ruling letter to be in error. It is now CBP’s position that the subject merchandise is classified in subheading 6402.99.31, HTSUS, as other footwear with uppers of which over 90 percent of the external surface area is plastics, except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N239495 and revoking any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (“HQ”) H246161, set forth as an attachment to this notice. 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: September 12, 2016

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H246161

September 12, 2016

CLA-2 OT:RR:CTF:TCM H246161 CkG

CATEGORY: Classification

TARIFF NO: 6402.99.31

JONATHAN M. FEE
ALSTON & BIRD LLP
950 F STREET, NW
WASHINGTON, DC 20004

RE: Reconsideration of NY N239495; classification of disposable shoe covers

DEAR MR. FEE:

This is in response to your request for reconsideration of New York Ruling Letter (NY) N239495, dated April 9, 2013, filed on behalf of Protexer, Inc., contesting Customs and Border Protection's (CBP) classification of disposable shoe covers in subheading 6402.99.33, Harmonized Tariff Schedule of the United States (HTSUS), as other, protective footwear with outer soles and uppers of rubber or plastics.

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 NY N239495 was published on May 04, 2016, in Volume 50, Number 18 of the Customs Bulletin. One comment was received in response to this notice.

FACTS:

The product at issue is a disposable shoe cover, identified as style Super Bootie II, with an elasticized opening, of the type worn by persons in health care or food processing facilities over regular shoes. The shoe cover is made of a spunbound polypropylene material, which has been partially laminated with a plastic chlorinated polyethylene (CPE), then subsequently cut to shape. The CPE layer is affixed to the polypropylene base layer only by its edges, while the remainder of the CPE layer separates easily from the base material. The universally-sized shoe covers measure approximately 16–1/2 inches long and approximately 6 inches tall when lying flat. It is intended to prevent the transfer of oil, dirt, water and other contaminants from a user's shoe to an otherwise sanitary environment. The blue-colored CPE layer covers the bottom of the shoe cover and up to the toe portion, covering all but the top 7/8-inch of the white-colored textile portion of the upper.

You claim classification of the subject disposable shoe covers in heading 6307, HTSUS, as other made up textile articles, or alternatively, in heading 6402, HTSUS.

ISSUE:

Whether the Super Bootie II disposable shoe covers imported by Protexer are classified in heading 6307, HTSUS, as other made up textile articles, or in heading 6402, HTSUS, as footwear with outer soles and uppers of plastics or rubber.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that "classification shall be determined according to the terms of the headings and any relative section or chapter notes, and, provided such headings or notes do not otherwise require, according to the remaining GRI's." In other words, classification is governed first by the terms of the headings of the tariff and any relative section or chapter notes.

The HTSUS headings at issue are as follows:

6307: Other made up articles, including dress patterns:

6307.90: Other:

Other:

6307.90.98: Other...

* * * *

6402: Other footwear with outer soles and uppers of rubber or plastics:

Other footwear:

6402.99: Other:

Other:

Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather):

Other:

6402.99.31: Other..

Other:

6402.99.33 Footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather...

* * * *

Note 1 to Chapter 64, HTSUS, provides, in pertinent part, as follows:

1. This chapter does not cover...
 - (a) Disposable foot or shoe coverings of flimsy material (for example, paper, sheeting of plastics) without applied soles. These products are classified according to their constituent material
 - (b) Footwear of textile material, without an outer sole glued, sewn or otherwise affixed or applied to the upper (Section XI)

Note 4 to Chapter 64 provides as follows:

4. Subject to note 3 to this chapter:

- (a) The material of the upper shall be taken to be the constituent material having the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, edging, ornamentation, buckles, tabs, eyelet stays or similar attachments;
- (b) The constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments.

Note 14 to Section XI provides as follows:

- 14. Unless the context otherwise requires, textile garments of different headings are to be classified in their own headings even if put up in sets for retail sale. For the purposes of this note, the expression “textile garments” means garments of headings 6101 to 6114 and headings 6201 to 6211.

* * * *

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The General Explanatory Note to Chapter 64 provides, in pertinent part, as follows:

GENERAL

With certain **exceptions** (see particularly those mentioned at the end of this General Note) this Chapter covers, under headings 64.01 to 64.05, various types of footwear (including overshoes) irrespective of their shape and size, the particular use for which they are designed, their method of manufacture or the materials of which they are made.

For the purposes of this Chapter, the term “footwear” **does not**, however, **include** disposable foot or shoe coverings of flimsy material (paper, sheeting of plastics, etc.) without applied soles. These products are classified according to their constituent material.

(A) The Chapter includes:

...

- (10) Disposable footwear, with applied soles, generally designed to be used only once.
- (B) The footwear covered by this Chapter may be of any material (rubber, leather, plastics, wood, cork, textiles including felt and nonwovens, furskin, plaiting materials, etc.) **except** asbestos, and may contain, in any proportion, the materials of Chapter 71.

Within the limits of the Chapter itself, however, it is the constituent material of the outer sole and of the upper which determines classification in headings 64.01 to 64.05.

- (C) The term “outer sole” as used in headings 64.01 to 64.05 means that part of the footwear (other than an attached heel) which, when in

use, is in contact with the ground. The constituent material of the outer sole for purposes of classification shall be taken to be the material having the greatest surface area in contact with the ground. In determining the constituent material of the outer sole, no account should be taken of attached accessories or reinforcements which partly cover the sole (see Note 4 (b) to this Chapter). These accessories or reinforcements include spikes, bars, nails, protectors or similar attachments (including a thin layer of textile flocking (e.g., for creating a design) or a detachable textile material, applied to but not embedded in the sole).

In the case of footwear made in a single piece (e.g., clogs) without applied soles, no separate outer sole is required; such footwear is classified with reference to the constituent material of its lower surface.

- (D) For the purposes of the classification of footwear in this Chapter, the constituent material of the uppers must also be taken into account. The upper is the part of the shoe or boot above the sole...the upper shall be considered to be that portion of the shoe which covers the sides and top of the foot. The size of the uppers varies very much between different types of footwear, from those covering the foot and the whole leg, including the thigh (for example, fishermen's boots), to those which consist simply of straps or thongs (for example, sandals).

Emphasis supplied.

The EN to heading 6405 provides:

Subject to Notes 1 and 4 to this Chapter, this heading covers all footwear having outer soles and uppers of a material or combination of materials not referred to in the preceding headings of this Chapter.

The heading includes in particular:

- (1) Footwear, with outer soles of rubber or plastics, and the uppers made of material other than rubber, plastics, leather or textile material;...

* * * *

In NY N239495, CBP concluded that the instant shoe covers should be classified as footwear in Chapter 64, specifically heading 6402, HTSUS. You claim classification of the instant goods in heading 6307, HTSUS.

You argue that the instant footwear is excluded from Chapter 64 by operation of Note 1(b) to that Chapter, because the shoe covers are made of textile material, and because they lack an applied sole. You contend that the plastic laminate on the instant cover is not a sole because it covers too much of the shoe cover, extending to the sides and potentially over the top of the toes, and that in any case, the plastic coating could not be considered to be an applied sole because it was applied to the textile base material before it was cut to form the shoe cover. Finally, you contend that classification of the shoe covers as "protective" footwear in subheading 6402.88.33, HTSUS, is inappropriate because the plastic coating does not offer sufficient protection against water, oil or inclement weather.

Pursuant to Note 1(a) to Chapter 64, which governs the classification of disposable shoe coverings in Chapter 64, a disposable shoe covering made of flimsy material and lacking an applied sole is precluded from classification as footwear of Chapter 64. Pursuant to Note 1(b) to Chapter 64, footwear of textile material without an outer sole glued, sewn or otherwise affixed or applied to the upper is precluded from classification in Chapter 64. Conversely, as noted in the General Explanatory Note to Chapter 64, flimsy disposable shoe covers, including those of textile materials, are classified in Chapter 64, as “footwear”, if they do have an applied sole.

A sole is defined in the General Explanatory Note to Chapter 64 as the part of the footwear in contact with the ground. In determining whether a shoe covering has an *applied* sole pursuant to Note 1 to Chapter 64, we look to whether there is a “line of demarcation” between the upper and the outer sole, which indicates that the outer sole was a distinct, separate component which was applied to the upper. *See* Headquarters Ruling Letter (HQ) H005104, dated May 20, 2010; HQ 967659, dated July 1, 2005; HQ 967851, dated November 18, 2005; and HQ 956921, dated November 22, 1994. In particular the “line of demarcation” has been defined as “the line along which the sole ends and the upper begins.” *See* Treasury Decision (T.D.) 93–88 (27 Cust. Bull. & Dec. 46), dated October 25, 1993. Applying these definitions to the present merchandise, the product consists of two separate pieces of material that are affixed together, with a clear line of demarcation between them. You claim that the sole is not a separate piece of material because the CPE layer constitutes a coating, and that the shoe cover is therefore covered in its entirety by Section XI, as a coated fabric. We disagree. The CPE layer is affixed to the polypropylene base layer only at the edges; the remainder of the CPE layer is not attached to the base textile layer in any way. In addition, this office was able to easily detach the blue CPE layer entirely. The CPE layer is therefore not a coating, but rather a separate piece of material applied to the base material of the upper. The seam is the line of demarcation and the ability to separate the two components is a clear indication that there is a separately applied outer sole.

Contrary to your position that the plastic laminate on the instant cover cannot be a sole because it is too extensive, nothing in the tariff or ENs states that a sole that is too extensive is no longer a sole. Nor is it stated anywhere in the tariff or in common definitions of the term “sole” that a sole must provide support or absorb impact for the user, as the Protestant contends. For example, the Merriam-Webster Dictionary Online and the Oxford English Dictionary Online, respectively, define “sole” as follows:

a: the undersurface of a foot

b: the part of an item of footwear on which the sole rests and upon which the wearer treads

http://www.merriam-webster.com/dictionary/sole.

a. The bottom of a boot, shoe, etc.; that part of it upon which the wearer treads (freq. exclusive of the heel); one or other of the pieces of leather or other material of which this is composed (cf. insole n. and outsole n.). Also, a separate properly-shaped piece of felt or other material placed in the bottom of a boot, shoe, etc.

http://www.oed.com/view/Entry/184121?rskey=VW5Gs4&result=1#eid.

Thus, there is nothing in either the tariff or the common understanding of the term “sole” that limits the scope of the term in the manner you suggest. The sole of an article of footwear is the portion covering the bottom of the foot. Whether the material constituting the sole extends past the bottom of the shoe cover is irrelevant, as long as it covers the bottom of the foot.

Nor do we find that the stage at which the CPE layer is applied precludes it from being considered an applied sole. Essentially, you argue that the plastic coating was not a sole when it was applied to the polypropylene base layer because the material was not yet cut to shape. However, articles are classified in their condition at time of importation. See *United States v. Citroen*, 223 U.S. 407 (1911). The instant shoe covers have an additional, separate layer that was applied to cover the bottom of the foot. Hence, regardless of when the plastic laminate became a sole, by the time of importation it is a sole. That sole was separately applied to the base material of the shoe cover, making it an applied sole for the purposes of Note 1 to Chapter 64.

The instant shoe covers are made of a base layer of a nonwoven textile material, partially covered with plastic. Pursuant to Note 4(a) to Chapter 64, the outer sole is the part of the footwear in contact with the ground. The CPE layer thus constitutes the outer sole. Pursuant to Note 4(b) to Chapter 64, the material of the upper is the constituent material having the greatest external surface area. In this case, the CPE layer covers the majority of the external surface area of the upper. The instant shoe covers therefore have outer soles and uppers of plastic and are classified in heading 6402, HTSUS.

Within heading 6402, HTSUS, two subheadings are implicated. We thus turn to GRI 6. Subheading 6402.99.31 provides for footwear with uppers of which over 90 percent of the external surface area is plastics, except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather. Subheading 6402.99.33 provides for footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather. NY N239495 determined that instant shoe covers were classified as “protective” footwear in subheading 6402.99.33, HTSUS. We disagree. While the blue laminate is waterproof, the material itself is flimsy and easily punctured or torn. In addition, the waterproof laminate does not cover the entire shoe cover, leaving the top of the white textile base layer exposed. Moreover, the shoe cover itself does not cover the entire foot. Due to the design of the shoe cover, the top of the foot is left mostly exposed while excess material gathers at the front and back of the shoe. Thus, we do not find that the shoe cover offers any particular protection against water, oil, grease or chemicals or cold or inclement weather, in addition to that already provided by most shoes. The instant shoe covers are therefore classified in subheading 6402.99.31, HTSUS.

One comment in response to the notice of proposed revocation argued that shoe covers of this type are indeed protective, and that the reasoning outlined above was incorrect and impermissibly narrowing the scope of the subheading. We disagree. We are not articulating any new or narrower test, but rather reiterating a longstanding position of Customs, as set forth in Treasury Decision 93–88 as follows: “footwear is designed to be a ‘protection’ against water, oil or cold or inclement weather **only** if it is substantially more of a ‘protection’ against those items than the usual shoes of that type. For example, a leather oxford will clearly keep your feet warmer and drier than going barefoot, but they are not a ‘protection’ in this sense.” (emphasis

added). *See* T.D. 93–88, dated October 25, 1993, published in the Customs Bulletin, Volume 27, Number 46. The examples given of footwear that is “protection” against water include “all items which are worn over other shoes or boots to give additional protection against water, e.g., galoshes.” Read in the context of the requirement that protective footwear must be “substantially more of a ‘protection’ against those items than the usual shoes of that type”, and the reference to galoshes as an example of footwear worn over other shoes for additional protection, we find that subheading 6402.99.33, HTSUS, requires more than the minimal “protection” offered by the subject shoe covers.

You cite to several rulings in support of classification of the instant shoe covers in heading 6307, HTSUS, including HQ 089744, dated October 10, 1991, HQ 081945, dated January 29, 1990, NY J83244, dated April 18, 2003, and NY G83136, dated October 25, 2000, all of which classified various styles of disposable shoe covers in heading 6307, HTSUS. However, we note that the merchandise at issue in these rulings is distinguishable from the Protexer shoe covers. In NY J83244, CBP classified a disposable shoe cover with plastic dots used for traction in heading 6307, HTSUS. Plastic dots that do not cover the entire bottom of the shoe cover are not soles for the purposes of Chapter 64; NY J83244 therefore has no bearing on the classification of the instant merchandise. Similarly, in NY G82136, CBP classified shoe covers with and without a “skid bottom” in heading 6307, HTSUS. It is unclear from the description whether the composition and coverage of the referenced “skid bottom” is more similar to the plastic laminate of the Protexer shoe covers or the “plastic dots” added for traction to the shoe covers of NY J83244. Finally, the shoe covers at issue in HQ 089744 and HQ 081945 were made of one material only and thus lacked an additional, applied coating on the bottom of the shoe cover. We therefore do not find any of these rulings persuasive as to the classification of the instant merchandise.

In contrast, CBP has classified virtually identical merchandise to the Protexer shoe covers at issue in Chapter 64, HTSUS, as footwear. *See* Headquarters Ruling Letter (HQ) 956921, dated November 22, 1994. In HQ 956921, CBP determined that a plastic layer applied to the bottom of a disposable textile shoe covering constituted an applied sole pursuant to Note 1(a) to Chapter 64, and therefore the disposable shoe cover was classified in Chapter 64, specifically heading 6404. In this ruling, CBP noted that the blue plastic laminate applied to the shoe cover was designed to be in contact with the ground, and would be approximately under the foot. *See also* HQ H241512, dated Jul 07, 2014; NY N239495, dated April 9, 2013; NY N202027, dated February 22, 2012; NY N182015, dated September 16, 2011; NY N034202, dated August 11, 2008; NY N007466, dated March 15, 2007; NY L81039, dated December 13, 2004; and NY F86838, dated June 2, 2000.

HOLDING:

Pursuant to GRIs 1 and 6, the Protexer Super Bootie II shoe covers are classified in heading 6402, HTSUS, specifically subheading 6402.99.31, HTSUS, which provides for “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed

to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Other.” The 2016 general, column one rate of duty is 6% *ad valorem*.

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided online at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N239495, dated April 9, 2013, is hereby revoked.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division



19 CFR PART 177

**REVOCAION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A BATTERY POWERED
TRANSFER TROLLEY**

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

ACTION: Notice of revocation of one ruling letter, and revocation of treatment relating to the tariff classification of a battery powered transfer trolley.

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 U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of a battery powered transfer trolley under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 33, on August 17, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 9, 2017.

FOR FURTHER INFORMATION CONTACT: Parisa J. Ghazi, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0272.

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) (“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 public 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 to 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, a notice was published in the *Customs Bulletin*, Vol. 50, No. 33, on August 17, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of a battery powered transfer trolley. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N274106, dated April 1, 2016, as well as 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 have advised CBP during the comment 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 is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 this notice.

In NY N274106, CBP classified a battery powered transfer trolley in heading 8704, HTSUS, specifically in subheading 8704.90.00, HTSUS, which provides for "Motor vehicles for the transport of goods: Other, with spark-ignition internal combustion piston engine: Other." CBP has reviewed NY N274106 and has determined the ruling letter to be in error. It is now CBP's position that a battery powered transfer trolley is properly classified, by operation of GRIs 1 and 6, in heading 8709, HTSUS, specifically in subheading 8709.11.00, HTSUS, which provides for "Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles: Vehicles: Electrical."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N274106 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H275962, set forth as an attachment to this notice. 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: September 20, 2016

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

HQ H275962

September 20, 2016

CLA-2 OT:RR:CTF:TCM H275962 PJG

CATEGORY: Classification

TARIFF NO.: 8709.11.00

LISA BRANDENBERGER
LEE HARDEMAN CUSTOMS BROKER, INC.
277 SOUTHFIELD PARKWAY, SUITE 135
FOREST PARK, GEORGIA 30297

RE: Revocation of NY N274106; tariff classification of a battery powered transfer trolley

DEAR Ms. BRANDENBERGER:

On April 1, 2016, U.S. Customs and Border Protection (“CBP”) issued to you New York Ruling Letter (“NY”) N274106. The ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of a battery powered transfer trolley. NY 274106 states that you did not provide any evidence to support your claim that the vehicle was classified in heading 8709, HTSUS, as a works truck. We have reconsidered NY N274106 based upon the additional evidence submitted with your request.

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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed action was published on August 17, 2016, in Volume 50, Number 33, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

In NY N274106, the subject battery powered transfer trolley was described as follows:

The item under consideration has been identified as a battery powered transfer trolley designed to run on either standard gauge rails or wheels. In your request you state that the trolley in the instant shipment will be used in a mock training facility owned by the United States Government to carry items such as monitors and cameras into tunnels (both above and underground). This is done in order to test rail operations for the purposes of your project. You state that only the rail traversing capabilities will be utilized.

You state that the track section that the trolley will be used on, which is not being imported, is approximately 1500 feet long and that the trolley itself measures 3000x2000x450mm with a load rating of two (2) tons.

In your request for reconsideration you explain that the transfer trolley at issue is model number KPX-2T, which is similar to the “foundry plant use railroad electric transfer cart” and the “painting line apply large load capacity rail car”. These can be found on the website <http://bfbtransporter.com/product/>.

According to the website, the “foundry plant use railroad electric transfer cart” model number KPX-2T has the following specifications: a rated load (t) of 2; a table size (mm) of 2000x1500x450; a running speed (min) of 0–25; a battery capacity (Ah) of 180; a battery voltage (V) of 24; a running time when

full load of 4.32; and a reference weight (t) of 2.8. The “painting line apply large load capacity rail car” model number KPX-2T has these same specifications, plus the following: a wheel base (mm) of 1200; a rail inner gauge (mm) of 1200; a wheel diameter (mm) of $\phi 270$; a wheel quantity of 4; a ground clearance (mm) of 50; a motor power of 1; a running distance for one charge (km) of 6.5; a max wheel load (KN) of 14.4; and a recommended rail model of P15.

The model that is at issue in this case was customized to reflect the needs of the ultimate purchaser, the Environmental Protection Agency (“EPA”). Along with your request for reconsideration, you provide a brochure containing a photograph of a model called the “battery powered transfer trolley” and its product specifications. You indicate that the specifications on the brochure reflect the specifications of the instant merchandise. According to the product specifications on the brochure, the “battery powered transfer trolley” is controlled by remote and pendant control, has a running speed of 50 meters/minute, a running distance of 500 meter, a motor power of 1 kilowatts, and a maximum wheel load of 14.4 kilonewtons. You indicate that subject merchandise weighs approximately 2.5 tons and is designed for a straight track and is not designed to be used on a flat surface.

You have also submitted a document entitled “PGA Message Set for the National Highway Traffic Safety Administration (NHTSA)” that you found on www.cbp.gov, which defines motor vehicle as “a vehicle that is driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways.” You state that the subject trolley “is not manufactured primarily for use on public streets, roads or highways.” You further indicate that “the wheels nor the rails are made for use on public roads, rather, they are manufactured to run on a typical warehouse floor. The product will be used in a mock training facility owned by the US Government, not on public roads.” You note that the mock training facility has 1100 feet of standard gauge rail track.

Lastly, you submit a letter from the EPA indicating that they purchased the battery powered transfer trolley “to support an upcoming study looking at the remediation of a rail system that has been contaminated with a biological agent.” They also provided the following information:

The transport trolley is designed to travel on standard gauge rail tracks and is not designed to operate on any other surface. The transport trolley has standard track wheels that are set at a distance of 4 feet 8.5 inches to be able to move up and down train tracks.

The piece of equipment will be used at a Department of Defense facility to facilitate the decontamination of a subway system. The trolley will not be used on any other surface or location.

ISSUE:

Whether the subject battery powered transfer trolley is classifiable in heading 8704, HTSUS, as “Motor vehicles for the transport of goods”, or in heading 8709, HTSUS, as “Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles.”

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) is made in accordance with the General Rules of Interpretation (“GRI”). GRI 1 provides that the classification of goods 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 GRIs may then be applied.

The 2016 HTSUS provisions under consideration are as follows:

- 8704** Motor vehicles for the transport of goods:
- 8709** Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles:

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute 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 and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN to 87.04 states, in pertinent part:

The classification of certain motor vehicles in this heading is determined by certain features which indicate that the vehicles are designed for the transport of goods rather than for the transport of persons (heading 87.03). These features are especially helpful in determining the classification of motor vehicles, generally vehicles having a gross vehicle weight rating of less than 5 tonnes, which have either a separate closed rear area or an open rear platform normally used for the transport of goods, but may have rear bench-type seats that are without safety seat belts, anchor points or passenger amenities and that fold flat against the sides to permit full use of the rear platform for the transport of goods. Included in this category of motor vehicles are those commonly known as “multipurpose” vehicles (e.g., van-type vehicles, pick-up type vehicles and certain sports utility vehicles). The following features are indicative of the design characteristics generally applicable to the vehicles which fall in this heading:

- (a) Presence of bench-type seats without safety equipment (e.g., safety seat belts or anchor points and fittings for installing safety seat belts) or passenger amenities in the rear area behind the area for the driver and front passengers. Such seats are normally fold-away or collapsible to allow full use of the rear floor (van-type vehicles) or a separate platform (pick-up vehicles) for the transport of goods;
- (b) Presence of a separate cabin for the driver and passengers and a separate open platform with side panels and a drop-down tailgate (pick-up vehicles);
- (c) Absence of rear windows along the two side panels; presence of sliding, swing-out or lift-up door or doors, without windows, on the side panels or in the rear for loading and unloading goods (van-type vehicles);

- (d) Presence of a permanent panel or barrier between the area for the driver and front passengers and the rear area;
- (e) Absence of comfort features and interior finish and fittings in the cargo bed area which are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays).
- (e) Absence of comfort features and interior finish and fittings in the cargo bed area which are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays).

EN to 87.09 states, in pertinent part:

This heading covers a group of self-propelled vehicles of the types used in factories, warehouses, dock areas or airports for the short distance transport of various loads (goods or containers) or, on railway station platforms, to haul small trailers.

Such vehicles are of many types and sizes. They may be driven either by an electric motor with current supplied by accumulators or by an internal combustion piston engine or other engine.

The main features common to the vehicles of this heading which generally distinguish them from the vehicles of heading 87.01, 87.03 or 87.04 may be summarised as follows:

- (1) Their construction and, as a rule, their special design features, make them unsuitable for the transport of passengers or for the transport of goods by road or other public ways.
- (2) Their top speed when laden is generally not more than 30 to 35 km/h.
- (3) Their turning radius is approximately equal to the length of the vehicle itself.

Vehicles of this heading do not usually have a closed driving cab, the accommodation for the driver often being no more than a platform on which he stands to steer the vehicle. Certain types may be equipped with a protective frame, metal screen, etc., over the driver's seat.

The vehicles of this heading may be pedestrian controlled.

Works trucks are self-propelled trucks for the transport of goods which are fitted with, for example, a platform or container on which the goods are loaded.

Works trucks of heading 8709, HTSUS, have certain design features which distinguish them from the vehicles of heading 8704, HTSUS. *See* EN 87.04. Among these are their construction and special design features which make them unsuitable for the transport of goods by road or other public ways; their top speed when laden is generally not more than 30 to 35 km/h; their turning radius is approximately equal to the length of the vehicle itself; vehicles of heading 8709, HTSUS, do not usually have a closed driving cab, the accommodation for the driver often being no more than a platform to stand. Certain types may be equipped with a protective frame or metal screen; such works trucks are normally fitted with a platform or container on which the goods are loaded.

In HQ H180102, CBP found that the Goldhofer self-propelled modular transporters (SPMTs) are "works trucks" because of their "extreme weight,

slow laden speed, small turning radius, and inability to operate on public roads.” The Goldhofer SPMTs had the following features: speed of 4.8s km/hr; turning radius of 28.9 feet; and total length of 29.53 feet. *See id.* Upon review of the physical characteristics and operating capabilities of the battery powered transfer trolley, there is no dispute that the subject merchandise, like the merchandise in HQ H180102, is also identifiable as “works trucks.” The self-propelled transfer trolley’s slow laden speed of 3 km/hour, standard track wheels, straight track design, and battery power, are specialized design features that make it unsuitable for the transport of passengers or goods by road or other public ways. The transfer trolley is clearly distinguishable from vehicles of heading 87.01, 87.03, or 87.04. *See* EN 87.09. Moreover, while the subject merchandise weighs 2.5 tons (less than 5 tons), it does not have the following design features that would indicate that it is classifiable as a motor vehicle under heading 8704, HTSUS: bench-type seats or passenger amenities; a separate cabin for the driver and passengers; doors; a separate open platform with side panels and drop-down tailgate; a permanent panel or barrier between the area for the driver and front passengers and the rear area; a separate cargo bed area. *See* EN 87.04. In fact, the subject merchandise consists of a flat platform without seats, and therefore, does not have the ability to carry passengers, a driver, or goods by road or other public ways.

Heading 8709, HTSUS, covers vehicles of a kind used in the environments specified in the text. This is a provision governed by “use.” *See Group Italglass U.S.A., Inc. v. United States*, 17 CIT 226, 228 (1993). As such, it is the principal use of the class or kind of vehicle to which the battery powered transfer trolley belongs that governs classification here. We find that the trolley has many of the design features listed in the EN 87.09. We conclude that the trolley belongs to the class or kind of vehicles principally used as a works trucks of heading 8709, HTSUS.

Accordingly, the subject merchandise is classified in heading 8709, HTSUS, specifically under subheading 8709.11.00, HTSUS, as “Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles: Vehicles: Electrical.”

HOLDING:

Under the authority of GRIs 1 and 6 the battery powered transfer trolley model KPX-2T is classified in heading 8709, HTSUS, specifically in subheading 8709.11.00, HTSUS, as “Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles: Vehicles: Electrical.” The 2016 column one, general rate of duty is Free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N274106, dated April 1, 2016, is REVOKED.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment



19 CFR PART 177

REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF SHEET STRAPS

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

ACTION: Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of sheet straps.

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 U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning the tariff classification of sheet straps under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 33, on August 17, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 9, 2017.

FOR FURTHER INFORMATION CONTACT: Nerissa Hamilton-vom Baur, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0104.

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) (“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 public 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 to 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, a notice was published in the *Customs Bulletin*, Vol. 50, No. 33, on August 17, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of sheet straps. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) D84225, dated December 3, 1998, as well as 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 have advised CBP during the comment 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 is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 this notice.

In NY D84225, CBP classified “Snug Straps” made from polyester elastic material and latex rubber elastic that are secured with metal alligator clips in heading 7326, HTSUS, specifically in subheading 7326.90.85, HTSUS, which provides for “Other articles or iron or steel: Other: Other: Other.” CBP has reviewed NY D84225 and has determined the ruling letter to be in error. It is now CBP’s position that the sheet straps are properly classified, by operation of GRI 1, in heading 6307, HTSUS, specifically in subheading 6307.90.9889, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY D84225 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H058921, set forth as an attachment to this notice. 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: September 19, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H058921

September 19, 2016

CLA-2 RR:CTF:TCM H058921 HvB

CATEGORY: Classification

TARIFF NO: 6307.90.9889

DAVID BLUESTEIN
DRAKE-BLUESTEIN, INC.
8440 ROVANA CIR
STE 100
SACRAMENTO CA 95828

RE: Revocation of New York Ruling Letter (NY) D84225; classification of sheet straps

DEAR MR. BLUESTEIN:

This is in reference to New York Ruling Letters (NY) D84225, dated December 3, 1998. In NY D84225, U.S. Customs and Border Protection (CBP) classified “metal snug straps” identified as “Snug Straps” in heading 7326, which provides for “Other Articles of Iron or Steel.” For the reasons set forth below, we have determined that the classification of the sheet straps in heading 7326, of the Harmonized Tariff System of the United States (HTSUS), was incorrect.

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 of the proposed action was published in the Customs Bulletin, Vol. 50, No. 33, on August 17, 2016. No comments were received in response to the notice.

FACTS:

In NY D84225, we described the snug straps as follows:

They are made of 70% latex rubber elastic material, 30% polyester elastic material, a polypropylene plastic slide and nickel-plated steel (alligator clips grip) grippers. This article is designed with an elastic strip that measures approximately 1/2 inch wide and approximately 4 inches long. The elastic strip has a nickel-plated steel gripper on each end. Your letter of inquiry states that these snug straps adjust from 6 inches to 24 inches. The snug straps can be used for holding articles firmly in place without making holes, such as bed sheets, blankets, mattress pads, ironing board covers, furniture covers, sport socks, mitten to jackets and more. This item is blister packaged in sets of four.

ISSUE:

Whether the subject merchandise is classifiable as an other made up textile articles under heading 6307, HTSUS, or as an other article of iron or steel in heading 7326, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In

the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

6307 Other made up articles, including dress patterns:

6307.90: Other:

Other:

6307.90.98: Other. . .

* * *

7326 Other articles of iron or steel

Other parts and accessories:

7326.90 Other:

Other:

Other:

7326.90.85: Other.

* * *

Note 7 to Section XI, which covers Chapter 63, states the following:

For the purposes of this section, the expression “*made up*” means:

(b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets);

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute 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 and are generally indicative of the proper interpretation of the headings. It is CBP’s practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 63.07 provides, in pertinent part:

This heading covers items made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.

EN 73.26 provides in pertinent part:

This heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling or perforating **other than** articles included in the preceding headings of this Chapter or covered by Note 1 to Section XV or included in **Chapter 82** or **83** or more specifically covered elsewhere in the Nomenclature.

* * * * *

The instant snug straps are designed to fit across a corner of a sheet and hold it in place, and are made of textile and rubber with metal clips. In NY D84225, we classified the instant snug straps in heading 7326, HTSUS. However, the ENs for heading 7326 state, in relevant part, as follows:

This heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling or perforating other than articles included in the preceding headings of this Chapter . . . or more specifically covered elsewhere in the Nomenclature.

The snug straps consist of textile elastic straps that have metal clips. Inasmuch as the subject “Sheet Straps” have a significant textile (1/2 inch x 4 inch) elastic component, we find that the article is not similar to those enumerated in the EN for heading 7326, *e.g.*, horseshoes, tree climbing irons, articles of wire, tool boxes, which are all articles of iron or steel that have been manufactured by forging, punching, cutting, etc. The ENs for heading 6307 provide, in relevant part, as follows:

This heading covers made up articles of any textile material which are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature.

In particular, the ENs for heading 6307 specifically include a variety of textile housekeeping articles and domestic use accessories which are similar to the subject “Sheet Straps”, *e.g.*, cleaning cloths, domestic laundry or shoe bags, and flat protective sheets. *See, e.g.*, NY N259415, dated December 15, 2014 (classifying a “pop-up storage container made from textile and metal) and Headquarters Ruling Letter (HQ) HQ 950036, dated November 5, 1991 (classifying a tarpaulin). The articles enumerated in the EN to heading 6307 are very similar to the subject “Sheet Straps” in that they are textile articles which are used in the home.

In view of the foregoing, pursuant to a GRI 1 and Note 7 to Section X, we find that the subject article is classifiable in heading 6307, HTSUS, as an other made up textile article. Furthermore, we find that this is consistent with HQ W968369, dated May 14, 2009, in which we classified substantially similar sheet straps in heading 6307. Similarly, our decision is consistent with HQ 961926, dated March 21, 2000, in which we classified a textile ornamental shoe clip in heading 6307, HTSUS. *See also* NY N015633, dated August 24, 2007 (classifying a vacuum harness in heading 6307) and NY 814429, dated September 11, 1995, (classifying a camera neck strap in heading 6307).

HOLDING:

By application of GRI 1, the instant Snug Straps” is classified in subheading 6307.90.9889, HTSUS, which provides for “Other made up articles, including dress patterns: other: other: other: other.” The 2016 column one, general rate of duty is 7% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided online at <http://www.usitc.gov/tata/hts/>.

EFFECT ON OTHER RULINGS:

NY D84225, dated December 3, 1998 is hereby revoked.

In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division