

U.S. Customs and Border Protection



DEPARTMENT OF THE TREASURY

19 CFR PARTS 12 AND 163

USCBP-2008-0111

CBP DEC. 10-04

RIN 1505-AC06

Prohibitions and Conditions for Importation of Burmese and Non-Burmese Covered Articles of Jadeite, Rubies, and Articles of Jewelry Containing Jadeite or Rubies

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

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, interim amendments to title 19 of the Code of Federal Regulations (“19 CFR”) which were published in the **Federal Register** on January 16, 2009, as CBP Dec. 09-01 to implement the prohibitions and conditions for importation of Burmese and non-Burmese covered articles of jadeite, rubies, and articles of jewelry containing jadeite or rubies.

DATES: Final rule effective April 22, 2010.

FOR FURTHER INFORMATION CONTACT: Cathy Saucedo, Director, Import Safety and Interagency requirements Division, Office of International Trade (202) 863-6556, or Brenda Brockman Smith, Executive Director, Trade Policy and Programs, Office of International Trade (202) 863-6406.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2008, the President signed into law the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008 (Pub. L. 110-286) (the “JADE Act”). Section 6 of the JADE Act amends the Burmese Freedom and Democracy Act of 2003 (Pub. L.

108–61) (as so amended, the “BFDA”) by adding a new section 3A that prohibits the importation of jadeite and rubies mined or extracted from Burma, and articles of jewelry containing jadeite or rubies mined or extracted from Burma (Burmese covered articles). Section 3A of the JADE Act also regulates the importation of jadeite and rubies mined or extracted from a country other than Burma, and articles of jewelry containing jadeite or rubies mined or extracted from a country other than Burma (non-Burmese covered articles). Presidential Proclamation 8294 of September 26, 2008, implements the prohibitions and conditions of the JADE Act. (See Annex of Presidential Proclamation 8294 for Additional U.S. Note 4 to Chapter 71, Harmonized Tariff Schedule of the United States (“HTSUS”).

On January 16, 2009, U.S. Customs and Border Protection (“CBP”) published CBP Dec. 09–01 in the **Federal Register** (74 FR 2844), setting forth interim amendments to implement certain provisions of the JADE Act and Presidential Proclamation 8294 by prohibiting the importation of “Burmese covered articles” (jadeite, rubies, and articles of jewelry containing jadeite or rubies, mined or extracted from Burma), and by setting forth conditions for the importation of “non-Burmese covered articles” (jadeite, rubies, and articles of jewelry containing jadeite or rubies, mined or extracted from a country other than Burma).

Although the interim regulations were promulgated without prior public notice and comment procedures and took effect on January 16, 2009, CBP Dec. 09–01 provided for the submission of public comments that would be considered before adopting the interim regulations as a final rule. The prescribed public comment period closed on March 17, 2009.

Discussion of Comment Received in Response to CBP Dec. 09–01

One commenter responded to the solicitation of comments on the interim regulations set forth in CBP Dec. 09–01. The commenter stated that the interim final rule provided “an excellent platform that offers both very workable and realistic means to uphold the law as written and to support the spirit of the law drafted by U.S. Congress.” The commenter offered a few suggestions. A description of the commenter’s suggestions and CBP’s analysis are set forth below.

Comment:

The commenter recommended that in order to support the importer certification under Additional U.S. Note 4(a), Chapter 71, HTSUS, importers be required, at their sole expense, to confirm the veracity of their certification of non-Burmese covered articles by conducting ran-

dom spot checks utilizing lab testing by an independent gemological laboratory accredited by CBP. The commenter also recommends requiring the importer to maintain records showing a history of the auditing process for a period of at least five years, and to make such records available to CBP upon request.

CBP's Response:

Requiring an importer to conduct lab testing on the merchandise to be imported goes beyond the explicit statutory requirements and the importer certification requirement of 19 CFR 12.151(d). Additional U.S. Note 4(a), Chapter 71, HTSUS, provides that the presentation of an entry for any good under heading 7103, 7113, or 7116 is deemed to be a certification by the importer that any jadeite or rubies contained in such good were not mined in or extracted from Burma. As such, the presentation of an entry serves as the importer certification. If an importer elects to test the imported gems to bolster the information provided by the exporter, the results of the testing will serve to reflect upon the importer's level of reasonable care used and will be objective evidence that the goods were not mined in or extracted from Burma. CBP concurs with the commenter regarding retaining the 5-year record retention period in the final rule as set forth in §12.151(e) as well as the requirement in §12.151(f) that the importer must provide, upon CBP's request, all documentation to support the importer and exporter certifications.

Comment:

The commenter recommended that only government-validated certificates of origin from the country in which the jadeite or rubies are mined or extracted be accepted as verifiable evidence, and that protocols related to the issuance of the exporter's government-validated certification guaranteeing non-Burmese origin should require random spot testing by an independent gemological laboratory accredited by CBP to verify non-Burmese origin.

CBP's Response:

The commenter's recommendations with respect to foreign government certification and validation of exporter certificates cannot be enforced by CBP because no international arrangement, similar to the Kimberley Process Certification Scheme for conflict diamonds, currently exists for jadeite or rubies from Burma.

Comment:

The commenter recommended that as a condition for export with the intent of re-importation into the United States, CBP should require that any Burmese covered article be detailed in such a way so as to ensure the same article is the one considered for re-importation to prevent circumvention of the JADE sanctions. Further, the commenter recommended that for the re-importation of non-Burmese covered articles, the original country of origin certificate be required, including a statement detailing any transformation that may have occurred.

CBP's Response:

On CBP Form 4457, Certificate of Registration for Personal Effects Taken Abroad, CBP collects information from the owner in advance of departure concerning articles that will be re-imported into the United States. In addition, on CBP Form 4455, Certificate of Registration, CBP collects information about articles that are exported from the United States via a carrier for alteration, repairs, use abroad, replacement, or processing that will be re-imported into the United States and that may be subject to duty for the cost or value of the alteration, repair, or processing. Completion of this form is mandatory. Although CBP cannot ensure that the item being re-imported is the actual item that was exported unless the article has permanent identifying information such as etched or engraved serial numbers, CBP will endeavor to use the information contained on these forms to prevent the circumvention of the JADE sanctions when a covered article is exported with the intention of re-importation. As is the case with all CBP forms, the importer is responsible for the truthfulness of the information submitted on the form.

Comment:

The commenter asserts that there is a risk that the personal-use exemption will be used as a means to circumvent the prohibitions and conditions for the importation of non-Burmese covered articles. The commenter recommended increased scrutiny be placed on individuals claiming a personal-use exemption and that random spot-testing be conducted to verify the imported goods are in fact non-Burmese covered articles.

CBP's Response:

CBP appreciates the commenter's concerns and the underlying rationale. Any Burmese covered articles or non-Burmese covered articles that are imported into the United States in violation of any

prohibition of the JADE Act are subject to all applicable seizure and forfeiture laws to the same extent as any other violation of the customs laws.

Comment:

The commenter stated that the reliance on a “paper-only” system of verifiable controls without built-in safeguards such as random spot lab testing to verify authenticity and accuracy of documentation is susceptible to the risk for fraud.

CBP’s Response:

CBP acknowledges that until there is an international certification scheme in place, the authenticity and accuracy of documentation in the required “system of verifiable controls” is susceptible to fraud. CBP will enforce the JADE Act through the use of an importer’s and exporter’s certification and the other applicable customs laws.

Comment:

The commenter recommended that importers should be required to provide a written warranty to each buyer or ultimate consignee of non-Burmese covered articles, affirming that an established system of verified controls from the mine to the supplier is in place and that officially validated certification has accompanied the articles at all stages.

CBP’s Response:

The commenter’s suggestion that the importer issue a written warranty to the ultimate consumer goes beyond what is required by the JADE Act. Accordingly, CBP cannot prescribe in this final rule such entry requirements that are not mandated by the Act.

Conclusion

As indicated in the above discussion, CBP is unable to adopt the commenter’s suggestions given the current statutory scheme. Accordingly, the interim rule published as CBP Dec. 09–01 is being adopted as a final rule.

Executive Order 12866

CBP has determined that this document does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993).

Regulatory Flexibility Act

CBP Dec. 09–01 was issued as an interim rule rather than a notice of proposed rulemaking because CBP had determined that, pursuant to the provisions of 5 U.S.C. 553(b)(B) of the Administrative Procedure Act, prior public notice and comment procedures on the interim regulations were impracticable and contrary to public interest, and that there was good cause for the rule to become effective immediately upon publication since the JADE Act is already in effect. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, this final rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information in this final rule have previously been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0133.

The collections of information in these regulations are contained in §12.151(d) (19 CFR 12.151(d)). This information is used by CBP to fulfill its information collection obligations under section 3A(c)(1) of the BFDA, as amended, and Additional U.S. Note 4, Chapter 71, HTSUS, required in connection with entry of non-Burmese covered articles. The likely respondents are business organizations, including importers and brokers.

The estimated average annual burden associated with the collection of information in this final rule is 0.2 hours per respondent or record keeper. Under the Paperwork Reduction Act, 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 OMB control number.

Signing Authority

This document is being issued in accordance with §0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Economic sanctions, Entry of merchandise, Foreign assets control, Imports, Licensing, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Sanctions.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

Accordingly, the interim rule amending parts 12 and 163 of the CBP regulations (19 CFR parts 12 and 163), which was published at 74 FR 2844 on January 16, 2009, is adopted as a final rule.

Dated: March 10, 2010

Deputy Assistant Secretary of the Treasury

Timothy E. Skud

DAVID V. AGUILAR
Acting Deputy Commissioner
U.S. Customs and Border Protection

[Published in the Federal Register, March 23, 2010 (75 FR 13676)]



DEPARTMENT OF THE TREASURY

19 CFR PARTS 111 AND 163

USCBP-2009-0019

RIN 1505-AC12

Customs Broker Recordkeeping Requirements Regarding Location and Method of Record Retention

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to title 19 of the Code of Federal Regulations regarding customs broker recordkeeping requirements as they pertain to the location and method of record retention. Specifically, Customs and Border Protection (CBP) proposes to amend the CBP regulations to permit a licensed customs broker to store records relating to his customs transactions at any location within the customs territory of the United States, so long as the broker's designated recordkeeping contact, identified in the broker's permit application, makes all records available to CBP within a reasonable period of time from request at the broker district that covers the CBP port to which the records relate. This document also proposes to remove the requirement, as it currently applies to brokers who maintain separate electronic records, that certain entry records must be retained in their original format for the 120-day period after the release or conditional release of imported merchandise. The changes proposed in this document are intended to conform CBP's recordkeeping requirements to reflect modern business practices whereby documents are often generated, stored and transmitted in an electronic format. The proposed changes serve to remove duplicative recordkeeping requirements and streamline recordkeeping procedures for brokers who maintain electronic recordkeeping systems without compromising the agency's ability to monitor and enforce recordkeeping compliance.

DATES: Comments must be received on or before May 24, 2010.

ADDRESSES: You may submit comments, identified by *USCBP 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-2009-0019.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, N.W. (Mint Annex), Washington, D.C. 20229.

Instructions: All submissions received must include the agency name and USCBP 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 International Trade, U.S. Customs and Border Protection, 799 9th Street, N.W., 5th Floor, Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Cynthia Whittenburg, Trade Policy and Programs, Office of International Trade, Customs and Border Protection, 202-863-6512.

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 proposed rule. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

This document proposes amendments to title 19 of the Code of Federal Regulations (19 CFR) regarding broker recordkeeping requirements as they pertain to the location and method of record retention.

Many recordkeeping requirements that were once deemed necessary to ensure CBP's ability to monitor broker compliance and enforce the regulations were promulgated at a time when most records existed in a paper format. New technologies in data processing have served to streamline business operations and have drastically changed or rendered obsolete many long-standing business practices.

Location of stored records

As the trade operates in an increasingly paperless environment, this document proposes amendments to the CBP regulations that would permit a licensed customs broker to store records relating to its customs transactions at any location within the customs territory of

the United States, so long as the designated recordkeeping contact identified in the broker's applicable permit application makes all records available to CBP within a reasonable period of time from request at the broker district that covers the CBP port to which the records relate. These amendments serve to modernize the CBP regulations to reflect the automated commercial environment in which most documents are generated, stored and transmitted electronically, while preserving the agency's ability to monitor and enforce recordkeeping compliance.

Method of entry record storage during prescribed 120-day period from release or conditional release of imported merchandise

The recordkeeping provisions set forth in part 163 of title 19 of the CFR require the retention of records for a 5-year period either in their original format (*i.e.*, as created or received by the person responsible for maintenance) or in an alternative format (*i.e.*, electronic formats that are in compliance with generally accepted business standards), unless the records are entry documents (excluding packing lists) in which case they must be retained in their original formats for the prescribed 120-day period from release or conditional release of the imported merchandise.

Currently, all records relating to a broker's customs business, even if originally submitted in paper, are typically stored in an electronic format as the broker receives them and/or at the time the broker files the entry summary in satisfaction of the general 5-year record retention requirement. In situations where the "original" entry documents are in an electronic format, there is no undue hardship in electronically retaining the records for the prescribed 120-day period inasmuch as it runs concurrently with the requisite 5-year document retention period. However, where the "original" entry documents are in a paper format, the broker currently must keep the "original" paper entry records for the prescribed 120-day period regardless of the fact that these same records have already been stored electronically. In these situations, a broker will end up retaining two sets of records (one paper and one electronic) for the same document. Moreover, because the period of retention for original entry documents varies depending on the extent of the "conditional release" period and/or whether a redelivery notice has been issued, a broker is precluded from establishing a reliable schedule for the systematic destruction of these types of documents. In most cases, a broker ends up maintaining both sets of records for the entire 5-year recordkeeping period.

This document proposes to remove this duplicative record retention requirement as it currently applies to brokers who maintain separate

electronic records. While importers still must retain entry records in their original format for the 120-day period after the release or conditional release of imported merchandise, brokers who are not serving as the importer of record are exempted from this requirement so long as they retain all records electronically for 5 years. In addition, this exemption does not apply to brokers who do not maintain electronic records (that is, all brokers who only transmit paper documents to CBP). Also, this exemption does not apply to any document that is required by law to be maintained as a paper record, such as some softwood lumber documents.

EXPLANATION OF AMENDMENTS

For the reasons described above, it is proposed to amend §§ 111.23 and 163.5 of title 19 of the CFR (19 CFR 111.23 and 163.5) regarding broker recordkeeping requirements as they pertain to the location and method of record retention. It is also proposed to amend § 163.12 (19 CFR 163.12) to reflect address changes. A more detailed explanation of the proposed amendments, other than those involving technical corrections or minor wording and editorial changes, is set forth below.

Section 111.23: Retention of records.

Section 111.23 sets forth entry record retention requirements. Paragraph (a)(1) of this section describes where records must be kept. Paragraph (a)(2) provides, in pertinent part, that the records described in paragraph (a)(1) of this section, other than powers of attorney, must be retained for at least 5 years after the date of entry. Paragraph (b) prescribes the manner by which brokers may exercise the option to store records on a consolidated system. This provision requires a broker to submit written notice to CBP providing each address at which the broker intends to maintain the consolidated records, a detailed statement describing all the records to be maintained at each location and the methodology of storage, as well as an agreement that there will be no change in the records or their method of storage without first notifying Regulatory Audit.

As CBP proposes to permit a licensed customs broker to store records relating to its customs transactions at any location within the customs territory of the United States, and to remove the requirement that the records must be retained within the specified broker district, a separate consolidated system of record retention as prescribed by existing § 111.23(b) is no longer necessary. Accordingly, CBP proposes to remove current paragraph (b) in § 111.23 and to restructure § 111.23 to set forth the new standards applicable to the

location of record storage in paragraph (a), and to redesignate existing paragraph (a)(2), which pertains to the period of record retention, as paragraph (b).

Section 163.5: Methods for storage of records.

Section 163.5 of title 19 of the CFR prescribes the manner by which records must be stored. Within § 163.5, paragraph (a) sets forth the storage requirements applicable to original records and provides that all persons listed in § 163.2 (*i.e.*, owners, importers, consignees, importers of record, entry filers, or other persons) must maintain all records required by law and regulation for the required retention periods and as original records, whether paper or electronic, unless alternative storage methods have been adopted.

Paragraph (b) prescribes the standards applicable to “alternative methods of storage” and states that any record, other than those that are specifically required by law to be maintained as original, may be stored in an alternative format. Section 163.5(b)(2)(iii) identifies entry records, other than packing lists, as among the types of records that must be stored “in their original formats” for a prescribed time period. It is proposed to amend § 163.5(b)(2)(iii) to provide that the requirement to store entry records in their original format for the prescribed time period is limited to importers, brokers who are serving as importers of records, and brokers who only maintain paper records.

Section 163.5(b)(5) sets forth the manner by which CBP will address a failure to comply with alternative storage requirements. This provision currently states that if a person uses an alternative storage method for records that is not in compliance with the regulations, the appropriate CBP office may instruct the person in writing to immediately discontinue the use of such method. The instruction to discontinue the alternative storage method, per the regulations, is effective upon receipt. This document proposes to amend § 163.5(b)(5) to provide that, prior to a discontinuance of the alternative storage method, CBP will provide the recordkeeper with 30-days written prior notice that describes the facts giving rise to the action. If, within that 30-day period, the recordkeeper provides written notice to CBP that establishes, to CBP’s satisfaction, that compliance has been achieved, the alternative storage method may continue. Failure to timely respond to CBP will result in CBP requiring discontinuance of the alternative storage method.

THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Because these proposed amendments liberalize broker recordkeeping requirements, and place no new regulatory requirements on small entities to change their business practices, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Further, these proposed amendments do not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

PAPERWORK REDUCTION ACT

The information collections contained in this proposed rule have been previously submitted and approved by the Office of Management and Budget (OMB) and assigned OMB control numbers 1651–0076 and 1651–0034. 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.

SIGNING AUTHORITY

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

LIST OF SUBJECTS

19 CFR Part 111

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

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Penalties Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

For the reasons set forth in the preamble, parts 111 and 163 of title 19 of the CFR (19 CFR Part 111 and 163) are proposed to be amended as set forth below.

PART 111 — CUSTOMS BROKERS

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

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

* * * * *

2. Section 111.23 is revised to read as follows:

§ 111.23 Retention of records.

(a) *Place of retention.* A licensed customs broker may retain records relating to its customs transactions at any location within the customs territory of the United States in accordance with the provisions of this part and part 163 of this chapter. Upon request by CBP to examine records, the designated recordkeeping contact identified in the broker's applicable permit application, in accordance with § 111.19(b)(6) of this chapter, must make all records available within a reasonable period of time to CBP at the broker district that covers the CBP port to which the records relate.

(b) *Period of retention.* The records described in this section, other than powers of attorney, must be retained for at least 5 years after the date of entry. Powers of attorney must be retained until revoked, and revoked powers of attorney and letters of revocation must be retained for 5 years after the date of revocation or for 5 years after the date the client ceases to be an "active client" as defined in § 111.29(b)(2)(ii), whichever period is later. When merchandise is withdrawn from a bonded warehouse, records relating to the withdrawal must be retained for 5 years from the date of withdrawal of the last merchandise withdrawn under the entry.

PART 163 — RECORDKEEPING

3. The authority citation for part 163 continues to read in part as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

4. In § 163.5:

a. Paragraph (a) is amended in the first sentence by removing the word "shall" and adding in its place the word "must"; and in the last sentence by removing the word, "Customs" and adding in its place the term "CBP";

b. Paragraph (b)(2) introductory text is amended in the second sentence by removing the word "Customs" and adding in its place the term "CBP";

c. Paragraph (b)(2)(iii) is revised;

d. Paragraph (b)(2)(v) is amended by removing the word "Customs" and adding in its place the term "CBP";

e. Paragraph (b)(2)(vi) is amended by removing the word "shall" and adding in its place the word "must";

f. Paragraph (b)(3) is amended by removing the words “the Miami regulatory audit field office” and adding in their place the language, “Regulatory Audit, Office of International Trade, Customs and Border Protection, 2001 Cross Beam Drive, Charlotte, North Carolina 28217”;

g. Paragraph (b)(4) is amended by removing the words “shall be” and adding in their place the word “are”;

h. Paragraph (b)(5) is revised.

The revision of 163.5(b) reads as follows:

§ 163.5 Methods for storage of records.

* * * * *

(b) * * *

(2) * * *

(iii) Except in the case of packing lists (*see* § 163.4(b)(2)), entry records must be maintained by the importer in their original formats for a period of 120 calendar days from the end of the release or conditional release period, whichever is later, or, if a demand for return to CBP custody has been issued, for a period of 120 calendar days either from the date the goods are redelivered or from the date specified in the demand as the latest redelivery date if redelivery has not taken place. Customs brokers who are not serving as the importer of record and who maintain separate electronic records are exempted from this requirement. This exemption does not apply to any document that is required by law to be maintained as a paper record.

* * *

(5) *Failure to comply with alternative storage requirements.* If a person listed in § 163.2 uses an alternative storage method for records that is not in compliance with the conditions and requirements of this section, CBP may issue a written notice informing the person of the facts giving rise to the notice and directing that the alternative storage method must be discontinued in 30 calendar days unless the person provides written notice to the issuing CBP office within that time period that explains, to CBP’s satisfaction, how compliance has been achieved. Failure to timely respond to CBP will result in CBP requiring discontinuance of the alternative storage method until a written statement explaining how compliance has been achieved has been received and accepted by CBP.

5. In § 163.12:

a. Paragraph (a) is amended by removing the word “Customs” where it appears and adding in each place the term “CBP”;

b. Paragraph (b)(2) is amended: by removing the word “shall” where it appears and adding in each place the word “must”, and; in the

second sentence, by removing the words “Customs Recordkeeping” and adding in their place the words “CBP Recordkeeping” and removing the language “the Customs Electronic Bulletin Board (703–921–6155)” and adding in its place the language, “CBP’s Regulatory Audit website located at http://www.cbp.gov/xp/cgov/import/regulatory_audit_program/archive/compliance_assessment/”;

c. Paragraph (b)(3) is amended: in the first, third and fourth sentences, by removing the word “Customs” where it appears and adding in each place the term “CBP”, and; in the second sentence, by removing the word “Customs” and adding in its place the words “all applicable”;

d. Paragraphs (b)(3)(iii), (iv), (v), and (vi) are amended by removing the word “Customs” where it appears and adding in each place the term “CBP”;

e. Paragraph (c)(1) is amended by removing the word “shall” where it appears and adding in each place the word “will”;

f. Paragraph (c)(2) is amended: by removing the word “Customs” and adding in its place the term “CBP”; by removing the word “Miami” and adding in its place the word “Charlotte”, and; by removing the word “shall” and adding in its place the word “will”;

g. Paragraph (d)(1) is amended: in the first sentence, by removing the words “Customs shall” and adding in their place the words “CBP will”, and; in the second sentence, by removing the word “Customs” and adding in its place the word “CBP”;

h. The introductory text to paragraph (d)(2) is amended by removing the word “shall” and adding in its place the word “must”; and

i. Paragraph (d)(3) is amended: by removing the word “shall” and adding in its place the word “must”, and; by removing the word “Customs” and adding in its place the term “CBP”.

Timothy E. Skud

Deputy Assistant Secretary of the Treasury

Dated: Approved: March 10, 2010

DAVID V. AGUILAR
Acting Deputy Commissioner
U.S. Customs and Border Protection

**ACCREDITATION AND APPROVAL OF COLUMBIA
INSPECTION, INC., AS A COMMERCIAL GAUGER AND
LABORATORY**

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

ACTION: Notice of accreditation and approval of Columbia Inspection, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Columbia Inspection, Inc., 797 West Channel Street, San Pedro, CA 90731, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Columbia Inspection, Inc., as commercial gauger and laboratory became effective on July 21, 2009. The next triennial inspection date will be scheduled for July 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: March 16, 2010

IRA S. REESE
Executive Director
Laboratories and Scientific Services

**ACCREDITATION AND APPROVAL OF SGS NORTH
AMERICA, INC., AS A COMMERCIAL GAUGER AND
LABORATORY**

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

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 925 Corn Product Road, Corpus Christi, TX 78409, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on July 14, 2009. The next triennial inspection date will be scheduled for July 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: March 16, 2010

IRA S. REESE
Executive Director
Laboratories and Scientific Services

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF MASS FLOW CONTROLLERS**

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

ACTION: Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of certain mass flow controllers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of certain mass flow controllers, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on December 10, 2009, in the *Customs Bulletin*, Volume 43, No. 50. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 7, 2010.

FOR FURTHER INFORMATION CONTACT: John Rhea, Tariff Classification and Marking Branch: (202) 325–0035.

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, a notice was published on December 10, 2009, in the *Customs Bulletin*, Volume 43, No. 50, proposing to revoke a ruling letter pertaining to the tariff classification of certain mass flow controllers, under the Harmonized Tariff Schedule of the United States (HTSUS). Although in the proposed notice, CBP specifically proposed the revocation of New York Ruling Letter (“NY”) R01762, dated April 26, 2005, 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 have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, 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 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 R01762, CBP determined that the mass flow controllers were classified under heading 8481, HTSUS, as a regulator, self-operating valve for controlling variables such as flow and liquid level. Based upon our analysis of the mass flow controller, it is now CBP’s position that the mass flow controller is properly classified in heading 9032, HTSUS, as an automatic regulating or control apparatus, flow and liquid level control instrument.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY R01762 and any other ruling not specifically identified, to reflect the proper classification of the mass flow controllers according to the analysis contained in Headquarters Ruling Letter (“HQ”) H028098, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C.

1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: January 26, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment:

HQ H028098

January 26, 2010

CLA-2 OT:RR:CTF:TCM H028098 JER

CATEGORY: Classification

TARIFF NO.: 9032.89.6060

GEORGE R. TUTTLE, ESQ.

LAW OFFICES OF GEORGE R. TUTTLE, PC

ONE EMBARCADERO CENTER, SUITE 730

SAN FRANCISCO, CA 94111

RE: Mass Flow Controller; Revocation of NY R01762

DEAR MR. TUTTLE:

On April 26, 2005, U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letter (“NY”) R01762, dated April 26, 2005, to you on behalf of Advanced Energy Industries, Inc. (hereinafter “AEI”), classifying certain Mass Flow Controllers (“MFC”) in heading 8481, of the Harmonized Tariff Schedule of the United States (“HTSUS”). After reviewing NY R01762, we have found that ruling to be in error. For the reasons set forth in this ruling, we are revoking NY R01762.

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 revocation was published on December 10, 2009, in the *Customs Bulletin*, Volume 43, No. 50. No comments were received in response to this notice.

FACTS:

The Mass Flow Controller (“MFC”) is described as being a closed-loop device that sets, measures, and controls the flow of gases or liquids. The MFC is said to operate automatically according to a complex system of internal applications. The MFC consists of five main components: the base, a thermal sensor, a bypass (or flow splitter), a control valve and a printed circuit board (or electronic assembly). The base provides the platform on which all other components of the MFC are mounted and contain the channels that form the main flow path of the gas. The thermal sensor is designed to respond to any changes in gas flow conditions. The bypass maintains a constant ratio of gas flow, measuring the portion of gas that passes through the sensor. The control valve establishes the flow of gas by responding to a signal that compares the actual flow to the set point. The printed circuit board system includes a bridge circuit, an amplifier circuit and a comparator circuit (or central processing unit (“CPU”)) wherein output indications and command signals are processed. The output signal is compared with the external set point signal. Any resulting error signal directs the control valve to open or close to maintain a constant flow at the set point. *Fundamentals of Mass Flow Control, Critical Terminology & Operation Principles for Gas and Liquid MFCs*, Advanced Energy Industries, Inc., (hereinafter *Fundamentals of Mass Flow Control*) available at, www.advanced-energy.com.

ISSUE:

Whether the subject merchandise is classified as an automatic regulating valve in heading 8481, HTSUS, or as an automatic controlling apparatus, in heading 9032, HTSUS, or as an instrument for measuring or checking liquids or gases in heading 9026, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS 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 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

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:
8481.80	Other appliances:
8481.80.90	Other...
8481.80.9015	Regulator valves, self-operating, for controlling variables such as temperature, pressure, flow and liquid level
9026	Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquid or gases...excluding instruments and apparatus of heading 9014, 9015, 9028 or 9032; parts thereof:
9026.10	For measuring or checking the flow or level of liquids:
9026.10.20	Electrical...
9026.10.2040	Flow meters
	* * *
9026.20	For measuring or checking pressure:
9026.20.4000	Electrical...

9032 Automatic regulating or controlling instruments
and apparatus; parts and accessories thereof:

* * *

Other instruments and apparatus:

* * *

9032.89 Other:

9032.89.60 Other...

Other:

9032.89.6060 Flow and liquid level
control instruments

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the HTSUS. While not 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 (August 23, 1989).

In NY R01762, CBP determined that the subject Mass Flow Controllers were classified in heading 8481, HTSUS. That ruling based its decision in part on the fact that the ENs to heading 8481, HTSUS, provide that combinations consisting of a valve and any measuring, checking or automatically controlling instrument of heading 9032, HTSUS, are classifiable in heading 8481, HTSUS, where it is found that the instrument or apparatus is mounted directly on the valve, and the combined article has the essential character of an article of heading 8481. By contrast, you contend that the controller apparatus is not mounted directly onto the valve and that the essential character of the combined apparatus is not imparted by an article of heading 8481, HTSUS. Specifically you aver that the MFC is classified in heading 9032, HTSUS, and alternatively in heading 9026, HTSUS.

In NY R01762, CBP viewed the MFC as satisfying the conditions for “combinations” set forth in the ENs to heading 8481, HTSUS. The ENs to heading 8481, HTSUS, provide that:

Combinations consisting of a valve and any measuring, checking or automatically controlling instrument or apparatus of HTSUS headings 9026 or 9032 remain in this heading if the instrument or apparatus is mounted directly on the valve, and **provided** the combined article has the essential character of an article of heading 8481. If **not** satisfying these conditions, they are classified in **heading 90.26 ...** or in **heading 90.32**.

AEI’s Mass Flow Controller consists of five main components which work in unison to maintain a constant gas flow at a particular set point. Essentially, the bypass or flow splitter forces a proportion of incoming gas through a thermal sensor which, through a heating and cooling effect, creates a temperature differential. This temperature differential is amplified into a flow output signal. This output signal is compared with the set point signal.

Should an error signal result, the command signal from the printed circuit board directs the control valve to open or close to maintain a constant flow at the set point. *Fundamentals of Mass Flow Control*, at 2.

While CBP has in previous rulings classified “combination” automatic control valves in heading 8481, HTSUS, those decisions were in part based on the fact that the term “valve” was incorporated into the product’s name and thus provided for *eo nomine* in heading 8481, HTSUS. Also, while capable of sensing changes in variables and regulating flow rate, these articles were distinguishable from articles of heading 9032 HTSUS. See Headquarters Ruling Letters (HQ) 952880, dated February 8, 1993; HQ 956084, dated July 27, 1994 and HQ 958548, dated February 1996 (which classified automatic flow regulating valves in heading 8481, HTSUS).

We find that the subject MFC does not satisfy the two-part analysis set forth in the ENs to heading 8481, HTSUS. We further find that the essential character of the subject MFC directs and analyzes the gas flow, features which are beyond the scope of heading 8481, HTSUS. Also, the measuring instrument is not mounted directly on the control valve.¹ In the instant case, the measuring and checking devices are housed in a common unit with the valve. As such, the subject MFC is not classifiable in heading 8481, HTSUS.

Note 1(g) to Chapter 90 provides that this chapter does not include valves of heading 8481, HTSUS. As the subject MFC does not satisfy the criteria for “combination automatic valves” described in the ENs to heading 8481, HTSUS, Note 1(g) to Chapter 90 applies to exclude products whose essential character and function is that of a valve of heading 8481, HTSUS. As discussed above, the subject MFC by its function, composition and essential devices, is not classifiable as a valve within the meaning of heading 8481, HTSUS.

In order to be classifiable in heading 9032, HTSUS, merchandise must meet the terms of Note 7 to Chapter 90, HTSUS. Specific to the instant facts, the subject merchandise must satisfy Note 7 (a) to Ch. 90, HTSUS. Note 7 (a) to Chapter 90 states that:

Heading 9032 applies only to:

(a) Instruments and apparatus for automatically controlling the flow, level, pressure or other variables of liquids or gases, or for automatically controlling temperature, whether or not their operation depends on an electrical phenomenon which varies according to the factor to be automatically controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value [.]

According to the ENs to heading 9032, HTSUS, this heading provides for instruments and apparatus for automatically controlling the flow, level pressure or other variables of liquids or gases. In previous rulings, CBP has classified automatic controlling devices in heading 9032, HTSUS, where it was determined that the merchandise met the requirements set forth in the terms of the heading, the ENs to heading 9032, HTSUS, and Note 7 to Ch. 90, HTSUS. Such items were substantially similar in function to the subject

¹ NY J87730, dated August 20, 2003 and NY L82203, dated February 15, 2005. (wherein the Taco bypass valve and the BASO automatic gas pilot valve, respectively, had measuring devices which, according to images posted on the respective websites, were mounted directly on the control valve).

MFC. For instance, in HQ H008629, dated August 13, 2007, CBP classified two cold control devices as automatic controlling apparatus within the meaning of Note 7(a) to heading 9032, HTSUS. In HQ H008629, CBP determined that the articles contained a device for measuring the variable to be controlled, a control device which compared the measured value with the desired value and a starting, stopping or operating device.² See also, HQ 954950, dated December 23, 1993, in which CBP classified an electronic control unit (“ECU”) in heading 9032, HTSUS, because the ECU measured the flow, pressure and temperature of fuel, compared the data to pre-established norms and had a control device which brought the variable within the desired parameters. Likewise, HQ 086179, dated March 12, 1990, classified a water temperature regulating module in heading 9032 HTSUS, because it had a measuring device to monitor the variable, had a control device to control the water temperature and a stopping device to turn off the hot water generator when the water reached a predetermined temperature.

As the ENs to heading 9032, HTSUS, explain, instruments and apparatus which control the flow, level and pressure of liquids, gases or temperature are generally remote controlled by another control device. However, in cases where the automatic apparatus is combined with the appliance or device which carries out the order, classification of the whole is determined by GRI 1 or GRI 3(b). The applicable ENs to heading 9032, HTSUS, state in pertinent part that:

Instruments and apparatus for automatically controlling the flow, level, pressure and other variables of liquids or gases or for automatically controlling temperature are connected to an appliance which carries out the orders ... which restores the variable ... This appliance, generally remote controlled by a mechanical, hydraulic, pneumatic or electric control, is to be classified in its own appropriate heading (pump or compressor: **heading 84.13 or 84.14** ; valve: **heading 84.81** , etc.). If the automatic control apparatus is combined with the appliance which carries out the orders, the classification of the whole is to be determined under either Interpretative Rule 1 or Interpretative Rule 3 (b) (*see* Part (III) of the General Explanatory Note to Section XVI and the Explanatory Note to heading 84.81).

The ENs to heading 9032, HTSUS, further state that: “Apparatus for automatically controlling liquids or gases or temperature, within the meaning of Note 7 (a) to this Chapter, consists of [the following] three devices forming a single entity or in accordance with Note 3 to this Chapter, a functional unit.” As counsel noted, advancements in technology have caused the once separate components, (flow meter, controller and valve) to become consolidated into one single device. As such, those aspects of the MFC which measure and monitor flow activity are inseparable from those aspects which regulate the gas flow. The ENs to heading 9032 HTSUS, state that these items consist of [the following] three essential devices which carry out its functions forming a single entity.

² HQ H008629, explained that: “these controllers contain the main components of thermostats, as they are described by EN 90.32(I). They contain: (1) an element sensitive to changes in temperature, the action of which depends on the vapor pressure of a liquid; (2) have preset differentials for obtaining a desired temperature; and (3) switches that operate contactors, relays, fans, and motors which regulate temperature.”

The ENs to heading 9032, HTSUS, provides as follows:

Automatic control apparatus for liquids or gases and apparatus for automatically controlling temperature form part of complete automatic control systems and consist essentially of the following devices:

- (A) **A device for measuring** the variable to be controlled (pressure or level in a tank, temperature in a room, etc.); in some cases, a simple device which is sensitive to changes in the variable (metal or bi-metal rod, chamber or bellows containing an expanding liquid, float, etc.) may be used instead of a measuring device.
- (B) **A control device** which compares the measured value with the desired value and actuates the device described in (C) below accordingly.
- (C) **A starting, stopping or operating device.**

The subject merchandise has each of these three essential devices. The subject MFC has (A) a measuring device: the sensor/bypass combination which measures and checks the flow of gas, (B) a control device: the printed circuit board system which interprets the output signal in light of the desired set point and ultimately directs (C) the starting and stopping device: the printed circuit board ("PCB") which provides the detailed instructions to the control valve to open or close to maintain a constant gas flow at the set point. Specifically, the signal generated by the bridge circuit is amplified and fed into the analog converter which outputs this signal into the CPU. The CPU compares the set point signal to the sensor reading to generate a signal to drive the control valve. See *Mass Flow Controllers: Series FC-77X, et al* ; Advanced Energy (March 2004). As such, the subject MFC meets the description of an automatic control apparatus as set forth in ENs to heading 9032 HTSUS. Moreover, because the subject MFC contains each of the three devices set forth above, the MFC therefore is classifiable as an automatic regulating or controlling apparatus within the meaning of Note 7 (a) to Chapter 90, HTSUS.

In the alternative, counsel asserts that the MFC is classifiable in heading 9026, HTSUS. Classification of the subject merchandise in heading 9026, HTSUS, would be proper only if the MFC was limited to measuring and checking gas flow, i.e., the device was a Mass Flow Meter and did not meet the terms of heading 9032, HTSUS. According to our research, Mass Flow Controllers throughout the industry are devices used to both measure and control the flow of gases or liquids.³ AEI's MFC is no different. Fundamentally, the MFC contains a thermal sensor, bypass and printed circuit board (the Flow Meter) and a solenoid control valve and PCB (the Flow Controller). As explained above, the MFC meets the terms of heading 9032, HTSUS. Therefore, classification under heading 9026, HTSUS, is precluded.

HOLDING:

By application of GRI 1 and Legal Note 7 (a) to Chapter 90, HTSUS, we find that the Mass Flow Controller is correctly classified in heading 9032, HTSUS,

³ See *Smart-Trak Series 100*, at www.sierrainstruments.com and *Brooks MF Series, Smart Mass Flow*, at www.Brooks Instruments.com. (For a discussion of the capacity of mass flow meters and controllers which monitor and regulate gas flow rates).

and specifically provided for in subheading 9032.89.6060, HTSUS, which provides for: “Automatic regulating or controlling instruments and apparatus...: Other instruments and apparatus: Other: Other: Other: Flow and liquid level control instruments.” The 2009 column one, general rate of duty is 1.7% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY R01762, dated April 26, 2005 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,

GAIL A. HAMILL

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**REVOCATION OF TWO RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF AUTOMOTIVE FAN
SHROUDS**

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

ACTION: Notice of revocation of two tariff classification ruling letters and revocation of treatment relating to the classification of automotive fan shrouds

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking two ruling letters relating to the tariff classification of certain automotive fan shrouds, also referred to as fan housings, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on December 10, 2009, in the *Customs Bulletin*, Volume 43, No. 50. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 7, 2010.

FOR FURTHER INFORMATION CONTACT: John Rhea, Tariff Classification and Marking Branch: (202) 325–0035.

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, a notice was published on December 10, 2009, in the *Customs Bulletin*, Volume 43, No. 50, proposing to revoke a ruling letter pertaining to the tariff classification of certain automotive fan shrouds, under the Harmonized Tariff Schedule of the United States (HTSUS). Although in the proposed notice, CBP specifically proposed the revocation of New York Ruling Letters (“NY”) N014061, dated July 25, 2007 and NY D88203, dated March 23, 1999, 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 have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, 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 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 N014061 and NY D88203, CBP determined that the automotive fan shrouds were classified under headings 8415 and 8708, HTSUS, respectively, as parts of air conditioning machines or as parts of radiators. Based upon our analysis of the automotive fan shrouds, it is now CBP's position that the automotive fan shrouds are properly classified in heading 8414, HTSUS, as parts of fans.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N014061 and NY D88203 and any other ruling not specifically identified, to reflect the proper classification of automotive fan shrouds according to the analysis contained in Headquarters Ruling Letters ("HQ") H027029 and H029003, set forth as Attachments "A" and "B" to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 3, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments:

[ATTACHMENT A]

HQ H027029

March 3, 2010

CLA-2 OT:RR:CTF:TCM H027029 JER

CATEGORY: Classification

TARIFF NO.: 8414.90.10

MS. LAURIE PEACH, NATIONAL CUSTOMS MANAGER
 AMERICAN HONDA MOTOR CO., INC.
 1919 TORRANCE BLVD
 TORRANCE, CA 90501-2746

RE: Revocation of NY N014061; Automotive Fan Shrouds for Automotive Air Conditioner Condensers and Radiators

DEAR MS. PEACH:

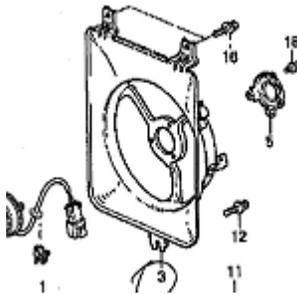
On July 25, 2007, U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letter (“NY”) N014061 to you, on behalf of American Honda Motor Company Inc., (“American Honda”), classifying certain “automotive fan shrouds” in headings 8415, and 8708, of the Harmonized Tariff Schedule of the United States (“HTSUS”). In light of the additional information provided by your company and after reviewing NY N014061, we have found that ruling to be in error. For the reasons set forth below, we are revoking NY N014061.

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 revocation was published on December 10, 2009, in the *Customs Bulletin*, Volume 43, No. 50. No comments were received in response to this notice.

FACTS:

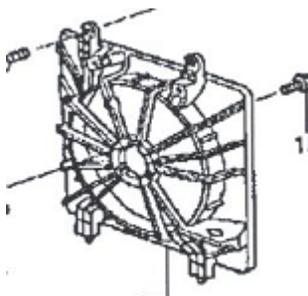
The facts as stated in NY N014061 are as follows:

The items in question are two fan shrouds used in the manufacturer of Honda automobiles. The first fan shroud, identified as an Air Conditioner Shroud (Part # 38615-P1E-A00), is constructed of steel and is used in the Honda Odyssey to, “protect elements of the air conditioner subassembly, including the fan and exterior condenser, from damage during operation of the vehicle.”



* * *

The second item is identified as a Radiator Shroud (Part # 19015-RBB-003) and is one of several components that make up the radiator cooling system used in certain Acura automobiles. The shroud is constructed of plastic and "...protect(s) the radiator fan (to) facilitate continued operation of the radiator.



Based on the information provided, CBP determined that the air conditioner shroud (Part # 38615-P1E-A00) was classified in heading 8415, HTSUS, and specifically in subheading 8415.90.80, HTSUS, as parts of an automotive conditioner. The radiator shroud (Part # 19015-RBB-003) was classified in subheading 8708.91.75, HTSUS, as parts of motor vehicles. Subsequent to the publication of NY 014061, American Honda discovered that certain facts concerning the two automotive shrouds had been misstated and acknowledged that only the protective function of the shroud was identified.

In your letter dated, March 20, 2008, you provide the following corrections to the facts considered in NY 014061:

These shrouds all serve two primary functions of ensuring that the air flow from electrically powered fans is circulated across the entire face of the vehicle radiator and condenser (thereby preventing "hot spots" that could otherwise impair the functioning of these components) and of serving as a mounting base for the fan motor and blades.

ISSUE:

Whether the subject merchandise is classifiable as a part of an automotive radiator, in heading 8708, HTSUS, as a part of an automotive air conditioning machine, in heading 8415, HTSUS, or as part of a fan, in heading 8414, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS 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 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

- 8708 Parts and accessories of the motor vehicles of headings 8701 to 8705:
- Other parts and accessories:
- 8708.91 Radiators and parts thereof:
- 8708.91.60 Parts:
- For other vehicles:
- 8708.91.7000 Of cast iron...
- 8708.91.75 Other...
- 8414.90 Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof:
- 8414.90 Parts:
- 8414.90.10 Of fans (including blowers) and ventilating or recycling hoods...
- 8415 Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated; parts thereof:
- 8415.90 Parts:
- 8415.90.80 Other...

Note 2 to Section XVI, HTSUS, provides in pertinent part as follows:

Subject to note 1 to this section, note 1 to chapter 84 and note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or

8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517.

There is no dispute that pursuant to Note 2 (a) to Section XVI, HTSUS, the instant articles are parts which are not goods of headings of Chapters 84 or 85, HTSUS. However, each fan shroud completes the fan assembly used in the air conditioning condenser or the radiator, and provides the structural mounting necessary to support the fan blades and the fan motor. Further, each shroud provides a means to direct the air flow produced by the fan blades to the vehicle's radiator or air conditioning condenser. Accordingly, each fan shroud is solely or principally used with an automotive fan which, in turn, operates with the radiator or air conditioning condenser, rather than as a part of the motor vehicle as a whole, under Note 2 (b) to Section XVI, HTSUS.

In NY E83687, dated July 30, 1999, CBP held that fan shrouds designed to house the fan blades within the engine compartment and used in an "electrodrive cooling system" were parts of a fan classified in heading 8414, HTSUS. We explained that the fan shroud components were not complete fans but instead were parts that will be assembled with other components to form a completed fan. Similarly, in Headquarters Ruling Letter ("HQ") 966787, dated February 9, 2004, CBP classified a "fan shroud assembly" as a complete axial fan, in part, because the article consisted of: an axial fan, fan blades, fan shrouds, a temperature sensor, mounting brackets and its intended purpose was for use as a fan. In HQ 966787, the fan shroud assembly was mounted to and used with a central processing unit ("CPU"). HQ 966787 noted that the "fan shroud merely protects the fan and provides a conduit for air to be channeled" but did not alone impart a method for cooling the CPU. Likewise, although the "fan shroud assembly" of HQ 966787 was used in a broader application, classification under the more specific heading was preferred to a more general heading. *See also*, NY J86319, dated February 9, 2004 (which classified the aforementioned "fan shroud assembly" in heading 8414, HTSUS, and was later affirmed by HQ 966787).

Likewise, the instant fan shrouds complete the fan assemblies into an automobile's radiator or air conditioner. It is a long-standing classification principle that "a part of [a] particular part is more specifically provided for as a part of the part than as a part of the whole." *C.F. Liebert v. United States*, 287 F. Supp. 1009 (1968). Therefore, the shrouds are more immediately parts of fans than they are parts of radiators, air conditioners or automobiles as a whole. In keeping with the reasoning in *C.F. Liebert*, and previous rulings involving substantially similar merchandise, we find that the subject fan shrouds are classified as parts of completed fan in heading 8414, HTSUS.

HOLDING:

By application of GRI 1 and pursuant to Section XVI Note 2 (b), both the subject air conditioner fan shroud and radiator fan shroud are classified under heading 8414, HTSUS. Specifically, the items are classified under subheading 8414.90.10, HTSUS, which provides for "Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof: Parts: Of fans (including blowers) and ventilating or recycling hoods: Other." The 2009, column one, general rate of duty is 4.7% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N014061, dated July 25, 2007, 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,

GAIL A. HAMILL

For

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H029003

March 3, 2010

CLA-2 OT:RR:CTF:TCM H029003 JER

CATEGORY: Classification

TARIFF NO.: 8414.90.10

ROBERT J. RESETAR
PORSCHE CARS NORTH AMERICA, INC.
980 HAMMOND DRIVE, SUITE 1000
ATLANTA, GA 30328

RE: Revocation of NY D88203; Fan Housing from Germany

DEAR MR. RESETAR:

On March 23, 1999, U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letter (“NY”) D88203 to you on behalf of Porsche Cars North America, Inc., (“Porsche”) classifying certain “automotive fan housings” in subheading 8708.99.80, of the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP has recently received new information concerning the function and purpose of automotive fan housings (also known as “fan shrouds”). After reviewing NY D88203, we have found that ruling to be in error. For the reasons set forth in this ruling, we are revoking NY D88203.

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 revocation was published on December 10, 2009, in the *Customs Bulletin*, Volume 43, No. 50. No comments were received in response to this notice.

FACTS:

The subject automotive fan housing, (also referred to as a “fan shroud”), was described in NY D88203 as being made from injected molded plastic and mounted on the engine side of the vehicle’s radiator. Twin electric cooling fans are mounted onto the fan housing. According to our research, the radiator fan shroud or the cooling system fan shroud facilitate the functioning of the radiator or air cooling system by effectively directing the air over the radiator and throughout the engine compartment. See *Discount Car Parts: Fan Shroud Description*, at www.car-stuff.com. The fan shroud basically houses the fan blades and secures them in place. *Id.*

ISSUE:

Whether the subject merchandise is classifiable as a part of an automotive radiator, in heading 8708, HTSUS, as a part of an automotive air cooling system, in heading 8415, HTSUS, or as part of a fan, in heading 8414, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS 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 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

8708 Parts and accessories of the motor vehicles of headings 8701 to 8705:

 Other parts and accessories:

8708.91 Radiators and parts thereof:

8708.91.60 Parts:

 For other vehicles:

8708.91.7000 Of cast iron...

8708.91.75 Other...

8414.90 Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof:

8414.90 Parts:

8414.90.10 Of fans (including blowers) and ventilating or recycling hoods...

8415 Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated; parts thereof:

8415.90 Parts:

8415.90.80 Other...

Note 2 to Section XVI, HTSUS, provides in pertinent part as follows:

Subject to note 1 to this section, note 1 to chapter 84 and note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

- (c) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

- (d) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517.

There is no dispute that pursuant to Note 2 (a) to Section XVI, HTSUS, the instant articles are parts which are not goods of headings of Chapters 84 or 85, HTSUS. However, the instant fan housing (a.k.a. fan shroud) completes the fan assembly used in the air cooling system or radiator, and provides the structural mounting necessary to support the fan blades and the fan motor. Further, the shroud provides a means to direct the air flow produced by the fan blades to the vehicle's radiator or air cooling system. Accordingly, the fan shroud is solely or principally used with an automotive fan which, in turn, operates with the radiator or air cooling system, rather than as a part of the motor vehicle as a whole, under Note 2 (b) to Section XVI, HTSUS.

In NY E83687, dated July 30, 1999, CBP held that fan shrouds designed to house the fan blades within the engine compartment and used in an "electrodrive cooling system" were parts of a fan classified in heading 8414, HTSUS. We explained that the fan shroud components were not complete fans but instead were parts that will be assembled with other components to form a completed fan. Similarly, in Headquarters Ruling Letter ("HQ") 966787, dated February 9, 2004, CBP classified a "fan shroud assembly" as a complete axial fan, in part, because the article consisted of: an axial fan, fan blades, fan shrouds, a temperature sensor, mounting brackets and its intended purpose was for use as a fan. In HQ 966787, the fan shroud assembly was mounted to and used with a central processing unit ("CPU"). HQ 966787 noted that the "fan shroud merely protects the fan and provides a conduit for air to be channeled" but did not alone impart a method for cooling the CPU. Likewise, although the "fan shroud assembly" of HQ 966787 was used in a broader application, classification under the more specific heading was preferred to a more general heading. *See also*, NY J86319, dated February 9, 2004 (which classified the aforementioned "fan shroud assembly" in heading 8414, HTSUS, and was later affirmed by HQ 966787).

Likewise, the instant fan shrouds complete the fan assemblies into an automobile's radiator or air cooling system. It is a long-standing classification principle that "a part of [a] particular part is more specifically provided for as a part of the part than as a part of the whole." *C.F. Liebert v. United States*, 287 F. Supp. 1009 (1968). Therefore, the shrouds are more immediately parts of fans than they are parts of radiators, air cooling systems or automobiles as a whole. In keeping with the reasoning in *C.F. Liebert*, and previous rulings involving substantially similar merchandise, we find that the subject fan shrouds are classified as parts of completed fan in heading 8414, HTSUS.

HOLDING:

By application of GRI 1 and pursuant to Section XVI Note 2 (b), the subject automotive fan housing is classified in heading 8414, HTSUS. Specifically, the item is classified under subheading 8414.90.10, HTSUS, which provides for "Air or vacuum pumps, air or other gas compressors and fans; ventilating

or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof: Parts: Of fans (including blowers) and ventilating or recycling hoods: Other.” The 2009, column one, general rate of duty is 4.7% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY D88203, dated March 23, 1999, 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,

GAIL A. HAMILL

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

AGENCY INFORMATION COLLECTION ACTIVITIES:

Arrival and Departure Record

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

ACTION: 30-Day notice and request for comments; Revision of an existing information collection: 1651-0111.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Form I-94 (Arrival/Departure Record), the Form I-94W (Nonimmigrant Visa Waiver Arrival/Departure), and the Electronic System for Travel Authorization (ESTA). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 64092) on December 7, 2009, allowing for a 60-day comment period. One comment was received. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before April 19, 2010.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of

Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

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

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Arrival and Departure Record, Nonimmigrant Visa Waiver Arrival/Departure, Electronic System for Travel Authorization (ESTA)

OMB Number: 1651-0111

Form Number: I-94 and I-94W

Abstract: Form I-94 (Arrival/Departure Record) and Form I-94W (Nonimmigrant Visa Waiver Arrival/Departure Record) are used to document a traveler's admission into the United States. These forms include date of arrival, visa classification and the date the authorized stay expires. The forms are also used by business employers and other organizations to confirm legal status in the United States. The Electronic System for Travel Authorization (ESTA) applies to aliens traveling to the United States under the Visa Waiver Program (VWP) and requires that VWP travelers provide information electronically to CBP before embarking on travel to the United States.

CBP proposes to decrease the burden hours for the I-94W and for ESTA due to better estimates. The reduction in the burden hours for the I-94W is also a result of pilot programs CBP has conducted recently in which passengers are not required to submit an I-94W.

Current Actions: This submission is being made to extend the expiration date with a revision to the burden hours.

Type of Review: Extension (with change)

Affected Public: Individuals, Carriers, Government Agencies, and the Travel and Tourism Industry

I-94 (Arrival and Departure Record):

Estimated Number of Respondents: 14,000,000

Estimated Number of Total Annual Responses: 14,000,000

Estimated Time per Response: 8 minutes

Estimated Total Annual Burden Hours: 1,862,000

Estimated Total Annualized Cost on the Public: \$84,000,000

I-94W (Nonimmigrant Visa Waiver Arrival/Departure):

Estimated Number of Respondents: 17,000,000

Estimated Number of Total Annual Responses: 17,000,000

Estimated Time per Response: 8 minutes

Estimated Total Annual Burden Hours: 2,261,000

Estimated Total Annualized Cost on the Public: \$102,000,000

Electronic System for Travel Authorization (ESTA):

Estimated Number of Respondents: 17,000,000

Estimated Number of Total Annual Responses: 17,000,000

Estimated Time per Response: 15 minutes

Estimated Total Annual Burden Hours: 4,250,000

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

Dated: March 16, 2010

TRACEY DENNING
Agency Clearance Officer
U.S. Customs and Border Protection

[Published in the Federal Register, March 19, 2010 (75 FR 13293)]

