

U.S. Customs and Border Protection



FINAL DETERMINATION REGARDING PETITION TO RECONCILE INCONSISTENT CUSTOMS DECISIONS CONCERNING THE TARIFF CLASSIFICATION OF CN-9 SOLUTION

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

ACTION: Notice of final determination regarding petition to reconcile inconsistent customs decisions.

SUMMARY: This document publishes a summary of a decision issued by U.S. Customs and Border Protection (“CBP”) in response to a petition filed pursuant to section 177.13 of the CBP regulations requesting the reconciliation of inconsistent classification decisions issued by CBP under the Harmonized Tariff Schedule of the United States (“HTSUS”) of a certain CN-9 solution, a hydrated ammonium calcium nitrate double salt that is primarily used as a fertilizer but is also used for waste water treatment. In the decision, CBP informed the party filing the petition that the correct classification of the subject CN-9 Solution is under subheading 3102.60.00, HTSUS.

DATES: The final classification decision was issued on December 16, 2011. The classification set forth in the decision applies to all entries of the described CN-9 Solution for which liquidation was not finalized as of December 16, 2011.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 325-0036.

SUPPLEMENTARY INFORMATION:

Background

I. Petition

A petition dated June 16, 2010¹ was filed under section 177.13 of the U.S. Customs and Border Regulations (“CBP”) regulations (19

¹ The **Federal Register** (76 FR 48875) notice of August 9, 2011 erroneously listed the petition as being dated June 6, 2010.

CFR 177.13), on behalf of Yara North America, Inc. (“Yara”) requesting the reconciliation of inconsistent classification decisions under the Harmonized Tariff Schedule of the United States (“HTSUS”).

Yara is a subset of Yara International ASA, a global firm specializing in agricultural products and environmental protection agents. It is a supplier of mineral fertilizers. As an importer of these products, Yara received inconsistent classification decisions on its merchandise at different ports. The petition concerned Yara’s importation of CN–9 Solution, a hydrated ammonium calcium nitrate double salt that is primarily used as a fertilizer but is also used for waste water treatment. Yara entered the subject merchandise at the Port of Long Beach between January 24, 2009 and September 8, 2009, and at the Port of Baltimore on April 20, 2010, under subheading 3102.60.00, HTSUS, as “Mineral or chemical fertilizers, nitrogenous: Double salts and mixtures of calcium nitrate and ammonium nitrate.” Citing Legal Note 2(a)(v) to Chapter 31, HTSUS,² the Port of Long Beach liquidated the subject merchandise as entered. Citing Legal Note 5 to Chapter 28, HTSUS,³ the Port of Baltimore liquidated the subject merchandise under subheading 2842.90.90, HTSUS, as “Other salts of inorganic acids or peroxyacids (including aluminosilicates whether or not chemically defined), other than azides: Other: Other.”

Yara met the requirements as an interested party set forth in 19 CFR 177.13(a)(2) and 19 U.S.C. 1514(c) and met the requirements regarding the types of decisions subject to petition set forth in 19 CFR 177.13(a)(1) and 19 U.S.C. 1514(a). Furthermore, having filed the petition within 180 days of the latest decision it received from a port, Yara met the timeliness requirements of 19 CFR 177.13(a)(3). Lastly, Yara also met the requirements of 19 CFR 177.13(b)(2), and specifically 19 CFR 177.13(b)(2)(i) in that the petition contained a complete description of the inconsistent decisions of which they complained. The company submitted a sample that had been tested by the CBP laboratories. Yara requested that CBP classify the imported merchandise under subheading 3102.60.00, HTSUS.

Notice of the petition, along with a request for comments, was published in the **Federal Register** (76 FR 48875) on August 9, 2011. No comments were received in response to the notice. This document informs all interested parties of CBP’s decision regarding the issue raised in the petition.

² Legal Note 2(a)(v) to chapter 31, HTSUS, provides that: “Heading 3102 applies only to the following goods, provided that they are not put up in the forms or packages described in heading 3105: (a) Goods which answer to one or other of the descriptions given below: ... (v) Double salts (whether or not pure) or mixtures of calcium nitrate and ammonium nitrate.”

³ Legal Note 5 to chapter 28, HTSUS, provides that: “Headings 2826 to 2842 apply only to metal or ammonium salts or peroxy salts. Except where the context otherwise requires, double or complex salts are to be classified in heading 2842.”

II. Decision

The subject merchandise is a hydrated ammonium calcium nitrate double salt that is used as a fertilizer. While it can also be used for water treatment, its primary use is as a fertilizer and its chemical structure is identical for both uses. As a result, it is described by the terms of heading 3102, HTSUS, as a nitrogenous mineral fertilizer.

Furthermore, Legal Note 2 to Chapter 31, HTSUS, specifically lists this merchandise: double salts, whether or not pure, or mixtures of calcium nitrate and ammonium nitrate. In addition, Explanatory Note (EN) 31.02 confirms this interpretation. The subject merchandise is a fertilizer with a secondary use in waste water treatment. This alternate function is explicitly allowed by EN 31.02.

The Port of Baltimore liquidated the subject merchandise under heading 2842, HTSUS. Legal Note 5 to Chapter 28, HTSUS, directs classification of double or complex salts into heading 2842, HTSUS, “except where the context otherwise requires.” There is no dispute that the subject merchandise is a double salt, but the context here requires that it be classified outside heading 2842, HTSUS. In this case, the subject merchandise is specifically described by Legal Note 2 to heading 3102, HTSUS, as being classified in that heading. The subject merchandise is also described, *eo nomine*, by the terms of heading 3102, HTSUS, as a nitrogenous mineral fertilizer. As a result, the context requires that it be classified there instead of heading 2842, HTSUS.

This notice informs all interested parties that in a decision dated December 16, 2011, CBP classified the subject CN-9 Solution under subheading 3102.60.00, HTSUS, which provides for: “Mineral or chemical fertilizers, nitrogenous: Double salts and mixtures of calcium nitrate and ammonium nitrate.” In accordance with 19 CFR 177.13(e), the decision was effective immediately upon issuance and, where applicable, applies to all entries for which liquidation is not final.

III. Authority

This notice is published in accordance with section 177.13(d), CBP Regulations (19 CFR 177.13(d)).

Dated: December 27, 2011.

SANDRA L. BELL,
*Executive Director, Regulations and Rulings,
Office of International Trade.*

[Published in the Federal Register, December 30, 2011 (76 FR 82316)]

AGENCY INFORMATION COLLECTION ACTIVITIES:**Small Vessel Reporting System**

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

ACTION: 30-Day notice and request for comments; Establishment of a new collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: the Small Vessel Reporting System (SVRS). CBP is proposing that the SVRS be established as a new collection of information. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 65206) on October 20, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 30, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this 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: Small Vessel Reporting System.

OMB Number: Will be assigned upon approval.

Form Number: None.

Abstract: CBP proposes to establish a collection of information for the Small Vessel Reporting System (SVRS), which is a pilot program to allow certain participants using small pleasure boats to report their arrival telephonically instead of having to appear in person for inspection by a CBP officer each time they enter the United States. In some cases, a participant may also be asked to report to CBP for an in person inspection upon arrival. Participants may be U.S. citizens, U.S. lawful permanent residents, Canadian citizens, and permanent residents of Canada who are nationals of Visa Waiver Program countries listed in 8 CFR 217.2(a). In addition, participants of one or more trusted traveler pilot or programs and current Canadian Border Boater Landing Permit (CBP Form I-68) holders may also participate in SVRS.

In order to register for the SVRS pilot program, participants enter data via the SVRS Web site which collects information such as biographical information and vessel information. Participants will go through the in person CBP inspection process during SVRS registration, and in some cases, upon arrival in the United States. SVRS is authorized by 8 U.S.C. 1103, 8 U.S.C. 1225, 8 CFR 235.1, 19 U.S.C. 1433, 19 U.S.C. 1498, and 19 CFR 4.2.

Current Actions: CBP proposes to establish a new collection of information.

Type of Review: Approval of a new collection.

Affected Public: Individuals.

Estimated Number of Respondents: 10,000.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Responses: 40,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 20,000.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229-1177, at (202) 325-0265.

Dated: December 27, 2011.

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

[Published in the Federal Register, December 30, 2011 (76 FR 82314)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Prior Disclosure

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

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

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Prior Disclosure. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 66741) on September 27, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 30, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this 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: Prior Disclosure.

OMB Number: 1651–0074.

Form Number: None.

Abstract: The Prior Disclosure program establishes a method for a potential violator to disclose to CBP that they have committed an error or a violation with respect to the legal requirements of entering merchandise into the United States, such as underpaid tariffs or duties or misclassified merchandise. The procedure for making a prior disclosure is set forth in 19 CFR 162.74 which requires that respondents submit information about the merchandise involved, a specification of the false statements or omissions, and what the true and accurate information should be. A valid prior disclosure will entitle the disclosing party to the reduced penalties pursuant to 19 U.S.C. 1592(c)(4).

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 3,500.

Estimated Number of Annual Responses: 3,500.

Estimated Time per Response: 1 hour.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC. 20229–1177, at (202) 325–0265.

Dated: December 27, 2011.

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

[Published in the Federal Register, December 30, 2011 (76 FR 82315)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Entry/Immediate Delivery Application and Simplified Entry

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

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

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Entry/Immediate Delivery Application (Forms 3461 and 3461 ALT) and Simplified Entry. This is a proposed revision and extension of an information collection that was previously approved. CBP is proposing that this information collection be revised and extended with a change to the burden hours and to the information collected. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 66740) on October 27, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 30, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this 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: Entry/Immediate Delivery Application and Simplified Entry.

OMB Number: 1651–0024.

Form Number: CBP Form 3461 and Form 3461 ALT.

Abstract: All items imported into the United States are subject to examination before entering the commerce of the United States. There are two procedures available to effect the release of imported merchandise, including “entry” pursuant to 19 U.S.C. 1484, and “immediate delivery” pursuant to 19 U.S.C. 1448(b). Under both procedures, CBP Forms 3461 and 3461 ALT are the source documents in the packages presented to Customs and Border Protection (CBP). The information collected on CBP Forms 3461 and 3461 ALT allow CBP officers to verify that the information regarding the consignee and shipment is correct and that a bond is on file with CBP. CBP also uses these forms to close out the manifest and to establish the obligation to pay estimated duties in the time period prescribed by law or regulation. CBP Form 3461 is also a delivery authorization document and is given to the importing carrier to authorize the release of the merchandise. CBP Forms 3461 and 3461 ALT are provided for by 19 CFR 141 and 142. These forms are accessible at: <http://www.cbp.gov/xp/egov/toolbox/forms/>.

CBP proposes to establish a new program for ACE entry summary filers called “Simplified Entry” in which importers or brokers may file Simplified Entry data in lieu of filing CBP Form 3461. This data includes 12 required elements: Importer of record; buyer name and address; buyer employer identification number (consignee number); seller name and address; manufacturer/supplier name and address;

Harmonized Tariff Schedule 10-digit number; country of origin; bill of lading; house air waybill number; bill of lading issuer code; entry number; entry type; and estimated shipment value. There will also be three optional data elements including: Container stuffing location; consolidator name and address; and ship to party name and address. The data collected under the proposed Simplified Entry program is intended to expedite the entry process.

Current Actions: CBP proposes to extend the expiration date of this information collection with a change to the burden hours as a result of the proposed addition of the Simplified Entry program.

Type of Review: Revision and Extension.

Affected Public: Businesses.

CBP Form 3461

Estimated Number of Respondents: 6,029.

Estimated Number of Responses per Respondent: 1,410.

Estimated Total Annual Responses: 8,500,890.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 2,125,223.

CBP Form 3461 ALT

Estimated Number of Respondents: 6,795.

Estimated Number of Responses per Respondent: 1,390.

Estimated Total Annual Responses: 9,444,069.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 472,203.

Simplified Entry

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1,410.

Estimated Total Annual Responses: 705,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 117,030.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229-1177, at (202) 325-0265.

Dated: December 27, 2011.

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