

Bureau of Customs and Border Protection

General Notices

PROPOSED COLLECTION; COMMENT REQUEST

Alien Crewman Landing Permit

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Alien Crewman Landing Permit. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before October 18, 2004, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of

capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Alien Crewman Landing Permit

OMB Number: 1651-0114

Form Number: Form CBP-95A and 95B

Abstract: This collection of information is used by CBP to document conditions and limitations imposed upon an alien crewman applying for benefits under Section 251 of the Immigration and Nationality Act.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension

Affected Public: Individuals

Estimated Number of Respondents: 433,000

Estimated Time Per Respondent: 5 minutes

Estimated Total Annual Burden Hours: 35,939

Estimated Total Annualized Cost on the Public: \$359,390

Dated: August 11, 2004

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Group.*

[Published in the Federal Register, August 18, 2004 (69 FR 51317)]

Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC)

ACTION: Notice of Committee Renewal and Request for Applications for Membership

SUMMARY: The Department of Homeland Security (DHS) and Department of the Treasury are providing this notice of the renewal of the charter for the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Func-

tions (COAC). This notice also requests qualified individuals interested in serving on this committee to apply for membership.

DATES: Applications for membership should reach the office on or before September 25, 2004. Applications should be submitted in sufficient time to be received by the close of business on the closing date.

ADDRESSES: You may request a copy of the COAC's charter or file an application for COAC membership by writing to Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528 Attn: COAC 2004. Facsimile applications are acceptable, sent to 571-227-1937 - Attn: COAC 2004. Contact Ms. Frazier with any questions at 571-227-3977.

FOR FURTHER INFORMATION CONTACT: Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528, telephone 571-227-3977; facsimile 571-227-1937.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Homeland Security and the Secretary of the Treasury have determined that the renewal of the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC) is necessary and in the public interest in connection with the duties of the respective Departments. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

NAME OF COMMITTEE: Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC).

PURPOSE AND OBJECTIVE: The purpose of the Committee is to provide advice to the Secretary of the Treasury and the Secretary of Homeland Security on all matters involving the commercial operations of bureau of Customs and Border Protection (CBP) and related functions within DHS or Treasury and to submit an annual report to Congress describing its operations and setting forth any recommendations. The Committee provides a critical and unique forum for distinguished representatives of diverse industry sectors to present their views and advice directly to senior Treasury, DHS, and customs officials. This is done on a regular basis in an open and candid atmosphere.

DURATION: Continuing.

BALANCED MEMBERSHIP PLANS: The members will be selected by the Secretary of the Treasury and the Secretary of Homeland Security jointly from representatives of the trade and transpor-

tation community that do business with CBP, or others who are directly affected by customs commercial operations and related functions. In addition, members shall represent major regions of the country, and, by statute, not more than ten members may be affiliated with the same political party.

Background

In the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), Congress directed the Secretary of the Treasury to create an Advisory Committee on Commercial Operations of the Customs Service. The Committee is to consist of 20 members drawn from industry sectors affected by Customs commercial operations with balanced political party affiliations. The Committee's first two-year charter was filed on October 17, 1988, and the committee has been renewed seven times since then.

With the creation of the Department of Homeland Security, the Secretary of the Treasury delegated a joint chair and Committee management role to the Secretary of Homeland Security (see 19 CFR Part 0 Appx.). Under this delegation, and pursuant to sections 412(a)(1) and 1512(d) of the Homeland Security Act of 2002 (P. L. 107-296), the Committee's name is being changed to the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection.

Due to the importance and usefulness of this Committee to both Departments, DHS and Treasury are revising the Committee's charter to provide the Committee discretion to advise not only on the commercial operations of CBP, but also on the related functions of DHS and Treasury.

It is expected that, during its ninth two-year term, the Committee will consider issues relating to enhanced border and cargo supply chain security. COAC will continue to provide advice and report such matters as on customs modernization and automation, informed compliance and compliance assessment, account-based processing, commercial enforcement and uniformity, international efforts to harmonize customs practices and procedures, strategic planning, northern border and southern border issues, and relationships with foreign customs authorities.

Both DHS and Treasury have functions related to CBP commercial operations, such as Coast Guard operations involving vessels in international commerce, the Transportation Security Administration's operations affecting international commerce and transportation security, and Treasury regulatory and policy functions related to the customs revenue functions. Accordingly, DHS and Treasury have determined to empower COAC to provide advice and report on not only CBP commercial operations as such, but also those other DHS or Treasury functions that are related to those operations to ensure

both Departments and Congress have the perspective of the COAC on the range of critical issues relating to CBP's commercial operations functions.

Committee Membership

Membership on the Committee is personal to the appointee and is concurrent with the two-year duration of the charter for the ninth term. Under the Charter, a member may not send an alternate to represent him or her at a Committee meeting. However, since Committee meetings are open to the public, another person from a member's organization may attend and observe the proceedings in a non-participating capacity. Regular attendance is essential; the Charter provides that a member who is absent for two consecutive meetings or two meetings in a calendar year shall be recommended for replacement on the Committee.

No person who is required to register under the Foreign Agents Registration Act as an agent or representative of a foreign principal may serve on this advisory committee.

Members who are currently serving on the Committee are eligible to reapply for membership provided that they are not in their second consecutive term and that they have met attendance requirements. A new application letter (see addresses) is required, but it can incorporate by reference materials previously filed (please attach courtesy copies).

Members will not be paid compensation by the Federal Government for their services with respect to the COAC, nor shall they be considered Federal Government employees for any purpose. No per diem, transportation, or other expenses are reimbursed by the Federal Government for the expenses they incur in attending Committee meetings at any location.

Application for Advisory Committee Appointment

There is no prescribed format for the application. Applicants may send a letter describing their interest and qualifications and enclose a resume.

Any interested person wishing to serve on the (COAC) must provide the following:

- Statement of interest and reasons for application;
- Complete professional biography or resume;
- Political affiliation, in order to ensure balanced representation. (Mandatory. If no party registration or allegiance exists, indicate "independent" or "unaffiliated").

DHS and Treasury are particularly interested in receiving applications from individuals with extensive experience in maritime cargo shipping. DHS and Treasury are also interesting in receiving appli-

cations from individuals with extensive small business or small business association experience in the commercial operations of customs and related functions.

In addition, all applicants must state in their applications that they agree to submit to pre-appointment background and tax checks. (Mandatory). However, a national security clearance is not required for the position.

Dated: August 11, 2004

C. STEWART VERDERY, JR.
Assistant Secretary
(Border and Transportation
Security Policy and Planning)
Department of Homeland Security.

TIMOTHY E. SKUD,
Deputy Assistant Secretary
(Tax, Trade, and Tariff Policy),
Department of the Treasury.

[Published in the Federal Register, August 26, 2004 (69 FR 52516)]

19 CFR Part 123

Required Advance Electronic Presentation of Cargo Information: Compliance Dates for Truck Carriers

AGENCY: Customs and Border Protection, DHS.

ACTION: Announcement of compliance dates.

SUMMARY: This document informs truck carriers when they will be required to transmit advance electronic cargo information to Customs and Border Protection regarding cargo they are bringing into the United States, as mandated by section 343(a) of the Trade Act of 2002 and the implementing regulations. The dates when truck carriers will be required to comply vary depending on the port of entry at which the truck carrier will be arriving in the United States.

DATES: The implementation schedule set forth in the SUPPLEMENTARY INFORMATION discussion specifies three compliance dates, depending on the location of the port of entry.

FOR FURTHER INFORMATION CONTACT: For questions concerning Inbound Truck Cargo: James Swanson, Field Operations, (202) 344-2576.

SUPPLEMENTARY INFORMATION:**Background**

Section 343(a) of the Trade Act of 2002, as amended (the Act; 19 U.S.C. 2071 note), required that Customs and Border Protection (CBP) promulgate regulations providing for the mandatory collection of electronic cargo information, by way of a CBP-approved electronic data interchange system, before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail or truck). The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP.

On December 5, 2003, CBP published in the **Federal Register** (68 FR 68140) a final rule intended to effectuate the provisions of the Act. In particular, a new § 123.92 (19 CFR 123.92) was added to the CBP Regulations to implement the inbound truck cargo provisions of the Act's provisions. Section 123.92 describes the general requirement that for any inbound truck required to report its arrival under § 123.1(b), that will have commercial cargo aboard, CBP must electronically receive certain information regarding that cargo through a CBP-approved electronic data interchange (EDI) system no later than 1 hour prior to the carrier's reaching the first port of arrival in the United States. For truck carriers arriving with shipments qualified for clearance under the FAST (Free and Secure Trade) program, CBP must electronically receive such cargo information through the CBP-approved EDI system no later than 30 minutes prior to the carrier's reaching the first port of arrival in the United States.

To effect the advance electronic transmission of the required truck cargo information to CBP, CBP has approved two interim EDI systems, for use until the Automated Commercial Environment Truck Manifest becomes fully operational. The two systems are the Pre-Arrival Processing System (PAPS) and QP/WP (an Automated Broker Interface (ABI) in-bond processing system that allows ABI filers to create and process in-bond shipments).

Truck carriers bringing commercial cargo subject to advance cargo information requirements into the United States must use one of the two interim EDI systems described above, with the two exceptions set forth below in the CAFES AND BRASS EXCEPTION portion of this document.

All commercial cargo is subject to advance cargo information requirements, pursuant to § 123.92(b), except for the following:

- (1) Cargo in transit from point to point in the United States. Domestic cargo transported by truck and arriving at one port from another in the United States after transiting Canada or Mexico (§ 123.21; § 123.41); and

(2) Certain informal entries:

- (i) Merchandise which is informally entered on Customs Form (CF) 368 or CF 368 A (cash collection or receipt);
- (ii) Merchandise unconditionally or conditionally free, not exceeding \$2000 in value, eligible for entry on CF 7523; and
- (iii) Products of the United States being returned, for which entry is prescribed on CF 3311.

It should be noted that upon final implementation of the Truck Manifest module of the Automated Commercial Environment, the exempted information described in (2) above will be transmitted electronically in advance of cargo arrival in order to expedite release and processing.

It is further noted that § 123.92(c)(2) allows a United States importer, or its customs broker, to elect to present to CBP a portion of the required information that it possesses in relation to the cargo. Under such circumstance, the truck carrier is responsible for presenting to CBP the remainder of the required cargo information.

CAFES and BRASS Exceptions

As a temporary accommodation, CBP will not require either of the CBP-approved EDI systems to be used if the merchandise transported by the truck carrier is currently approved for processing under the Customs Automated Forms Entry System (CAFES) or the Border Release Advanced Screening and Selectivity (BRASS) programs. Under the BRASS program, the following conditions must be met:

- (1) The importer and shipper involved in the transaction are current BRASS participants (as of the date of publication of this notice);
- (2) The importer and shipper have engaged in a minimum number of BRASS import transactions during the previous calendar year. The minimum number is currently 50, but CBP retains the right to change this number as a matter of policy. Any policy changes regarding the minimum number of BRASS transactions will be communicated by the CBP BRASS Processing Center or through Port Information Notices;
- (3) The truck carrier carrying the merchandise only utilizes drivers who are registered under the Free and Secure Trade (FAST) program and carrying a FAST Driver Card. This requirement does not apply at the ports of Eastport, Idaho; International Falls, Minnesota; Grand Portage, Minnesota; and Jackman, Maine, where FAST Driver Cards are not available. This requirement will apply at these ports when CBP publishes a **Federal Register** notice announcing that CBP is ready to register FAST drivers at these geographic locations; and

- (4) For processing along the southern border, the truck carrier participates in an approved industry partnership program, such as C-TPAT (Customs-Trade Partnership Against Terrorism).

Implementation of Advance Electronic Information Requirements

Section 123.92(e) requires CBP, 90 days prior to mandating advance electronic information at a port of entry, to publish notice in the **Federal Register** informing affected carriers that the EDI system is in place and fully operational. Accordingly, in this document, CBP is notifying truck carriers when they will be required to present advance electronic cargo information regarding cargo arriving at particular ports of entry in the United States through a CBP-approved EDI system. The implementation schedule will be staggered in three phases.

The above-described interchange systems are now in place and operational at the forty ports of entry listed in the "Compliance Dates" section of this document, under the caption "First Implementation". Truck carriers, which will first arrive in the United States at these ports, will be required, 90 days from the date of publication of this notice in the **Federal Register**, to comply with the advance electronic transmission requirements set forth in § 123.92, CBP Regulations.

Two additional implementations are scheduled for the remaining ports. Consistent with the provision in § 123.92(e) that requires CBP to announce when ports are fully operational, CBP is announcing by this document that the remaining fifty-nine ports listed in the second and third phases of implementation will become fully operational at least 90 days before truck carriers are required to transmit advance electronic information to CBP at those ports. The schedule for implementing the advance electronic transmission requirements at all ninety-nine ports is summarized below in the "Compliance Dates" section.

Compliance Dates

First Implementation

Effective November 15, 2004, truck carriers must commence the advance electronic transmission to CBP of required cargo information for inbound cargo at the following forty ports of entry (corresponding port code and field office location appear in parenthesis next to port location):

- (1) Buffalo, NY (0901, Buffalo);
- (2) Alexandria Bay, NY (0708, Buffalo);
- (3) Ogdensburg, NY (0701, Buffalo);

- (4) Massena, NY (0704, Buffalo);
- (5) Detroit, MI (3801, Detroit);
- (6) Port Huron, MI (3802, Detroit);
- (7) Sault Ste. Marie, MI (3803, Detroit);
- (8) Algonac, MI (3814, Detroit);
- (9) Blaine, WA (3004, Seattle);
- (10) Sumas, WA (3009, Seattle);
- (11) Lynden, WA (3023, Seattle);
- (12) Oroville, WA (3019, Seattle);
- (13) Frontier, WA (3020, Seattle);
- (14) Laurier, WA (3016, Seattle);
- (15) Point Roberts, WA (3017, Seattle);
- (16) Danville, WA (3012, Seattle);
- (17) Ferry, WA (3013, Seattle);
- (18) Metaline Falls, WA (3025, Seattle);
- (19) Laredo, TX (2304, Laredo);
- (20) Eagle Pass, TX (2303, Laredo);
- (21) Brownsville, TX (2301, Laredo);
- (22) Progresso, TX (2309, Laredo);
- (23) Del Rio, TX (2302, Laredo);
- (24) Hidalgo/Pharr, TX (2305, Laredo);
- (25) Roma, TX (2310, Laredo);
- (26) Rio Grande City, TX (2307, Laredo);
- (27) El Paso, TX (2402, El Paso);
- (28) Presidio, TX (2403, El Paso);
- (29) Fabens, TX (2404, El Paso);
- (30) Columbus, NM (2406, El Paso);
- (31) Santa Teresa, NM (2408, El Paso);
- (32) Douglas, AZ (2601, Tucson);
- (33) Lukeville, AZ (2602, Tucson);
- (34) Naco, AZ (2603, Tucson);
- (35) Nogales, AZ (2604, Tucson);
- (36) Sasabe, AZ (2606, Tucson);
- (37) San Luis, AZ (2608, Tucson);
- (38) Tecate, CA (2505, San Diego);
- (39) Calexico, CA (2507, San Diego);
- (40) Otay Mesa, CA (2506, San Diego).

Second Implementation

Effective December 15, 2004, truck carriers must commence the advance electronic transmission to CBP of required cargo information for inbound cargo at the following forty-three ports of entry:

- (41) Champlain, NY (0712, Buffalo);
- (42) Trout River, NY (0715, Buffalo);
- (43) Pembina, ND (3401, Seattle);
- (44) Noyes, MN (3402, Seattle);
- (45) Portal, ND (3403, Seattle);

- (46) Neche, ND (3404, Seattle);
- (47) St. John, ND (3405, Seattle);
- (48) Northgate, ND (3406, Seattle);
- (49) Walhalla, ND (3407, Seattle);
- (50) Hannah, ND (3408, Seattle);
- (51) Sarles, ND (3409, Seattle);
- (52) Ambrose, ND (3410, Seattle);
- (53) Antler, ND (3413, Seattle);
- (54) Sherwood, ND (3414, Seattle);
- (55) Hansboro, ND (3415, Seattle);
- (56) Maida, ND (3416, Seattle);
- (57) Fortuna, ND (3417, Seattle);
- (58) Westhope, ND (3419, Seattle);
- (59) Noonan, ND (3420, Seattle);
- (60) Carbury, ND (3421, Seattle);
- (61) Dunseith, ND (3422, Seattle);
- (62) Warroad, MN (3423, Seattle);
- (63) Baudette, MN (3424, Seattle);
- (64) Pine Creek, MN (3425, Seattle);
- (65) Roseau, MN (3426, Seattle);
- (66) International Falls, MN (3604, Seattle);
- (67) Grand Portage, MN (3613, Seattle);
- (68) Richford, VT (0203, Boston);
- (69) Derby Line, VT (0209, Boston);
- (70) Norton, VT (0211, Boston);
- (71) Beecher Falls, VT (0206, Boston);
- (72) Highgate Springs, VT (0212, Boston);
- (73) Houlton, ME (0106, Boston);
- (74) Bridgewater, ME (0127, Boston);
- (75) Fort Fairfield, ME (0107, Boston);
- (76) Limestone, ME (0118, Boston);
- (77) Van Buren, ME (0108, Boston);
- (78) Madawaska, ME (0109, Boston);
- (79) Fort Kent, ME (0110, Boston);
- (80) Calais, ME (0115, Boston);
- (81) Vanceboro, ME (0105, Boston);
- (82) Eastport/Lubec, ME (0103, Boston);
- (83) Jackman, ME (0104, Boston).

Third Implementation

Effective January 14, 2005, truck carriers must commence the advance electronic transmission to CBP of required cargo information for inbound cargo at the following sixteen ports of entry:

- (84) Eastport, ID (3302, Seattle);
- (85) Porthill, ID (3308, Seattle);
- (86) Sweetgrass, MT (3310, Seattle);
- (87) Raymond, MT (3301, Seattle);

- (88) Turner, MT (3306, Seattle);
- (89) Scobey, MT (3309, Seattle);
- (90) Whitetail, MT (3312, Seattle);
- (91) Piegan, MT (3316, Seattle);
- (92) Opheim, MT (3317, Seattle);
- (93) Roosville, MT (3318, Seattle);
- (94) Morgan, MT (3319, Seattle);
- (95) Whitlash, MT (3321, Seattle);
- (96) Del Bonita, MT (3322, Seattle);
- (97) Alcan, AK (3104, Portland);
- (98) Skagway, AK (3103, Portland);
- (99) Dalton Cache, AK (3106, Portland).

DATED: August 12, 2004

ROBERT C. BONNER,
Commissioner,
Customs and Border Protection.

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.

Washington, DC, August 18 2004,

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

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

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF AN AIR BLOW GUN KIT

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

ACTION: Notice of proposed revocation of tariff classification ruling letter and revocation of treatment relating to the classification of an air blow gun kit.

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 the Bureau of Customs and Border Protection (CBP) intends to revoke a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of an air blow gun kit. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before October 1, 2004.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: David Salkeld, General Classification Branch, at (202) 572-8781.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter relating to the tariff classification of an air blow gun kit. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) K85017, dated April 26, 2004 (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.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or

CBP's previous interpretation of the HTSUS. Any person involved with 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 K85017, CBP classified an air blow gun kit under subheading 8467.19.5090, HTSUSA, which provides for "Tools for working in the hand, pneumatic, hydraulic or with self-contained electric or nonelectric motor, and parts thereof: Pneumatic: Other: Other: Other:"

Based on our analysis of the scope of the terms of headings 8424 and 8467, HTSUS, the Legal Notes, and the Explanatory Notes, we now believe the air blow gun kit is classified under subheading 8424.20.9000, which provides for, "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Spray guns and similar appliances: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY K85017 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967219 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that is contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: August 16, 2004

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY K85017

April 26, 2004

CLA-2-84:RR:NC:1:104 K85017

CATEGORY: Classification

TARIFF NO.: 8467.19.5090

MS. SARALEE ANTRIM-SAZAN
CARMICHAEL INTERNATIONAL SERVICE
533 Glendale Boulevard
Los Angeles, California 90026-5097

RE: The tariff classification of an air blow gun kit from China

DEAR MS. ANTRIM-SAZAN:

In your letter dated March 16, 2004 on behalf of Alltrade, Inc. of Long Beach, California you requested a tariff classification ruling.

A sample has been provided of the Trades Pro 15 pc. Air Tool Accessory Kit, Model # 835048. This air blow gun kit includes a blow gun, three nozzles, two male and two female connectors, two universal adapters, two quick couplers, a dual tire chuck, tire gauge and wire brush. All of these items are packaged for retail on a hanging blister card. The blow gun (for blowing out tubes and pipes, and other air cleaning applications) will be used with a compressor. It is connected to the compressor's hose utilizing the connectors, couplers and adapters in the kit. The sample will be returned per your request.

General Rule of Interpretation (GRI) 1, HTS, states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. Goods that are, prima facie, classifiable under two or more headings, are classifiable in accordance with GRI 3, HTS. GRI 3(a) states in part that when two or more headings each refer to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific, even if one heading gives a more precise description of the goods.

The air blow gun kit consists of at least two different articles that are, prima facie, classifiable in different headings. The kits consist of articles put up together to carry out a specific activity (i.e., air cleaning operations). Finally, the articles are put up in a manner suitable for sale directly to users without repacking. Therefore, the kits in question are within the term "goods put up in sets for retail sale." GRI 3(b) states in part that goods put up in sets for retail sale, which cannot be classified by reference to GRI 3(a), are to be classified as if they consisted of the component which gives them their essential character. It is the opinion of this office that the air blow gun imparts the essential character to this kit.

The applicable subheading for the Trades Pro 15 pc. Air Tool Accessory Kit will be 8467.19.5090, Harmonized Tariff Schedule of the United States (HTS), which provides for tools for working in the hand, pneumatic, hydraulic or with self-contained electric or nonelectric motor, and parts thereof: pneumatic: other. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert Losche at 646-733-3011.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.



[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967219
CLA-2 RR:CR:GC 967219 DSS
CATEGORY: Classification
TARIFF NO.: 8424.20.9000

MS. SARALEE ANTRIM-SAZAN
CARMICHAEL INTERNATIONAL SERVICE
533 Glendale Boulevard
Los Angeles, CA 90026-5097

RE: Revocation of NY K85017; air blow gun kit from China

DEAR MS. ANTRIM-SAZAN:

This letter is pursuant to the Bureau of Customs and Border Protection (CBP) reconsideration of New York Ruling Letter (NY) K85017, dated April 26, 2004, which was issued to you on behalf of Alltrade, Inc. by the Director, National Commodity Specialist Division, New York, with respect to the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of the air blow gun kit. After review of NY K85017, CBP has determined that the classification of the kit under subheading 8467.19.5090, HTSUS, was incorrect.

FACTS:

In NY K85017, CBP wrote, in relevant part:

A sample has been provided of the Trades Pro 15 pc. Air Tool Accessory Kit, Model # 835048. This air blow gun kit includes a blow gun, three nozzles, two male and two female connectors, two universal adapters, two quick couplers, a dual tire chuck, tire gauge and wire brush. All of these items are packaged for retail on a hanging blister card. The blow gun (for blowing out tubes and pipes, and other air cleaning applications) will be used with a compressor. It is connected to the compressor's hose utilizing the connectors, couplers and adapters in the kit. . . .

The air blow gun kit consists of at least two different articles that are, prima facie, classifiable in different headings. The kits consist of articles put up together to carry out a specific activity (i.e., air cleaning

operations). Finally, the articles are put up in a manner suitable for sale directly to users without repacking. Therefore, the kits in question are within the term "goods put up in sets for retail sale." GRI 3(b) states in part that goods put up in sets for retail sale, which cannot be classified by reference to GRI 3(a), are to be classified as if they consisted of the component which gives them their essential character. It is the opinion of this office that the air blow gun imparts the essential character to this kit.

The kit was classified under subheading 8467.19.5090, HTSUS, which provides for, "Tools for working in the hand, pneumatic, hydraulic or with self-contained electric or nonelectric motor, and parts thereof: Pneumatic: Other: Other: Other."

ISSUE:

What is the proper tariff classification for the instant air blow gun kit?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRIs). 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. GRI 2 is not applicable here except insofar as it provides that "[t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." GRI 3 provides as follows:

When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected 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.
- (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

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 HTSUSA and are thus useful in ascertaining the classification of merchandise under the System. CBP be-

lieves the ENs should always be consulted. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUSA provisions under consideration are as follows:

8424	Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof:
8424.20	Spray guns and similar appliances:
8424.20.9000	Other
	* * * *
8467	Tools for working in the hand, pneumatic, hydraulic or with self-contained electric or nonelectric motor, and parts thereof:
	Pneumatic:
8467.19	Other:
8467.19.50	Other
8467.19.5090	Other

We still believe that the kit is considered a set under GRI 3(b) and that its essential character is provided by the air blow gun. However, upon reexamination of the kit, it is apparent that the kit is not classified under heading 8467, but instead should be classified under heading 8424, which provides for spray guns and similar appliances, by operation of Note 2 to Chapter 84, HTSUS.

The kit meets the GRI 3(b) and attendant EN (X) definition of "goods put up in sets for retail sale." First, the kit consists of at least two different articles which are, *prima facie*, classifiable in two different headings. Second, the items are put up together to carry out the specific activity of spraying air or air cleaning operations and the items will be used together or in conjunction with one another. Third, the articles are put up in a manner suitable for sale directly to users without repacking. We thus believe that the kit qualifies as a set of GRI 3(b).

The factor which determines essential character may 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. GRI 3(b) EN (VIII). As was stated in NY K86865, it is the air blow gun that imparts the essential character of the kit as it sprays the air needed for the air cleaning operations.

Chapter 84, Note 2, HTSUS, states:

Subject to operation of note 3 to section XVI, a machine or appliance which answers to a description in one or more of the headings 8401 to 8424 and at the same time to a description in one or more of the headings 8425 to 8480 is to be classified under the appropriate heading of the former group and not the latter. . .

The question then is whether the air blow gun kit is classified under heading 8424, HTSUS. We believe that it is. EN 84.24 provides in pertinent part:

(B) Spray Guns and Similar Appliances

Spray guns and similar hand controlled appliances are usually designed for attaching to compressed air or steam lines, and are also connected, either directly or through a conduit, with a reservoir of the material to be projected. . . . They may also be used for projecting a powerful jet of compressed air or steam for cleaning stonework in buildings, statuary, etc.

The group also includes separately presented hand controlled "anti-smudge" spraying devices for fitting to printing machines, and hand controlled metal spraying pistols operating either on the principle of a blow pipe, or by the combined effect of an electric heating device and a jet of compressed air. . . .

The instant air gun would seem to fall under the terms of the heading and the language within EN 84.24, which states that hand controlled appliances fitted with triggers or other valves for controlling flow through the nozzle fall under heading 8424. Furthermore, similar products have been classified under subheading 8424.20.90, HTSUS. In NY 832130, dated October 14, 1988, CBP classified an air blow gun used for cleaning dust and other impurities, and a general purpose spray gun used for high volume application of enamels, varnish and similar materials under that heading. *See also* NY R00091, dated February 5, 2004 (classifying spray-on tanning system under subheading 8424.20); NY F80605, dated December 16, 1999; NY 801566, dated September 14, 1994; and NY 865507, dated August 15, 1991.

From the description provided to CBP, we feel that the air blow gun falls under the definition of spray gun or similar appliance for tariff purposes. In this instance, the air blow gun will be connected to a compressor and will be used to blow out tubes and pipes and for other air-cleaning operations by shooting a jet of compressed air. Chapter 84, Note 2 compels classification of this kit under heading 8424.

HOLDING:

In accordance with the above discussion, the correct classification for the air blow gun kit is under subheading 8424.20.9000, HTSUSA, which provides for "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Spray guns and similar appliances: Other." The 2004 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 World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY K85017 is REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.