

U.S. Customs and Border Protection



DEPARTMENT OF THE TREASURY
19 CFR Part 148

Docket No. CBP Dec. 13-19

USCBP-2012-0008

RIN 1515-AD76

MEMBERS OF A FAMILY FOR PURPOSE OF FILING CBP FAMILY DECLARATION

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

ACTION: Final rule.

SUMMARY: This final rule affects persons eligible to file a single customs declaration. The final rule expands the definitions of family members residing in one household. As a result of this expansion, more U.S. returning resident and non-resident visitor families will be eligible to file a single customs declaration, and correspondingly, more U.S. returning resident family members may group their personal duty exemptions.

DATES: Effective January 17, 2014.

FOR FURTHER INFORMATION CONTACT: Sophie Galvan, Program Manager, Trusted Traveler Programs, Office of Field Operations, (202) 344-2292.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 2012, U.S. Customs and Border Protection (CBP) published a notice of proposed rulemaking (NPRM) in the **Federal Register** (77 FR 18143) proposing to amend title 19 of the Code of Federal Regulations (19 CFR) regarding U.S. returning residents who are eligible to file a single customs declaration for members of a family residing in one household and traveling together upon arrival in the United States. The amendments proposed in the NPRM would

expand the definition of “members of a family residing in one household” for purposes of allowing a responsible family member to make a joint declaration, either oral or written, for articles acquired abroad for all members of a family residing in one household and traveling together on their return to the United States.

The NPRM proposed to expand the relationships included in the definition of “members of a family residing in one household” and to refer to the additions as “domestic relationships.” As proposed in the NPRM, “domestic relationships” would include foster children, step-children, half-siblings, legal wards, other dependents, and individuals with an *in loco parentis* or guardianship relationship within the definition of “members of a family residing in one household.” “Domestic relationships” would also include two adult individuals in a committed relationship wherein the partners share financial assets and obligations, and are not married to, or a partner of, anyone else, including, but not limited to, long-time companions, and couples in civil unions or domestic partnerships. The proposed term “domestic relationship” would not extend to roommates or other cohabitants not otherwise meeting the above definition. Additionally, the proposed changes would not alter the residency requirements that, in order to file a family declaration, members of a family residing in one household must have lived together in one household at their last permanent residence and intend to live together in one household after their arrival in the United States. The NPRM also proposed to remove outdated references to “resident servants” of a family and state instead that individuals employed by the household but not related by blood, marriage, domestic relationship, or adoption cannot be included in the family declaration.

Finally, the NPRM proposed to remove the phrase “regardless of age” where it currently appears in the introductory text of §§ 148.34(b) and 148.103(b), because it would not be consistent with the proposed definition of “domestic relationships.”

CBP solicited comments on the proposed rulemaking.

Discussion of Comments

Twenty-three commenters responded to the solicitation of public comment in the proposed rule. Twenty-two of those comments were favorable, noting in particular that the proposed amendments would reduce passenger processing time and create less paperwork for people who are traveling together as a family. Several of the commenters included additional suggestions. The one comment that was opposed to the proposal was submitted anonymously and stated that “this needs to stay as is, don’t add to or change it.” Since the proposed definition more accurately reflects family relationships among mem-

bers of the traveling public, CBP is not persuaded by this comment. A description of the comments received, together with CBP's responses, is set forth below.

Overall

Comment

The vast majority of commenters supported CBP's effort to broaden the definition of members of a family residing in one household to more accurately reflect relationships among members of the public who are traveling together as a family, to reduce passenger processing time, and to create less paperwork for people who are traveling together as a family. Many commenters shared their own personal experiences upon their return to the United States and outlined what they perceived to be inconsistent and sometimes rude behavior by CBP officers. These commenters expressed their expectation that when the rule becomes final, CBP would apply the proposed definition consistently at all ports of entry.

CBP Response

CBP is encouraged that members of the public are receptive to the proposal to expand the definition of members of a family residing in one household. Expanding the definition beyond the current criteria of "by blood, marriage, and adoption," would facilitate travel for families and would reduce the paperwork burden on both the traveling public and the government. As is further discussed in a response to a comment below, CBP plans to raise public awareness and train CBP staff to promote the consistent application of this new definition once it is final.

Children of Domestic Partners

Comment

One commenter suggested that the regulations should clearly identify children of domestic partners as being within the definition of "members of a family residing in one household."

CBP Response

Biological and adopted children of a domestic partner meet the criteria of being "related by blood" or "by adoption" of paragraph (b)(1) of § 148.34 (19 CFR 148.34(b)(1)). The revised definition was expanded to also include foster children, stepchildren, half-siblings, legal wards, and other dependents, and individuals with an *in loco parentis* or guardianship relationship.

Shared Financial Assets and Obligations

Comment

Three commenters noted that the proposed language appears to exclude some family members who should fall within the definition of “domestic relationship.” For instance, one commenter questioned whether the proposed definition would exclude a family member who does not work outside of the house because that family member would not “share financial assets and obligations.”

One commenter was concerned that the sharing of financial assets may be interpreted too narrowly by CBP Officers. This commenter recommended that the requirement of “wherein the partners share financial assets and obligations” in the definition of “domestic relationship” be revised to read, “wherein the partners are financially interdependent” because a partner who does not work outside the home may not be contributing to or “sharing financial assets,” but he or she is financially interdependent with the salary-earning partner.

One commenter suggested amending the definition to read as follows: “Two adults who are in a committed relationship including, but not limited to, long-time companions, and couples in civil unions, or domestic partnerships, wherein the partners are financially interdependent, and are not married to, or a partner of anyone else.”

Some commenters recommended that CBP not define “members of a family” by their finances at all.

CBP Response

The regulations at issue address the ability of returning U.S. residents to group the exemptions for articles acquired abroad to which the several members of the family may be entitled. Therefore, the issue of finances is relevant to the definition. CBP interprets the phrase “wherein the partners share financial assets and obligations” to include situations where one partner does not work outside the home. Nevertheless, upon consideration of this comment, CBP agrees that the term, “financially interdependent” is clearer, and CBP will adopt this suggestion.

Definition of Resident

Comment

Some commenters expressed concern whether the definition of “resident” as used by CBP in this context is the same as “permanent resident” as used in the immigration law context. Another commenter

expressed the view that the definitions of “resident” and “non-resident” are not clear and should be further explained in the regulations.

CBP Response

The term “resident” for purposes of this regulation is not the same as “lawful permanent resident” in immigration law. For customs purposes, pursuant to 19 CFR 148.2, persons arriving from foreign countries are divided into two categories: (1) Residents of the United States returning from abroad and (2) all other persons (*i.e.*, visitors). In describing further how a returning resident is described for customs purposes, paragraph (b) of § 148.2 provides, in pertinent part, that citizens of the United States or persons who have formerly resided in the United States (including American citizens who are residents of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States) will be deemed residents of the United States returning from abroad within the meaning of “residents” as used in Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), in the absence of evidence that they have established a home elsewhere. For example, U.S. lawful permanent residents returning from abroad, who satisfy the definition of “members of a family residing in one household,” also may file a joint CBP declaration and aggregate their duty exemptions.

Paragraph (c) of § 148.2 provides that, “[a]ny person arriving in the United States who is not a resident of the United States or who, though a resident of the United States, is not returning from abroad, shall be treated for the purpose of these regulations as a nonresident.”

Married Women’s Status and Gender Language

Comment

Two commenters recommend that 19 CFR 148.2(b) be amended to remove outdated language. Section 148.2(b) states, in part, “For this purpose, the residence of a wife shall be deemed to be that of her husband unless satisfactory evidence is presented that the wife has established a separate residence elsewhere.” One commenter proposed that CBP eliminate this sentence and the following sentence on children’s residence or revise it to be gender neutral and encompass the revised definition of members of a family residing in one household.

CBP Response

CBP agrees. In the regulatory text, CBP is removing the outdated sentence regarding the residence of the wife because a woman can claim her own individual personal exemption. CBP is also revising the sentence on a child's residence to make it gender neutral.

Non-Resident Visitors

Comment

Two commenters recommend that the regulations be further amended to permit visitors entering the United States to complete a single CBP Form 6059–B in accordance with the expanded definition of family.

CBP Response

In the NPRM, CBP proposed to revise the definition of the phrase “members of a family residing in one household.” That phrase is used in 19 CFR 148.34(b) and 148.103(b), which relate to the family grouping of exemptions for articles acquired abroad to which only returning residents are eligible.

All individuals entering the United States must declare all articles acquired abroad to CBP at the port of first arrival in the United States. Returning residents and nonresidents arriving in the United States must make a declaration, either oral or written, of the merchandise they are importing and must pay duty on the merchandise unless specifically exempted by law. *See* 19 U.S.C. 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)). Unless an oral declaration is accepted, a person arriving in the United States must complete a written declaration on CBP Form 6059–B and present the form to the CBP officer at inspection. Section 148.14 of title 19 CFR is the regulatory section applicable to all international travelers presenting themselves at a port of entry. That section uses the phrase “family group residing in one household.” The term “family group residing in one household” is not currently defined in statute or regulation. In light of the comments CBP has received and for consistency and clarity, CBP will amend § 148.14 to explicitly define the phrase “family group residing in one household” to mean persons who are related by blood, marriage, domestic relationship (as defined in § 148.34(c)), or adoption.

Accordingly, visitors entering the U.S. who meet the expanded definition of family group residing in one household may file a single

CBP Form 6059-B, but they do not get the benefit of any duty aggregation, or any other benefits which are only provided to residents of the United States.

Binational Families

Comment

One commenter raised questions regarding “binational families” (families where one family member is a U.S. citizen or lawful permanent resident and another is a non-immigrant) and the fact that the current form does not indicate that families must have the same U.S. immigration status in order to submit the form jointly.

CBP Response

As indicated before, the declaration requirement is controlled by the customs regulations which are in title 19 of the Code of Federal Regulations (CFR); this regulation does not concern the immigration status of the traveler which would be controlled by the regulations in title 8 of the CFR. The proposed changes do not alter the residency requirements that, in order to file a family declaration, members of a family residing in one household must have lived together in one household at their last permanent residence in the United States and intend to live together in one household after their arrival in the United States. Therefore, if one family member resides in the United States and another resides abroad, even if they are traveling together, they are not eligible to file a joint customs declaration. In this instance, the returning resident would be entitled to the personal duty exemption of \$800 for articles acquired abroad (and not the family grouping of duty aggregation of \$1,600) while the non-resident family member would be entitled to the duty exemptions allowed for visitors.

Published Guidance & Training

Comment

Two commenters recommend that CBP publish guidance for the public and train employees on the meaning of “residence” and “permanent residence.” Two commenters suggested that CBP include the new definition of “domestic relationship” on the instructions for CBP Form 6059-B and in the FAQ section of CBP Form 6059-B posted on the CBP Web site. A commenter expressed the need for training on the new regulations in order for them to be implemented properly and recommended that instruction on the proposed changes be part of the regularly scheduled training of all CBP officers.

CBP Response

CBP understands the need to make clear to the traveling public who is included in the expanded definition of family to facilitate the completion of customs declarations. After this rule is published, CBP plans to update the travel section of the CBP Web site including the FAQ section on CBP Form 6059–B itself which is also found on the CBP Web site. CBP’s public affairs materials will also be updated to reflect the expanded definition of the terms “members of a family residing in one household” and a “family group residing in one household.” The Office of Field Operations (OFO) and the Office of Public Affairs plan to do outreach to trade groups and airline associations so that the public is made aware of the changes. For CBP officers and OFO staff, a roll out of memoranda, musters, and updates of CBP Officer Basic Training Academy training will be implemented upon final rule publication.

While CBP will not be amending CBP Form 6059–B (OMB Control Number 1651–0009) at this time, the form is scheduled to expire in February 2014. CBP will solicit comments during the renewal process on whether the form should be revised to improve clarity of the form or to reduce the number of questions listed on the form. CBP will also evaluate whether oral declarations could be used more often than written declarations. More discussion regarding the information collection associated with this regulation can be found later in the document in the section “Paperwork Reduction Act”.

Conclusion

After review of the comments and further consideration, CBP has decided to adopt as final, with the changes discussed above in the preamble and with additional non-substantive editorial changes, the proposed rule published in the **Federal Register** (77 FR 18143) on March 27, 2012.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action”

although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has reviewed this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to examine the impact a rule will have on small entities. A small entity may be: a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business under the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). Because this rule directly regulates individuals and families, and these are not considered small entities, CBP certifies under 5 U.S.C. 605(b) that the amendments will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by Office of Management and Budget (OMB). The information collected under 19 CFR part 148 is included under OMB control number 1651-0009. There are no new collections of information required by this document and CBP is not modifying the form at this time. The number of responses related to the completion of the CBP Form 6059-B (customs declaration) for OMB control number 1651-0009 by members of the public traveling by air and sea is currently 105,606,000. This number has been updated below to reflect an estimated decrease of 1,100,000 customs declarations completed as a result of this rule:

Estimated Number of Respondents (Travelers): 104,506,000.

Estimated Time per Response: 4 minutes.

Estimated Total Responses: 104,506,000.

Estimated Total Annual Burden Hours: 7,001,902.

The customs declaration (CBP Form 6059-B) is due to expire on February 28, 2014. CBP will determine whether the form should be significantly revised, or whether there can be an expanded use of oral declarations instead of written declarations to further reduce the paperwork burden on the traveler. CBP plans to publish a 60-day **Federal Register** Notice and a 30-day **Federal Register** Notice to solicit comments from the public on CBP Form 6059-B prior to its expiration. CBP Form 6059-B and instructions can be seen on the

following Web site: http://cbp.gov/xp/cgov/travel/vacation/sample_declaration_form.xml.

Signing Authority

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

List of Subjects in 19 CFR Part 148

Customs duties and inspection, Declarations, Taxes.

Amendments to the CBP Regulations

For the reasons set forth above, part 148 of the CBP regulations (19 CFR part 148) is amended as set forth below.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

■ 1. The general authority for part 148 continues to read as follows:
Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States);
 * * * * *

■ 2. In § 148.2,

■ a. Paragraphs (a) through (d) are amended by removing the word, “shall” wherever it appears, and adding in its place the word, “will”; and

■ b. Paragraph (b) is further amended by removing the last two sentences and adding a new last sentence.

The addition reads as follows:

§ 148.2 Residence status of arriving persons.

* * * * *

(b) * * * The residence of a minor child will be presumed to be the residence of the child’s parents.

* * * * *

■ 3. Section 148.14 is amended by removing the last sentence and adding two sentences to read as follows:

§ 148.14 Family declarations.

* * * “A family group residing in one household” means persons who are related by blood, marriage, domestic relationship (as defined in § 148.34(c)), or adoption. Individuals who are employed by the household but not related by blood, marriage, domestic relationship, or adoption will not be included in the family declaration.

■ 4. In § 148.34:

■ a. Paragraph (a) is amended by revising the last sentence;

■ b. Paragraph (b) is revised; and

■ c. Paragraph (c) is added.

The additions and revisions read as follows:

§ 148.34 Family grouping of exemptions for articles acquired abroad.

(a) * * * No exemptions allowable to individuals employed by the household and accompanying the family but not related by blood, marriage, domestic relationship, or adoption will be included in the family grouping.

(b) *Members of a family residing in one household.* “Members of a family residing in one household” includes all persons who:

(1) Are related by blood, marriage, domestic relationship, or adoption;

(2) Lived together in one household at their last permanent residence; and

(3) Intend to live in one household after their arrival in the United States.

(c) *Domestic relationship.* As used in paragraph (b)(1) of this section, the term “domestic relationship” includes foster children, step-children, half-siblings, legal wards, other dependents, individuals with an *in loco parentis* or guardianship relationship, and two adults who are in a committed relationship including, but not limited to, long-time companions, and couples in civil unions, or domestic partnerships, wherein the partners are financially interdependent, and are not married to, or a partner of, anyone else. The term “domestic relationship” does not extend to roommates or other cohabitants not otherwise meeting this definition.

■ 5. In § 148.103, paragraph (b) is revised to read as follows:

§ 148.103 Family grouping of allowances.

* * * * *

(b) *Members of a family residing in one household.* “Members of a family residing in one household” includes all persons who:

(1) Are related by blood, marriage, domestic relationship (as defined in § 148.34(c)), or adoption;

(2) Lived together in one household at their last permanent residence; and

(3) Intend to live in one household after their arrival in the United States.

Dated: December 13, 2013.

THOMAS S. WINKOWSKI,
Acting Commissioner,
U.S. Customs and Border Protection.

[Published in the Federal Register, December 18, 2013 (78 FR 76529)]

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**PROPOSED REVOCATION OF ONE RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE CLASSIFICATION OF A BRICK TYPE PLATE USED IN
BALLISTIC JACKETS**

AGENCY: U.S. Customs and Border Protection (“CBP”), Department of Homeland Security.

ACTION: Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to the classification of a brick type plate used in ballistic jackets from Italy.

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 CBP proposes to revoke one ruling letter concerning the classification of a brick type plate used in ballistic jackets from Italy under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before February 3, 2014.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, N.E.—10th Floor, Washington, DC 20229–1179. Comments submitted may be inspected at 90 K Street, N.E. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke one ruling pertaining to the classification of a brick type plate used in ballistic jackets from Italy. Although in this notice CBP is specifically referring to New York Ruling (“NY”) N016133, dated December 20, 2007 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP pro-

poses to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY N016133, CBP classified a brick type plate used in ballistic jackets from Italy in subheading 6903.20.00, Harmonized Tariff Schedule of the United States ("HTSUS"), as "Other refractory ceramic goods... Containing by weight more than 50 percent of alumina (Al_2O_3) or of a mixture or compound of alumina and of silica (SiO_2)."

We now believe that it is classified in subheading 6914.90.80, HTSUS, which provides for "Other ceramic articles: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N016133, and any other ruling not specifically identified, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H218236 (see Attachment "B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: December 3, 2013

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT A]

N016133

December 20, 2007

CLA-2-69:OT:RR:NC:1:128

CATEGORY: Classification

TARIFF NO.: 6903.20.0000

MR. ANDREW GERARD

ARIES GLOBAL LOGISTICS, INC.

AIRPORT INDUSTRIAL PARK

145 HOOK CREEK BLVD., BLDG. A-3A

VALLEY STREAM, NY 11581

RE: The tariff classification of a brick type plate used in ballistic jackets from Italy.

DEAR MR. GERARD:

In your letter dated August 21, 2007, on behalf of First Choice Armor & Equipment, Inc., you requested a tariff classification ruling.

A sample described as a brick type plate used in ballistic jackets was submitted with your request. The sample was sent to our Customs Laboratory for analysis. The laboratory has now completed its analysis of the product.

You indicate that the article is produced specifically for the manufacture of ballistic vests. The plates are used for ballistic protection in tactical vests. You also indicate that the item consists of 98% alumina (a synthetic oxide of aluminum) and 2% other components, and that it is baked with a fiber glass Kevlar coating which provides its ballistic value.

Laboratory analysis indicates that the sample is an off white, curved, rectangular protective plate with corners clipped and with rounded edges. It measures 24.9 cm x 29.8 cm x 10 mm thick. It is composed essentially of aluminum oxide and conforms to the definition of a ceramic article as stated in Chapter 69, Additional U.S. Note 1, and of a refractory article as stated in Chapter 69, Additional U.S. Note 2 of the Harmonized Tariff Schedule of the United States (HTSUS). The average hardness is 1376 on the Knoop scale, or approximately 8.1 on the Mohs scale.

You suggest classification in subheading 6902.20.5010, HTSUS, which provides for "Refractory bricks, blocks, tiles and similar refractory ceramic constructional goods, other than those of siliceous fossil meals or similar siliceous earths: Containing by weight more than 50 percent of alumina (Al_2O_3), of silica (SiO_2), or of a mixture or compound of these products: Other, Alumina."

The Explanatory Notes to the Harmonized Commodity Description and Coding System constitute the official interpretation of the HTSUS at the international level. The Explanatory Notes to heading 6902 state that the provision covers a group of refractory products normally used in the construction of ovens, kilns, furnaces or other plant for the metallurgical, chemical, ceramic, glass and other industries. However, since this article is not of the class or kind of merchandise that will be used in the construction of the aforementioned, consideration of classification under subheading 6902.20.5010, HTSUS, is precluded.

The applicable subheading for the brick type plate used in ballistic jackets will be 6903.20.0000, HTSUS, which provides for "Other refractory ceramic

goods... Containing by weight more than 50 percent of alumina (Al_2O_3) or of a mixture or compound of alumina and of silica (SiO_2)." The rate of duty will be Free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Sharon Chung at 646-733-3028.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H218236
CLA-2 OT:RR:CTF:TCM H218236 TNA
CATEGORY: Classification
TARIFF NO.: 6914.90.80

MR. ANDREW GERARD
ARIES GLOBAL LOGISTICS, INC.
AIRPORT INDUSTRIAL PARK
145 HOOK CREEK BLVD., BLDG. A-3A
VALLEY STREAM, NY 11581

RE: Revocation of NY N016133; Classification of a Brick Type Plate Used in Ballistic Jackets from Italy

DEAR MR. GERARD:

This letter is in reference to New York Ruling (“NY”) N016133, issued to you on December 20, 2007, on behalf of First Choice Armor & Equipment, Inc., concerning the tariff classification a brick type plate used in ballistic jackets from Italy. There, U.S. Customs and Border Protection (“CBP”) classified the subject plate under subheading 6903.20.00, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Other refractory ceramic goods... Containing by weight more than 50 percent of alumina (Al_2O_3) or of a mixture or compound of alumina and of silica (SiO_2).”

We have reviewed NY N016133 and found it to be incorrect. For the reasons set forth below, we hereby revoke NY N016133.

FACTS:

The subject merchandise consists of a brick-type ceramic plate. It is 98% alumina and 2% other components. It is designed for incorporation into ballistic jackets that are worn for protection against firearms and other weapons. As such, it is designed to be worn on the person during use by military, police, and similar personnel.

Before issuing NY N016133, CBP’s National Commodity Specialist division (“NCS”) sent a sample of the subject merchandise to a CBP laboratory for analysis. The resulting laboratory report, Laboratory Report # NY 20071421, dated December 18, 2007, concluded that the subject merchandise was composed essentially of aluminum oxide. The laboratory also noted that the subject merchandise conformed to the definition of a “refractory article” found in Additional U.S. Note 1 to chapter 69, HTSUS.¹ Finally, the laboratory noted that the average hardness of the merchandise is approximately 8.1 on the Mohs Scale.

ISSUE:

Whether the subject brick type plate is classified as a refractory article of heading 6903, HTSUS, or as a ceramic ware of heading 6209, HTSUS?

¹ We note that both the laboratory report and NY N016133 were issued in 2007. In the 2007 tariff, the cited definition of “refractory article” was found in Additional U.S. Note 2 to Chapter 69, which has since been renumbered to Additional U.S. Note 1. Furthermore, the Additional U.S. Note 1 that appeared in the 2007 tariff schedule contained a definition of the term “ceramic article.” Laboratory Report # NY 20071421 found that the subject merchandise met that definition as well.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The HTSUS provisions under consideration are as follows:

- 6903 Other refractory ceramic goods (for example, retorts, crucibles, muffles, nozzles, plugs, supports, cupels, tubes, pipes, sheaths and rods), other than those of siliceous fossil meals or of similar siliceous earths:
- 6909 Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods:
- 6914 Other ceramic articles:

Additional U.S. Note 1 to chapter 69, HTSUS, states, in pertinent part, the following:

For the purposes of headings 6902 and 6903, the term “refractory” is applied to articles which have a pyrometric cone equivalent of at least 1500EC when heated at 60EC per hour (pyrometric cone 18). Refractory articles have special properties of strength and resistance to thermal shock and may also have, depending upon the particular uses for which designed, other special properties such as resistance to abrasion and corrosion.

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

The General ENs to Sub-Chapter I of Chapter 69, HTSUS, provides, in pertinent part, the following²:

This sub-Chapter covers, whether or not they contain clay:...

(B) In headings 69.02 and 69.03 refractory goods, i.e., fired articles having the special property of resisting high temperatures as met in metallurgy, the glass industry, etc. (e.g., of the order of 1,500 °C and higher). According to the particular uses for which they are intended, refractory articles may also need to withstand rapid changes of temperature, be either good thermal insulators or conductors, have a low coefficient of thermal expansion, be porous or dense, resist the corrosive effects of products with which they come into contact, have a good mechanical strength and resistance to wear, etc.

² Subchapter I of Chapter 69, HTSUS, encompasses heading 6901 through 6903, HTSUS. Subchapter II of Chapter 69, HTSUS, encompasses heading 6904 through 6912, HTSUS

However, to fall in heading 69.02 or 69.03 as refractory goods, articles must not only be capable of resisting high temperatures, they must also be designed for high temperature work. Heading 69.03 would therefore include crucibles of sintered alumina, but textile machine thread guides of the same material would fall in heading 69.09 since they are designed for clearly non-refractory uses.

The main types of refractory goods are:

- (1) High alumina refractories based either upon bauxite, mullite or corundum (sometimes mixed with clays) or on kyanite, sillimanite or andalusite (aluminium silicates) mixed with clays, or on sintered alumina....

Refractory materials are used mainly to line blast furnaces, coke ovens, petroleum cracking plants, glass, ceramic and other industrial furnaces, and in the manufacture of pots, crucibles and other plant for the chemical, glass, cement and aluminium and other metallurgical industries.

But headings 69.02 and 69.03 do not cover articles which, though sometimes described as refractory or semi-refractory, are incapable of withstanding industrial temperatures of the type described above. Such articles fall in the appropriate heading of sub-Chapter II.

The EN to heading 6903, HTSUS, states, in pertinent part, the following:

This heading covers all refractory goods not specified or included in the preceding headings.

These articles include:

- (1) Articles which, unlike the refractory products of heading 69.02, are in many cases not permanent fixtures, such as retorts, reaction vessels, crucibles, cupels and similar articles for industrial or laboratory use, muffles, nozzles, plugs, burner jets and similar parts of furnaces; saggars, stands and other kiln furniture to support or separate pottery during firing; sheaths and rods; stands for crucibles; ingot moulds; etc.

The EN to heading 6909, HTSUS, states, in pertinent part, the following:

This heading covers a range of very varied articles usually made from vitrified ceramics (stoneware, porcelain or china, steatite ceramics, etc.), glazed or unglazed. It does not, however, cover refractory goods of a kind designed for resisting high temperatures as described in the General Explanatory Note to sub-Chapter I. But articles of a type not designed for high temperature work remain in this heading even if made of refractory materials (e.g., thread guides, grinding apparatus, etc., of sintered alumina).

The heading covers in particular:

- (1) Laboratory wares (e.g., for research or industrial use) such as crucibles and crucible lids, evaporating dishes, combustion boats, cupels; mortars and pestles; spoons for acids, spatulas; supports for filters and catalysts; filter plates, tubes, candles, cones, funnels, etc.; water-baths; beakers, graduated vessels (other than graduated kitchen measures); laboratory dishes, mercury troughs; small tubes (e.g., combustion tubes, including analysis tubes for estimation of carbon, sulphur, etc.).

(2) Ceramic wares for other technical uses, such as pumps, valves; retorts, vats, chemical baths and other static containers with single or double walls (e.g., for electroplating, acid storage); taps for acids; coils, fractionating or distillation coils and columns, Raschig rings for petroleum fractionating apparatus; grinding apparatus and balls, etc., for grinding mills; thread guides for textile machinery and dies for extruding man-made textiles; plates, sticks, tips and the like, for tools.

The EN to heading 6914, HTSUS, states, in pertinent part, the following:

This heading covers all ceramic articles not covered by other headings of this Chapter or in other Chapters of the Nomenclature.

In NY N016133, CBP classified the subject merchandise in heading 6903, HTSUS, which provides for “Other refractory ceramic goods (for example, retorts, crucibles, muffles, nozzles, plugs, supports, cupels, tubes, pipes, sheaths and rods), other than those of siliceous fossil meals or of similar siliceous earths.” Refractory goods of this heading are fired articles that can resist high temperatures of the order of 1,500 °C and higher. *See* Additional U.S. Note 1 to Chapter 69; *see also* General EN to Chapter 69, HTSUS. Furthermore, in order to be classified as a refractory good of heading 6903, HTSUS, merchandise must not only be capable of resisting high temperatures, they must also be of a type designed for high temperature work. *See* General EN to Chapter 69, HTSUS.

Reading these definitions together, CBP has long held that classification as a refractory article of heading 6903, HTSUS, requires more than simply meeting the definition in Additional U.S. Note 1 to Chapter 69, HTSUS, and simply being capable of resisting temperatures of 1500 degrees Celsius and higher. Thus, we have reasoned that merchandise of a type not regularly subjected to temperatures of 1,500 degrees Celsius and higher is not designed for high temperature use, even if the merchandise is capable of withstanding that amount of heat. For example, in HQ 082956, dated December 8, 1989, CBP classified ceramic needle guides for use with a computer printer outside heading 6903, HTSUS, because, while they were “capable of withstanding temperatures of 1500 degrees centigrade, they will not be subjected to those temperatures in a computer printer.” *See* HQ 082956. Nor are needle guides the type of merchandise regularly subjected to 1500 degrees Celsius. This principle has been followed in subsequent CBP rulings. *See* HQ 089409, dated June 7, 1991; NY G83258, dated November 2, 2000.

Similarly, in the present case, the subject ballistic plates are used in jackets that are worn on the person. While it is not in dispute that the subject plates are capable of withstanding temperatures of 1500 degrees centigrade or higher, they are not the type of article that will be subject to anywhere near these temperatures in everyday use. To the contrary, they will be used in training and in combat, activities conducted in and generating far lower temperatures than 1500 degrees Celsius. As a result, the subject plates do not meet the terms of heading 6903, HTSUS, and we examine alternate headings.

Heading 6909, HTSUS, provides for “Ceramic wares for laboratory, chemical or other technical uses....” Here, the focus is on what constitutes a “technical use.” In *Apex Universal v. United States*, 22 C.I.T. 465, the court

classified ceramic paving markers. *Apex Universal v. United States*, 22 C.I.T. 465, 466–467. In considering classification in heading 6909, HTSUS, the court defined “technical” as “designed or used to facilitate any special mechanical or scientific process.” *Id.* at 471. This definition is in accordance with the ENs, which list items whose unifying characteristics are both a ceramic composition and “utility as an instrument or container to facilitate a ‘technical’ process, whether it be a chemical experiment in a laboratory or storage and conveyance of an agricultural product.” *See* EN 69.09; *Apex Universal*, 22 C.I.T. at 471.

In the present case, the subject ceramic plate is designed for incorporation into ballistic vests so that it can stop bullets. This is a function that is separate from any special technical or scientific process. Thus, this ceramic plate cannot be said to be designed or used to facilitate any special mechanical or scientific process. As such, it cannot be classified in heading 6909, HTSUS, as a ceramic ware for laboratory, chemical or other technical use.

Heading 6914, HTSUS, provides for “Other ceramic articles.” The heading covers all ceramic articles not covered by other headings of Chapter 69 or other chapters of the nomenclature. *See* EN 69.14. CBP has classified a wide range of articles in this heading, from a ceramic setter which was used to maintain the shape of fine china dinnerware through the firing process, to plastic box with a ceramic magnet attached to the bottom. *See, e.g.*, HQ 960294, dated August 12, 1997 (classifying the ceramic setter in heading 6914, HTSUS); HQ 089760, dated February 24, 1992 (classifying the plastic box with a ceramic magnet attached to the bottom in heading 6914, HTSUS); HQ 960922, dated August 3, 1998 (classifying ceramic adapters and receptacles used in the transmission of signals through optical fibers in heading 6914, HTSUS).

In the present case, the subject merchandise is made of ceramic and has been precluded from classification in various other headings of the nomenclature pursuant to the analysis above. It also comports with the broad range of merchandise that CBP has classified in heading 6914, HTSUS. As such, it is described by the terms of heading 6914, HTSUS, and will be classified there.

HOLDING:

Under the authority of GRI 1, the subject brick type plate is classified in heading 6914, HTSUS. It is specifically provided for in subheading 6914.90.80, HTSUS, which provides for “Other ceramic articles: Other: Other.” The applicable duty rate is 5.6%.

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

EFFECT ON OTHER RULINGS:

NY N016133, dated December 20, 2007, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177**PROPOSED REVOCATION OF ONE RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE CLASSIFICATION OF A PLASTIC PLACEMAT AND
COASTER SET**

AGENCY: U.S. Customs and Border Protection (“CBP”), Department of Homeland Security.

ACTION: Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to the classification of a plastic placemat and coaster set.

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 CBP proposes to revoke one ruling letter concerning the classification of a plastic placemat under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before February 3, 2014.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, N.E.—10th Floor, Washington, DC 20229–1179. Comments submitted may be inspected at 90 K Street, N.E. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke one ruling pertaining to the classification of a plastic placemat and coaster set. Although in this notice CBP is specifically referring to New York Ruling (“NY”) N020816, dated December 20, 2007 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

In NY N020816, CBP classified a plastic placemat and coaster set in subheading 3924.10.40, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Tableware and kitchenware: Other.” We now believe that it is properly classified in subheading 3924.90.10, HTSUS, as: “other household articles of plastic.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N020816, and any other ruling not specifically identified, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H236273 (*see* Attachment “B” to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: December 3, 2013

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT A]

N020816

December 20, 2007

CLA-2-39:OT:RR:NC:N2:222

CATEGORY: Classification

TARIFF NO. 3924.10.4000

MS. FRANCINE RAMSEY
HAMPTON DIRECT, INC.
P. O. BOX 1199
WILLISTON, VT 05495

RE: The tariff classification of plastic placemats and coasters from China.

DEAR Ms. RAMSEY:

In your letter dated December 7, 2007, you requested a tariff classification ruling.

The submitted sample is identified as a Sunflower Placemat and Coaster Set, SKU# 64180. These items are made of polyvinyl chloride (PVC). The placemat and matching coasters are decorated with the pattern of a brown wicker basket holding brightly colored orange, yellow and white sunflowers and green leaves. The placemats and coasters help to protect tables from scratches, food spills or stains. The placemats measure 17 inches long by 11-1/8 inches wide and the coasters measure 3-7/8 inches square. The placemats and coasters are fashioned with rounded corners.

The applicable subheading for SKU# 64180, will be 3924.10.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for tableware, kitchenware...of plastics: tableware and kitchenware: other. The rate of duty will be 3.4 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Gary Kalus at 646-733-3055.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H236273
CLA-2 OT:RR:CTF:TCM H236273 TNA
CATEGORY: Classification
TARIFF NO.: 3924.90.10

Ms. FRANCINE RAMSEY
HAMPTON DIRECT, INC.
P. O. BOX 1199
WILLISTON, VT 05495

Re: Revocation of NY N020816; Classification of a plastic placemat and coaster set

DEAR Ms. RAMSEY:

This letter is in reference to New York Ruling Letter (“NY”) N020816, issued to you on December 20, 2007, concerning the tariff classification of plastic placemats and coasters. In NY N020816, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 3924.10.40, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Tableware and kitchenware: Other.” We have reviewed NY N020816 and found it to be in error. For the reasons set forth below, we hereby revoke NY N020816.

FACTS:

NY N020816 classified a “Sunflower Placemat and Coaster Set,” SKU# 64180. The placemat and the coasters are all made of polyvinyl chloride (PVC). They also contain matching colors and designs. They are decorated with a brown wicker basket holding brightly colored orange, yellow and white sunflowers and green leaves. The placemats measure 17 inches long by 11–1/8 inches wide and the coasters measure 3–7/8 inches square. The coasters and the placemats are all fashioned with rounded corners and are designed help to protect tables from scratches, food spills or stains.

ISSUE:

Whether the subject placemat and coasters are classifiable in subheading 3924.10, HTSUS, as tableware or kitchenware, or in subheading 3924.90, HTSUS, as other household articles of plastics?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI’s). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

3924	Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:
3924.10	Tableware and kitchenware:
3924.10.40	Other
3924.90	Other:
3924.90.10	Curtains and drapes, including panels and valances; napkins, table covers, mats, scarves, runners, doilies, centerpieces, antimacassars and furniture slipcovers; and like furnishings

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN’s 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. 35127–28 (Aug. 23, 1989).

The EN to heading 3924, HTSUS, provides, in relevant part:

This heading covers the following articles of plastics:

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

(C) Other household articles such as ash trays, hot water bottles, match-box holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).

We begin by noting that there is no dispute at the heading level that subject placemats are described by the terms of heading 3924, HTSUS. This finding is supported by the EN 39.24, which states specifically that “table mats” are covered by this heading. Thus, the dispute, at the six-digit level, is whether the subject placemats are “tableware and kitchenware,” or “other,” the latter of which specifically includes table mats.

In construing the scope of heading 3924, HTSUS, CBP has held that the principle of *ejusdem generis* applies. *See, e.g.*, HQ H176516, dated September 20, 2012 and HQ H020141, dated July 30 2008. The Court of International Trade has stated that the canon of construction *ejusdem generis*, which means “of the same class or kind,” teaches that “where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” *See Nissho-Iwai American Corp. v. United States*, 10 CIT 154, 156 (1986). The court further stated that “as applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157. *See also Totes, Inc. v. United States*, 18 CIT 919, 865 F. Supp. 867, 871 (1994), *aff’d*. 69 F. 3d 495 (Fed. Cir. 1995).

Applying these principles to heading 3924, HTSUS, CBP has found that the essential characteristics or purposes of household articles of this heading are that they are made of plastic, are used in the household, and are reusable. *See* HQ H176516 and HQ W968181, dated October 3, 2006. Furthermore, CBP has held that many of the exemplars of “tableware” in EN 39.24, and classifiable under subheading 3924.10, HTSUS, are items from which the consumer can directly consume beverages or food. *See, e.g.*, HQ H100800, dated December 23, 2011.

In addition, although the terms “tableware” and “kitchenware” are not defined in either the nomenclature or the ENs, CBP has defined these terms in prior rulings by consulting dictionaries and other lexicographic sources. In HQ H005207, for example, CBP defined “tableware” as “those items traditionally used in serving food or associated with table settings.” *See* HQ H005207, *citing* Webster’s Collegiate Dictionary, 1195, 10th ed., (2001) (defining tableware as: “utensils {as of china, glass or silver} for table use).”¹ Furthermore, HQ H005207 defined “kitchenware” as “utensils and appliances for use in a kitchen.” *See* HQ H005207, *citing* Webster’s Collegiate Dictionary at 643. Thus, HQ H005207 concluded that tableware and kitchenware are articles immediately associated with food preparation, food storage and food consumption. Furthermore, HQ H005207 found that unlike household articles, tableware and kitchenware could be used in a variety of table and kitchen related functions. For example, they could be used for food preparation and beverage items or act as table settings; they could also be used for storing or displaying foods, or for serving food and beverages. As a result, HQ H005207 classified a toothpick holder as tableware and kitchenware because toothpicks are primarily used in connection with the consumption of foods, with the serving of hors d’oeuvres, mixed drinks and for removing food particles from between the teeth.

By contrast, the subject placemats are not used in the preparation of food or beverages; nor are they as necessary to place settings as utensils, plates, glasses, etc. The subject placemats also cannot be used for storing or displaying foods, or for serving food and beverages. They are also not items from which a consumer would directly consume food or beverages. As a result, they do not meet the cited definitions of tableware and kitchenware, and they do not comport with the exemplars listed therein. As such, they cannot be classified as tableware or kitchenware of heading 3924, HTSUS, or subheading 3924.10, HTSUS.

However, the subject placemats, like the household articles of HQ H176516 and HQ W968181, meet the exemplars of household articles in that they are made of plastic, are used in the household, and are reusable. Furthermore, CBP has found that “heading 3924 provides for, among other things, very broad categories of plastic household articles and plastic toilet articles.” *See* HQ H046780, dated March 10, 2009. Thus, CBP has classified such disparate items as a hand shower, a shower head, a tunnel tent, and plastic inflatable

¹ Although we acknowledge that HQ H005207 applied to different heading than those at issue here, we find its conclusions instructive because headings 3924, 6911 and 6912, HTSUS, share nearly identical heading text and provide for the same articles, albeit of different materials.

tepees as “other household articles” of heading 3924, HTSUS. *See, e.g.*, HQ H046780, HQ 961348, dated April 14, 1998; HQ 961349, dated April 14, 1998. As a result, we find that the subject place mats are described by these terms as well and are therefore classified as “other household articles” of heading 3924, HTSUS.

In particular, subheading 3924.90.10, HTSUS, provides for table cover covers, mats, “and like articles.” The subject place mats, which are designed to cover the table, meet these terms. As a result, the subject placemats are classified in subheading 3924.90.10, HTSUS, as “... other household articles and hygienic or toilet articles, of plastics: Other: Curtains and drapes, including panels and valances; napkins, table covers, mats, scarves, runners, doilies, centerpieces, antimacassars and furniture slipcovers; and like furnishings.” This conclusion is consistent with prior CBP rulings. *See e.g.*, HQ H064878, dated August 13, 2009; HQ H064878, dated August 13, 2009; NY R04714, dated September 18, 2006; NY L89674, dated January 12, 2006; and NY K85476, dated May 26, 2004.

HOLDING:

In accordance with GRI 1 and GRI 6, the subject placemats are classified in heading 3924, HTSUS. They are specifically provided for in subheading 3924.90.10, HTSUS, as: “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Curtains and drapes, including panels and valances; napkins, table covers, mats, scarves, runners, doilies, centerpieces, antimacassars and furniture slipcovers; and like furnishings.” The general, column one duty rate is 3.3%.

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

EFFECT ON OTHER RULINGS:

NY N020816, dated December 20, 2007, is REVOKED.

Sincerely,

MYLES B. HARMON

Director

Commercial and Trade Facilitation Division

19 CFR PART 177**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
CLASSIFICATION OF THERMAL TRANSFER RIBBONS**

AGENCY: U.S. Customs and Border Protection (“CBP”), Department of Homeland Security.

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the classification of thermal transfer ribbons.

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 CBP proposes to revoke one ruling concerning the classification of thermal transfer ribbons under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before February 3, 2014

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, N.E., 10th Floor, Washington, D.C. 20229–1179. Comments submitted may be inspected at 90 K Street, N.E., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke a ruling pertaining to the classification of thermal transfer ribbons. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N022500, dated February 11, 2008 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

In NY N022500, CBP classified the subject thermal transfer ribbon in subheading 8443.99.25, HTSUS, as “Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile ma-

chines, whether or not combined; parts and accessories thereof: Parts and accessories: Other: Parts and accessories of printers: Other.”

Pursuant to the analysis in *QMS, Inc., v. United States*, 19 C.I.T. 551; 17 Int'l Trade Rep. (BNA) 1510; 1995 Ct. Intl. Trade LEXIS 104; SLIP OP. 95-65 (Ct. Int'l Trade 1995), we now believe that the subject thermal transfer ribbons are correctly classified in heading 3207, HTSUS, which provides for “Photographic film in rolls, sensitized, unexposed, of any material other than paper, paperboard or textiles; instant print film in rolls, sensitized, unexposed.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N022500 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H097674. (*see* Attachment “B” to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: December 3, 2013

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT A]

N022500

February 11, 2008

CLA-2-84:OT:RR:E:NC:N1:106

CATEGORY: Classification

TARIFF NO.: 8443.99.2550

MS. PENELOPE PERKINS
JOHN S. JAMES, CO.
4119-F ROSE LAKE DRIVE
CHARLOTTE, NC 28217

RE: The tariff classification of thermal transfer ribbon from Japan for dye sublimation printers.

DEAR MS. PERKINS:

In your letter dated January 28, 2008 on behalf of DNP IMS America, you requested a tariff classification ruling. You included a drawing and information with your request.

The merchandise at issue is referred to as a thermal transfer ribbon. The ribbon, which is from Japan and is the essential character of the merchandise, will be attached with other components to a spool in a free trade zone. It is designed to be used solely on dye sublimation printers. The printers are said to be capable of being connected to an automated data processor or network. Each spool contains dye of a single color (red, green, blue or black) and can range in width from 19mm to 273mm, corresponding to the size of the printer.

The applicable subheading for the thermal transfer ribbon will be 8443.99.2550, Harmonized Tariff Schedule of the United States (HTSUS), which provides for printing machinery...: parts and accessories: other: other: other. The general rate of duty will be free percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mark Palasek at 646-733-3013.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H097674
CLA-2 OT:RR:CTF:TCM H097674 TNA
CATEGORY: Classification
TARIFF NO.: 3702.39.01, 3702.44.01

MS. PENELOPE PERKINS
JOHN S. JAMES, CO.
4119-F ROSE LAKE DRIVE
CHARLOTTE, NC 28217

RE: Revocation of NY N022500; Classification of thermal transfer ribbon

DEAR MS. PERKINS:

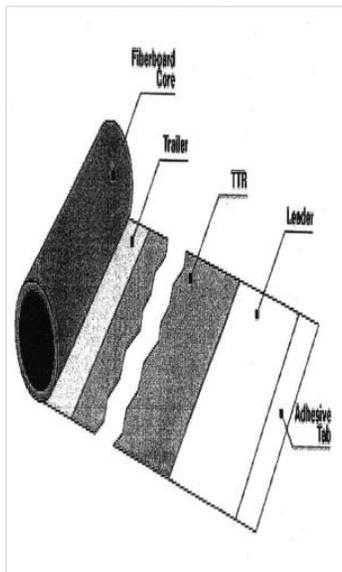
This letter is in reference to New York Ruling Letter (“NY”) N022500, issued to you on behalf of DNP IMS America on February 11, 2008, concerning the tariff classification of thermal transfer ribbon for dye sublimation printers. In NY N022500, U.S. Customs and Border Protection (“CBP”) classified the thermal transfer ribbon in heading 8443, Harmonized Tariff Schedule of the United States (“HTSUS”), as a part of a printer. We have reviewed NY N022500. For the reasons set forth below, we hereby revoke NY N022500.

FACTS:

The subject merchandise consists of thermal transfer ribbon that is designed to be used solely with dye sublimation printers. These printers are capable of being connected to an automated data processor (“ADP”) or network. Dye sublimation printers function by way of a printing process that uses heat to transfer dye onto medium materials such as a plastic card, paper, or fabric. By way of example, they are typically used to transfer bar codes onto removable paper labels. It is called “sublimation” because the dye transitions between the solid and gas states without going through a liquid stage.

The subject ribbon is manufactured from polyethylene terephthalate (“PET”) film and consists of a core, a trailer, the thermal transfer ribbon, a leader, and an adhesive tab. The core is typically made of fiber or plastic. The trailer communicates with the printer so that the printer knows when the ribbon is finished. The leader protects the ribbon during shipping and facilitates the loading of the ribbon into the printer. The adhesive tab secures the leader around the ribbon so that it will not unravel.

When the spools are placed into the printer, a plastic or metal spindle is inserted through the core of the spool to hold it in place. The leader is then pulled between the platen roller, and the thermal print head is manually attached to a part of the printer called the ribbon take-up spindle. Each spool contains dye of a single color (red, green, blue or black) and can range in width from 19mm to 273mm, corresponding to the size of the printer. The following is a picture of the subject merchandise:



In NY N022500, CBP classified the subject thermal transfer ribbon in subheading 8443.99.25, HTSUS, as “Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof: Parts and accessories: Other: Parts and accessories of printers: Other.”

ISSUE:

Whether thermal transfer ribbons are classified in heading 3702, HTSUS, as “Photographic film in rolls” or in heading 8443, HTSUS, as parts and accessories of “Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442”?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

- | | |
|------|--|
| 3702 | Photographic film in rolls, sensitized, unexposed, of any material other than paper, paperboard or textiles; instant print film in rolls, sensitized, unexposed: |
|------|--|

8443 Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof:

Note 2 to Chapter 37, HTSUS, provides that:

In this chapter the word “*photographic*” relates to the process by which visible images are formed, directly or indirectly, by the action of light or other forms of radiation on photosensitive surfaces.

Note 1 to Section XVI, HTSUS, of which Chapter 84, HTSUS, is a part, provides, in pertinent part, that:

This section does not cover:

...

(q) Typewriter or similar ribbons, whether or not on spools or in cartridges (classified according to their constituent material, or in heading 9612 if inked or otherwise prepared for giving impressions).

Additional U.S. Rule of Interpretation (AUSRI) 1(c) provides that:

a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part or accessory.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. 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 (Aug. 23, 1989).

The EN to heading 3702, HTSUS, provides, in pertinent part:

This heading covers:

(A) Photographic film in rolls, of any material other than paper, paperboard or textiles.

Photographic film **in rolls** (i.e., other than flat), **sensitised, unexposed** is usually of poly(ethylene terephthalate), cellulose acetate or similar flexible materials and normally provides for a number of exposures. The heading **does not cover** such film of paper (e.g., paper “films” used to make negatives), paperboard or textiles (**heading 37.03**).

Film in rolls falls in this heading with or without perforations; it must be protected from the light by paper backing or other suitable packing...

Like the photographic plates of heading 37.01, this film may be used for amateur, professional photomechanical, scientific, radiographic, etc., purposes. X-ray film in rolls is generally sensitised on both sides.

The EN to heading 8443, HTSUS, provides, in pertinent part:

This heading covers (1) all machines used for printing by means of the plates or cylinders of the previous heading, and (2) other printers, copying machines and facsimile machines, whether or not combined.

The heading includes machines for printing a repetitive design, repetitive wording or overall colour on textiles, wallpaper, wrapping paper, rubber, plastics sheeting, linoleum, leather, etc....

(II) OTHER PRINTERS, COPYING MACHINES AND FACSIMILE MACHINES, WHETHER OR NOT COMBINED

This group covers:

(A) Printers.

This group includes apparatus for the printing of text, characters or images on print media, other than those that are described in Part (I) above.

These apparatus accept data from various sources (e.g., automatic data processing machines, flatbed desktop scanners, networks). Most incorporate memory to store that data.

The products of this heading may create the characters or images by means such as laser, ink-jet, dot matrix or thermal print processes....

PARTS AND ACCESSORIES

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading also covers parts and accessories of the machines of this heading.

In *QMS, Inc., v. United States*, 19 C.I.T. 551; 17 Int'l Trade Rep. (BNA) 1510; 1995 Ct. Intl. Trade LEXIS 104; SLIP OP. 95-65 (Ct. Int'l Trade 1995), the court examined the classification of color ink sheet rolls ("ISRs"), also known as thermal transfer ribbons in the trade. See *QMS, Inc., v. United States*, 19 C.I.T. 551, 552 ("*QMS*"). The ISRs are specially designed for use solely in color thermal transfer printers which were used to print graphics with *automatic* data processing equipment. The printers could not function as intended without color ISRs. *Id.* at 551. In their condition as imported, the ISRs consisted of a thin polymer (*i.e.*, plastic) film to which had been applied paraffin wax pigments (or "inks") in varying color configurations (*i.e.*, yellow, magenta, cyan, and black). *Id.* at 551. The ISRs varied in size, depending on the color thermal transfer printers for which they are specially designed. They were between 228 and 325 millimeters in width, between 105 and 297 meters in length, and between 50 and 74 millimeters in diameter when tightly wound around a reinforced cardboard core. *Id.* at 551-552.

The court first considered classification in heading 9612, HTSUS, as typewriters or similar ribbons, and found that the subject ISRs were not typewriter or similar ribbons. *Id.* at 556. The court reasoned that typewriter ribbons are typically narrow whereas the ISRs were wide, and that whereas typewriter ribbons are uniformly inked along their length, the ISRs were coated with alternating color configurations throughout their length. *Id.* at 559. Furthermore, the court noted that the ISRs used color marks and page marks located precisely along the edges of the ISR for continuous electronic feedback and precise electronic positioning for overprinting. *Id.* at 559.

The court also noted that typewriter ribbons and ISRs do not possess the same purposes, because with typewriter ribbons, the ink is transferred to paper by impression which occurs when the ribbon is directly impacted by a mechanical striker. *Id.* at 559–560. Thus, the court stated that the purpose of such ribbons is to serve as a medium for print on paper by impression from impact, not the general purpose of printing. *Id.* at 560. By contrast, the court found that the purpose of the ISRs was to serve as a medium for the printing of graphic images on paper by use of heat. In the thermal printing process, pigmented wax is never transferred to the paper by means of impact. *Id.* at 560. As a result, the court found that the subject ISRs could not be classified in heading 9612, HTSUS.

In the present case, the subject thermal transfer ribbons also cannot be classified as typewriter ribbons of heading 9612, HTSUS, because they too are not similar enough to typewriter ribbons to be classified there. Not only are the subject thermal transfer ribbons longer and wider than typewriter ribbons, they also function as a medium for printing images onto various media by way of heat. This is in contrast to typewriter ribbon, which functions by transferring an image by way of impact. As a result, the subject thermal transfer ribbons cannot be classified in heading 9612, HTSUS.¹

Next, the *QMS* court considered classification in heading 8473, HTSUS, as parts and accessories suitable for use solely or principally with machines of headings 8469 to 8472, HTSUS. The court did not determine whether the subject ISRs fit the established definitions of parts or accessories. *Id.* at 561. Rather, the court reasoned that, even assuming the subject ISRs fit these definitions, the GRIs required that, where goods were, *prima facie*, classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. Thus, under the authority of GRI 3(a), the court found that the ISRs were more specifically provided for in heading 3702, HTSUS, and specifically in subheading 3702.44, HTSUS, as “Photographic film in rolls, sensitized, unexposed, of any material other than paper, paperboard or textiles; instant print film in rolls, sensitized, unexposed: Other film, without sprocket holes, of a width exceeding 105 mm: Of a width exceeding 105 mm but not exceeding 610 mm.” *Id.* at 561.

In coming to its conclusion, the court noted that its awareness that there seemed to be “differences between ISRs and photographic film as the term ‘photographic’ is commonly understood.” *Id.* at 561. The court examined the term, first by looking to Note 2 to Chapter 37, HTSUS, and then by consulting dictionaries. *See* Note 2 to Chapter 37 (defining “photographic” as “relat[ing] to a process which permits the formation of visible images directly or indirectly by the action of light or other forms of radiation on sensitive surfaces”); Van Nostrand’s Scientific Encyclopedia, at 2378 (Douglas M. Considine *et al.* eds., 7th ed. 1989) (defining “photographic” as “1. The emission and propa-

¹ We note that a number of CBP rulings classified thermal transfer ribbons in heading 9612, HTSUS. *See, e.g.*, HQ 088950, dated July 1, 1990; HQ 952835, dated March 18, 2993; HQ 089172, dated August 14, 1991; HQ 954563, dated January 11, 1994; NY 859143, dated January 4, 1991; NY 887235, dated June 15, 1993; NY 850825, dated April 3, 1990. However, all of those rulings predated *QMS*, and, as a result, were revoked by operation of law.

gation of energy *through space or through a material medium* in the form of waves; for instance, the emission and propagation of electromagnetic waves, or of sound and elastic waves. 2. The energy propagated *through space or through a material medium* as waves; for example, energy in the form of electromagnetic waves or of elastic waves. The term radiation, or radiant energy, *when left unqualified, usually refers to electromagnetic radiation*; such radiation commonly is classified, according to frequency, as radio-frequency, microwave, infrared, visible (light), ultraviolet, x-rays, and gamma-rays . . .” [emphasis added]); The McGraw-Hill Concise Encyclopedia of Science & Technology, at 903 (Sybil P. Parker *et al.* eds., 2d ed. 1989) (defining “photographic” as “the energy radiated by solids, liquids, and gases as a result of their temperature. Such radiant energy is in the form of electromagnetic waves and covers the entire electromagnetic spectrum, extending from the radio-wave portion of the spectrum through the infrared, visible, ultraviolet, x-ray, and gamma-ray portions.”) *Id.* at 562.

As a result of this dictionary review, the court found that the term “photographic” was broad enough to include more than just conventional photography. The court also found that the thermal transfer process that the ISRs utilized was a “photographic” process, because, for the purposes of the tariff schedule, it was sufficient that the ISRs permitted the formation of visible images directly or indirectly by the action of light or other forms of radiation on sensitive surfaces. The court concluded that the ISRs were described by the terms of heading 3702, HTSUS because they were the “photographic film” in that they were in rolls, sensitized to heat radiation, unexposed to heat radiation, and made of a material other than paper, paperboard or textiles. Accordingly, the court classified the ISRs under heading 3702, HTSUS, and found that even if ISRs were, *prima facie*, classifiable under heading 8473, HTSUS, as “parts and accessories of certain printer machines,” such a description was less specific than the term “photographic film.”

Likewise, heading 3702, HTSUS, is also more specific than heading 8443, HTSUS, which provides for “parts and accessories of printing machinery.” Furthermore, pursuant to AUSRI 1(c), heading 3702, HTSUS, prevails over heading 8443, HTSUS, because it is a specific provision for the merchandise even if that merchandise is also a part described in another provision. As a result, the subject merchandise is classified in heading 3702, HTSUS, which provides for “Photographic film in rolls, sensitized, unexposed, of any material other than paper, paperboard or textiles; instant print film in rolls, sensitized, unexposed.” This conclusion is consistent with prior CBP rulings. *See* HQ 960328, dated February 4, 1998; HQ 963093, dated September 22, 1999; NY N094576, dated February 25, 2010; NY K87956, dated August 10, 2004; NY L82265, dated February 10, 2005; NY D80198, dated August 6, 1998.

HOLDING:

Under the authority of GRIs 1 and 3(a) and AUSR 1(c), the subject thermal transfer ribbons are classified in heading 3702, HTSUS. Specifically, if imported in a width not exceeding 105 mm, they are classified in subheading 3702.39.01, HTSUS, which provides for “Photographic film in rolls, sensitized, unexposed, of any material other than paper, paperboard or textiles;

instant print film in rolls, sensitized, unexposed: Other film, without perforations, of a width not exceeding 105 mm: Other.” The 2011 column one general rate of duty is 3.7% *ad valorem*.

If imported in a width exceeding 105 mm, the subject thermal transfer ribbons are classified in subheading 3702.44.01, HTSUS, which provides for: “Photographic film in rolls, sensitized, unexposed, of any material other than paper, paperboard or textiles; instant print film in rolls, sensitized, unexposed: Other film, without perforations, of a width exceeding 105 mm: Of a width exceeding 105 mm but not exceeding 610 mm.” The 2011 column one general rate of duty is 3.7% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N022500, dated February 11, 2008, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND MODIFICATION OF ONE RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF POWER DISTRIBUTION
UNITS**

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

ACTION: Notice of proposed revocation of two ruling letters, modification of one ruling letter and revocation of treatment relating to the tariff classification of power distribution units.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this Notice advises interested parties that U.S. Customs and Border Protection (CBP) proposes to revoke two ruling letters and to modify one ruling letter relating to the tariff classification of power distribution units under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before February 3, 2014.

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

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch: (202) 325–0347.

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 to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this Notice advises interested parties that CBP intends to revoke two ruling letters and modify one ruling letter pertaining to the tariff classification of power distribution units. Although in this Notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) G89656, dated April 20, 2001 (Attachment A), and NY I81158, dated May 16, 2002 (Attachment B) and modification of NY B88396, dated August 26, 1997 (Attachment C), this Notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this Notice should advise CBP during this notice period.

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

In NY G89656 and NY B88396 (model PDU 500 only), CBP determined that the subject remote power managers, consisting of power distribution units (PDUs) and other components, were classified in heading 8471, HTSUS, which provides for, in pertinent part, “Automatic data processing machines and units thereof...” In NY I81158, CBP determined that the subject PDU was classified in heading 8536, HTSUS, which provides for, in pertinent part, “Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes), for a voltage not exceeding 1,000 V ...” It is now CBP’s position that the PDUs are properly classified in heading 8537, HTSUS, which provides for, in pertinent part, “Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity ...”, in accordance with Headquarters Ruling Letter (HQ) W967525 and HQ 967869, both dated November 18, 2005.

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY G89656 and NY I81158, and to modify NY B88396 with regard to the model PDU 500, and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of PDUs according to the analysis contained in proposed HQ 203636, set forth as Attachment D to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially similar transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: December 3, 2013

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT A]

NY G89656

April 20, 2001

CLA-2-84:RR:NC:1:110 G89656

CATEGORY: Classification

TARIFF NO.: 8471.80.1000

MS. DANA L. TROUT
TRANS-TRADE, INC.
ALLIANCE AIRPORT
400 INTERMODAL PKWY., STE. 150
FT. WORTH, TX 76177

RE: The tariff classification of a Remote Power Manager from Taiwan.

DEAR MS. TROUT:

In your letter dated March 26, 2001, on behalf of your client Para Systems, Inc., you requested a tariff classification ruling.

The merchandise under consideration is the Minuteman RPM (Remote Power Manager) Models RPM 1601, 1603, 1605, 1607 & 1609. The Minuteman Remote Power Manager's appear to meet the definition of a "unit" of an ADP system under Legal Note 5 (B) to Chapter 84 of the Harmonized Tariff Schedule of the United States (HTS).

The applicable subheading for the Minuteman RPM (Remote Power Manager) Models RPM 1601, 1603, 1605, 1607 & 1609 will be 8471.80.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Automatic data processing machines and units thereof... Other units of automatic data processing machines: Control or adapter units." The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Eileen S. Kaplan at 212-637-7019.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

NY I81158

May 16, 2002

CLA-2-85:RR:NC:1: 112 I81158

CATEGORY: Classification

TARIFF NO.: 8536.69.8000

MS. KAREN A. SOUSA
AMERICAN POWER CONVERSION CORPORATION
PO BOX 278
132 FAIRGROUNDS ROAD
WEST KINGSTON, R.I. 02892

RE: The Tariff Classification of a "PSX RM PDU" from India.

DEAR MS. SOUSA:

In your letter dated April 19, 2002, you requested a tariff classification ruling.

The PSX RM PDU, sample submitted, is APC's PowerStruXure Rack-Mount Power Distribution Unit (PDU). Its function is to provide power distribution for APC's NetShelter VX. In addition, the digital display on the unit provides on-site installers with the ability to monitor the total current draw as equipment is connected to the PDU.

The applicable subheading for the "PSX RM PDU" will be 8536.69.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for lamp holders, plugs and sockets: Other: Other. The rate of duty will be 2.7 percent ad valorem.

Articles classifiable under subheading 8536.69.8000, HTS, which are products of India, may be entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check the Customs Web site at www.customs.gov. At the Web site, click on "CEBB", click on "Files", click on "Search" and then enter a key word search for the term "T-GSP".

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist David Curran at 646-733-3017.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

NY B88396

August 26, 1997

CLA-2-84:RR:NC:1:110 B88396

CATEGORY: Classification

TARIFF NO.: 8471.80.1000

MR. A.J. SPATARELLA
KANEMATSU USA, INC.
114 WEST 47TH STREET
NEW YORK, N.Y. 10036

RE: The tariff classification of Control Hubs from Japan.

DEAR MR. SPATARELLA:

In your letter dated August 12, 1997, you requested a tariff classification ruling.

The merchandise under consideration involves three models of Control Hubs that are designed for use with PC Client and server machines for controlling the on/off and interconnection functions of computers in a LAN or WAN network.

Model 7511 is a power controllable intelligent hub that controls shutdowns and reboots of computers. It also supports SNMP (simple network management protocol). It features 8-port 10Base-T HUB, a 7-segment LED x4 display, and approximately 20W power consumption. This model of Control Hub appears to be principally used in a LAN protocol.

Model 7030 is an intelligent startup/shutdown and interconnection device that also comes equipped with Ethernet interfaces to connect directly to the LAN-supports TCP/IP. It is designed primarily to function with UNIX systems, such as HP, Sun, IBM and other UNIX workstations and servers. The modem inside of the unit also makes it possible to not only transmit preset messages upon various alarm or startup/ shutdown conditions, but also provides for remote system operation and control.

The model PDU 500 is a remote power controller that functions as a remote power management device for computers, servers or any other peripheral devices in a heterogeneous environment. Communications can be by Ethernet LAN, or WAN, and analog modems and RS232C are also supported. Although capable of use with WAN applications, this device appears to be principally used for controlling PC clients on local LAN.

The applicable subheading for the three models of Control Hubs will be 8471.80.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for other units of automatic data processing machines; control or adaptor units. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Art Brodbeck at 212-466-5490.

Sincerely,

ROBERT B. SWIERUPSKI

Chief,

*Metals & Machinery Branch National Commodity
Specialist Division*

[ATTACHMENT D]

HQ H203636
CLA-2 OT:RR:CTF:TCM H203636 EGJ
CATEGORY: Classification
TARIFF NO.: 8537.10.90

Ms. DANA L. TROUT
TRANS-TRADE, INC.
1200 INTERMODAL PARKWAY, SUITE 100
HASLET, TEXAS 76052

RE: Revocation of NY G89656 and NY I81158, Modification of NY B88396:
Classification of Power Distribution Units

DEAR Ms. TROUT:

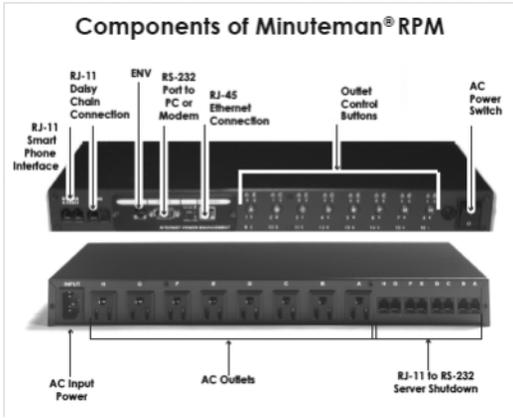
This is in reference to New York Ruling Letter (NY) G89656, dated April 20, 2001, issued to you concerning the tariff classification of the Minuteman Remote Power Manager, Models RPM 1601, 1603, 1605, 1607 and 1609. The Minuteman Remote Power Manager consists of a power distribution unit (PDU) and other functional components. In NY G89656, U.S. Customs and Border Protection (CBP) classified the subject merchandise in subheading 8471.80.10, HTSUS, which provides, in pertinent part, for “Automatic data processing machines and units thereof...: Other units of automatic data processing machines: Control or adapter units...” We have reviewed NY G89656 and find it to be in error. For the reasons set forth below, we hereby revoke NY G89656 and one other ruling with substantially similar merchandise, namely, a PDU: NY I81158, dated May 16, 2002, issued to American Power Conversion Corporation.¹ We also hereby modify NY B88396, dated August 26, 1997, issued to Kanematsu USA, Inc., regarding the tariff classification of the model PDU 500 in that ruling.

FACTS:

The subject merchandise is the Minuteman Remote Power Manager (RPM). The Minuteman RPM is used in computer rooms and computer cabinets to distribute power to computers, routers, modems and other devices. The merchandise allows a system administrator to remotely access and reboot specific devices which are connected to the Minuteman RPM. The Minuteman RPM also provides surge protection to connected devices.

The Minuteman RPM is a power distribution unit, or power strip, because it is a device fitted with multiple outputs designed to distribute electric power. Housed in a rectangular casing, the back of the Minuteman RPM has eight alternating current (AC) power outlets which accept three-prong electric plugs. The back also has a plug for AC power input, as well as eight connectors for Ethernet or Local Area Network (LAN) connections. The front of the Minuteman RPM has an on/off AC power switch, buttons to control each of the AC power outlets, and additional connectors for personal computers, Ethernet and LAN connections. Here is a picture of the subject merchandise:

¹ The power distribution unit in NY I81158 is described as the “PowerStruXure Rack-Mount Power Distribution Unit (PDU). Its function is to provide power distribution for APC’s NetShelter VX. In addition, the digital display on the unit provides on-site installers with the ability to monitor the total current draw as equipment is connected to the PDU.”



ISSUE:

Is the Minuteman RPM classified as an accessory to an automatic data processing machine under heading 8471, HTSUS, or as a device for the distribution of electricity under heading 8537, HTSUS?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). 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 GRI's 2 through 6 may then be applied in order.

The HTSUS provisions at issue are as follows:

- | | |
|------|---|
| 8471 | Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included ... |
| * | * |
| 8536 | Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes), for a voltage not exceeding 1,000 V; connectors for optical fibers, optical fiber bundles or cables |
| * | * |

8537 Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517² ...

Note 5(C) and 5(E) to Chapter 84 provide that:

(C) Subject to paragraphs (D) and (E) below, a unit is to be regarded as being part of an automatic data processing system if it meets all of the following conditions:

- (i) It is of a kind solely or principally used in an automatic data processing system;
- (ii) It is connectable to the central processing unit either directly or through one or more other units; and
- (iii) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

Separately presented units of an automatic data processing machine are to be classified in heading 8471.

However, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of paragraphs (C) (ii) and (C) (iii) above, are in all cases to be classified as units of heading 8471.

...

(E) Machines incorporating or working in conjunction with an automatic data processing machine and performing a specific function other than data processing are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings.

* * *

Applying GRI 1, the first issue is whether NY G89656 properly classified the Minuteman RPM under heading 8471, HTSUS, as a unit of an automatic data processing (ADP) machine. Even if the Minuteman RPM satisfies all the criteria for classification as a unit of an ADP machine under Note 5(C) to Chapter 84, it may still be excluded by Note 5(E) to Chapter 84. Note 5(E) states that machines

² Heading 8517, HTSUS, provides for “Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528.”

which perform a specific function other than data processing must be classified in the heading appropriate to that function.

Heading 8537, HTSUS, covers boards, panels and consoles equipped with two or more apparatus of heading 8535 or 8536, HTSUS, for electric control or the distribution of electricity. Heading 8536, HTSUS, covers electrical apparatus for switching or protecting electrical circuits, such as switches, surge suppressors, plugs, sockets and other connectors. The Minuteman RPM has an AC on/off power switch. It also has a surge suppressor, a plug and sockets. As such, it has two or more apparatus of heading 8536, HTSUS.

The instant merchandise is called a “remote power manager,” but it also contains a PDU.³ As such, the Minuteman RPM is specifically designed for electric control and the distribution of electricity. CBP has consistently classified PDUs with two or more apparatus of heading 8536, HTSUS, in heading 8537, HTSUS. *See* NY J89027, dated November 13, 2003; NY L81897, dated January 27, 2005; HQ W967525, dated November 18, 2005; HQ W967869, dated November 18, 2005. For all of these reasons, the Minuteman RPM is classified under heading 8537, HTSUS. Since it performs the specific function of distributing electricity described under heading 8537, HTSUS, the merchandise is excluded from classification in heading 8471, HTSUS, by Note 5(E) to Chapter 84.

HOLDING:

By application of GRI 1 (Note 5(E) to Chapter 84), the power distribution units in NY G89656, dated April 20, 2001, NY I81158, dated May 16, 2002, and NY B88396, dated August 26, 1997 are classifiable under heading 8537, HTSUS. Specifically, they are classifiable under subheading 8537.10.90, HTSUS, which provides, in pertinent part, for “Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity ...: For a voltage not exceeding 1,000 V: Other...” The 2013 column one, general rate of duty is 2.7% *ad valorem*.

³ Not all remote power managers have two or more apparatus of heading 8536, HTSUS, nor do all remote power managers distribute electricity. Some remote power managers act merely as pass-through devices. They forward along a signal from the system administrator to separately connected PDUs. The separately connected PDUs close circuits, open circuits and reboot connected devices. *See, e.g.* NY 810662, dated May 23, 1995. CBP also has issued rulings on remote power managers for which the records were destroyed during the September 11, 2001, attacks on the World Trade Center. CBP does not have enough information to determine whether these power managers were also PDUs or merely pass-through devices. *See, e.g.* NY B88396, dated August 26, 1997 (classifies three remote power manager devices and only states that one of them is a PDU; we do not have enough information to revoke the classification of the remaining two devices).

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

EFFECT ON OTHER RULINGS:

NY G89656, dated April 20, 2001, and NY I81158, dated May 16, 2002, are hereby revoked.

NY B88396, dated August 26, 1997, is hereby modified with regard to the model PDU 500.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**NATIONAL CUSTOMS AUTOMATION PROGRAM (NCAP)
TEST CONCERNING THE SUBMISSION OF CERTAIN DATA
REQUIRED BY THE ENVIRONMENTAL PROTECTION
AGENCY AND THE FOOD SAFETY AND INSPECTION
SERVICE USING THE PARTNER GOVERNMENT AGENCY
MESSAGE SET THROUGH THE AUTOMATED
COMMERCIAL ENVIRONMENT (ACE)**

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

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to conduct a National Customs Automation Program (NCAP) test concerning transmission of electronic filings of certain Environmental Protection Agency (EPA) and the U.S. Department of Agriculture, Food Safety and Inspection Service (FSIS) import data to CBP for commodities regulated by these agencies. The test will involve using the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set and the Automated Broker Interface (ABI) to transmit the data. PGA Message Set data may be submitted only for certain entries filed at certain ports.

This test is in furtherance of key CBP International Trade Data System (ITDS) initiatives as provided in the Security and Accountability for Every Port Act (SAFE) of 2006 to achieve the vision of ACE as the "single window" for the Government and trade community by automating and enhancing the interaction between international trade partners, CBP, and PGAs by facilitating electronic collection, processing, sharing, and review of trade data and documents required

by Federal agencies during the cargo import and export process. The initiatives will significantly increase efficiency and reduce costs over the manual, paper-based interactions that have been in place. The PGA Message Set will improve communication between agencies and filers regarding imports and when applicable, will allow test participants to submit the required data once rather than submitting data separately to each agency, resulting in quicker processing. During this test, participants will collaborate with CBP, EPA, and FSIS to examine the effectiveness of the “single window” capability.

This notice invites public comment concerning the test program, provides legal authority for the test, explains the purpose of the test and the test participant responsibilities, identifies the regulation that will be waived under the test, provides the eligibility and selection criteria for participation in the test, provides a link to a list of ports that are accepting PGA Message Set data under this test, explains the application process, and determines the duration of the test. This document also explains the repercussions and appeals process for misconduct under the test.

DATES: The test will commence January 13, 2014. Comments will be accepted through the duration of the test.

ADDRESSES: To submit comments concerning this test program: Send an email to Stephen Hilsen, Director, Business Transformation, ACE Business Office (ABO), Office of International Trade at stephen.r.hilsen@cbp.dhs.gov. In the subject line of an email, please use, “*Comment on PGA Message Set Test FRN*”.

Any party seeking to participate in the PGA Message Set test should contact their client representative. Interested parties without an assigned client representative should submit an email to Susan Maskell at susan.c.maskell@cbp.dhs.gov with the subject heading “*PGA Message Set Test FRN-Request to Participate*”.

Any party seeking to participate in this test must provide CBP, in their request to participate, their filer code and the port(s) at which they are interested in filing the appropriate PGA Message Set information. At this time, PGA Message Set data may be submitted only for entries filed at certain ports. A current listing of those ports may be found on the following Web site: http://www.cbp.gov/linkhandler/cgov/trade/automated/modernization/whats_new/info_notice_trade.ctt/info_notice_trade.pdf.

FOR FURTHER INFORMATION CONTACT: For technical questions related to the Automated Commercial Environment (ACE) or Automated Broker Interface (ABI) transmissions, contact your as-

signed client representative. Interested parties without an assigned client representative should direct their questions to Susan Maskell at susan.c.maskell@cbp.dhs.gov. For PGA related questions, contact Emi Wallace emi.r.wallace@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

I. The National Customs Automation Program

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (Customs Modernization Act). *See* 19 U.S.C. 1411. Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions.

CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace a specific legacy ACS function. Each release will begin with a test and will end with mandatory use of the new ACE feature, thus retiring the legacy ACS function. Each release builds on previous releases and sets the foundation for subsequent releases.

For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments in Entry, Summary, Accounts and Revenue (ESAR) is set forth below in *Section XV*, entitled, "*Development of ACE Prototypes.*" The procedures and criteria related to participation in the prior ACE tests remain in effect unless otherwise explicitly changed by this or subsequent notices published in the **Federal Register**.

The Automated Broker Interface (ABI) allows participants to electronically file required import data with CBP and transfers that data into ACE.

II. Authorization for the Test

The Customs Modernization provisions in the North American Free Trade Agreement Implementation Act provide the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The test described in this notice is authorized pursuant to § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) which provides for the testing of NCAP programs or procedures. *See* Treasury Decision (T.D.) 95–21.

III. International Trade Data System (ITDS)

This test is also in furtherance of the International Trade Data System (ITDS) key initiatives, which is statutorily required by section 405 of the Security and Accountability for Every (SAFE) Port Act of 2006, Public Law 109–347, 120 Stat. 1884. The purpose of ITDS, as defined by section 4 of the SAFE Port Act of 2006, is to eliminate redundant information requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies.

CBP is developing ACE as the “single window” for the trade community to comply with the ITDS requirement established by the SAFE Port Act of 2006. To date, other ITDS key initiatives have included: The test of the Document Image System (*see* 77 FR 20835, dated April 6, 2012; 78 FR 44142, dated July 23, 2013; and 78 FR 53466, dated August 29, 2013), which allows trade members to electronically supply documentation needed during the cargo release and entry summary processes to CBP and specified Federal agencies; and PGA Interoperability, which enables CBP to share information, documents, and events of interest with PGAs in an automated manner. CBP will publish **Federal Register** notices as the capabilities of the Message Set expand.

IV. Partner Government Agency Message Set

The Partner Government Agency (PGA) Message Set is the data needed to satisfy the PGA reporting requirements. ACE enables the message set by acting as the “single window” for the submission of trade-related data required by the PGAs only once to CBP.

This data must be submitted at any time prior to the arrival of the merchandise on the conveyance transporting the cargo to the United States as part of an ACE Entry Summary. The data will be validated

and made available to the relevant PGAs involved in import, export, and transportation-related decision making. The data will be used to fulfill merchandise entry requirements and will allow for earlier release decisions and more certainty for the importer in determining the logistics of cargo delivery. Also, by virtue of being electronic, the PGA Message Set will eliminate the necessity for the submission and subsequent handling of paper documents.

At this time, ACE is prepared to accept certain PGA data elements for the Environmental Protection Agency (EPA) and the U.S. Department of Agriculture, Food Safety and Inspection Service (FSIS) for type “01” (consumption) and type “11” (informal) commercial entries filed at specified ports. These data elements are generally those found in the current paper form (EPA Forms 3520–1 and 3520–21; and FSIS Form 9540–1) and also include data submissions related to Ozone Depleting Substances (ODS) imports, which are currently handled via phone, email, and/or paper communication. These data elements are set forth in the supplemental Customs and Trade Automated Interface Requirements (CATAIR) guidelines for both EPA and FSIS. These technical specifications, including the CATAIR chapters can be found at the following link: http://www.cbp.gov/xp/cgov/trade/automated/modernization/ace_edi_messages/catair_main/abi_catair/catair_chapters/future_pga_set_docs/.

At this time, a limited number of ports will be accepting PGA Message Set data. A list of those ports is provided on the following Web site: http://www.cbp.gov/linkhandler/cgov/trade/automated/modernization/whats_new/info_notice_trade.ctt/info_notice_trade.pdf. CBP may expand to additional ports in the future.

V. The Environmental Protection Agency (EPA) and the U.S. Department of Agriculture, Food Safety and Inspection Service (FSIS) Test

This document announces CBP’s plan to conduct a new test concerning certain electronic filings of EPA and FSIS import data with CBP for commodities regulated by these agencies that are imported into the United States. This new PGA Message Set capability will satisfy the EPA (ODS and Vehicle and Engine (V&E) programs only) and FSIS (meat, poultry, and egg products) data requirements for formal and informal consumption entries through electronic filing in ACE as opposed to filing in paper. Submission of the PGA Message Set will enable the Trade to have a CBP-managed “single window” for data submission required by the EPA and FSIS during the cargo importation and review process.

a. U.S. Environmental Protection Agency

The Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), generally prohibits importation into the United States of any motor vehicle, motor vehicle engine, nonroad engine and equipment that has not been certified by EPA to conform to EPA emission standards and requirements. U.S. EPA emission standards are in effect for light-duty motor vehicles, motorcycles, heavy-duty on-highway engines, nonroad engines and recreational vehicles (dirt bikes, ATVs, ORUVs, and snowmobiles) and stationary engines. These standards apply regardless of whether the engines are new or used, manufactured domestically or abroad. Currently, a paper EPA importation declaration form (EPA Form 3520-1 for on-road vehicles, or EPA Form 3520-21 for nonroad, off-road, and heavy-duty highway and stationary engines) must be submitted for most vehicle and engine importations.

The PGA Message Set will eliminate these paperwork filings for participating importers and as a result, reduce the overall paperwork burden on the port associated with these EPA regulated shipments. It will also provide advance electronic information on regulated shipments to allow the system to make electronic checks of mandatory declaration information including certificate numbers which allows EPA to make pre-arrival admissibility decisions, thereby focusing CBP and EPA resources on shipments of interest and using those resources to identify and resolve the health and safety issues discovered by the submission of advance data to EPA.

Under Title VI of the Clean Air Act, EPA also regulates the import of ODS into the United States (*see* 40 CFR Part 82, Subpart A). Importers of virgin ODS are required to have import allowances or meet the criteria for specific EPA exemptions. Allowance holders are able to trade allowances. Importers of used ODS must petition EPA forty (40) days prior to the import, and if approved, EPA will issue a non-objection notice, indicating the agency's approval of the import. Any information exchange related to ODS imports, such as which importers have import allowances or exemptions, are currently handled via phone, email, and/or paper communication.

The electronic data transmitted by the filer using the PGA Message Set allows CBP to electronically share that data with EPA for review. This process will improve the current communication process between CBP, EPA and filers concerning imports of ODS, allowing EPA to perform automatic electronic checks of current allowance holders and importers of exempt ODS, resulting in quicker import processing. The sharing of this electronic data will also provide advance electronic information on regulated shipments to EPA to allow them to

make pre-arrival admissibility decisions thereby focusing CBP and EPA resources on shipments of interest and using those resources to identify and resolve the health and safety issues discovered by the submission of advance data to EPA.

At this time, the EPA aspect of the test will include only entries originating in the ocean environment. Land border arrivals, both truck and rail, and air arrivals will be included in later stages of the test. Upon acceptance into this test, participants will be required to transmit electronic EPA data for entries originating in the ocean environment for the EPA forms specified in this notice as well as for the ODS related data elements.

b. U.S. Department of Agriculture—Food Safety and Inspection Service

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) prohibit the importation of meat and poultry products into the United States if such products are adulterated or misbranded and unless they comply with all the inspection, building construction standards, and all other provisions of the Acts and regulations as are applied to domestic products (21 U.S.C. 466 and 620). The Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) prohibits the importation of egg products unless they have been processed under an approved continuous inspection system of the government of the foreign country of origin and comply with all other provisions of the Act and regulations that apply to United States domestic products (21 U.S.C. 1046). FSIS meat, poultry, and egg products import regulations require importers to apply for the inspection of imported products (9 CFR 327.5, 381.198, and 590.920). Applicants complete FSIS Form 9540–1, “Import Inspection Application and Report,” for meat, poultry products, and egg products.

On May 29, 2012, FSIS implemented the import component of the Public Health Information System (PHIS), a web-based data analytics system. PHIS provides the capability for a streamlined, electronic alternative to the paper-based import inspection application process. The electronic data transmitted by the filer using the PGA Message Set allows CBP to electronically share that data with PHIS, which electronically links with CBP’s ACE system.

The PGA Message Set will provide the additional information that FSIS requires from importers to complete the FSIS import application process. Using the PGA Message Set, ACE will enable U.S. importers and customs brokers to enter FSIS import inspection application information directly into the Automated Broker Interface

(ABI). FSIS anticipates that the data transmitted by the filer using the PGA Message Set will help FSIS prepare to completely transition the FSIS Form 9540–1 to an electronic form in PHIS (*see* 78 FR 19182, dated March 29, 2013) for additional information including how to access the FSIS Compliance Guide). The electronic data transmitted to ACE using the PGA Message Set will expedite the delivery of information to FSIS by providing the data to FSIS before the products arrive for inspection thereby allowing FSIS to more effectively track and control ineligible shipments, efficiently inspect shipments when they arrive and improve the ability to prevent non-compliant products from reaching American consumers.

At this time, the FSIS aspect of the test will include only entries originating in the ocean and truck environments. Air and rail arrivals will be included in later stages of the test. Upon acceptance into this test, participants will be required to transmit electronic FSIS data for entries originating in the ocean and truck environments.

On March 29, 2013, FSIS published a notice in the **Federal Register** (78 FR 19182) announcing a pilot program intended to test the transfer of data from the PGA Message Set in ACE to PHIS. That notice also invited industry participation in the Pilot.

VI. Test Participant Responsibilities

PGA Message Set test participants will be required to:

- File the applicable data with the ports that are accepting the ACE PGA Message Set data. A current list of those ports will be posted on the following Web site: http://www.cbp.gov/linkhandler/cgov/trade/automated/modernization/whats_new/info_notice_trade.ctt/info_notice_trade.pdf;
- File, when applicable, the data elements contained in the following forms using the PGA Message Set. This information must be electronically transmitted to ACE using the ACE Entry Summary at any time prior to the arrival of the merchandise on the conveyance transporting the cargo to the United States. The electronic transmission of this data is in lieu of filing the paper forms specified below:
 - EPA Form 3520–1 for on-road vehicles (only for entries originating in the ocean environment);
 - EPA Form 3520–21 for nonroad, off-road, and heavy-duty highway and stationary engines (only for entries originating in the ocean environment);
 - Information exchange related to ODS imports (only for entries originating in the ocean environment); and

- FSIS Form 9540–1 for meat, poultry products, and egg products (only for entries originating in the ocean and truck environments);
- Include PGA Message Set import filings only as part of an ACE Entry Summary certified for cargo release;
- Transmit import filings to CBP via ABI in response to a request for documentation or in response to a request for release information for certified ACE Entry Summaries;
- Only transmit to CBP information that has been requested by CBP, the EPA, or FSIS; and
- Take part in a CBP evaluation of this test.

Participants are reminded that they should only file documents that CBP can accept electronically. The documents CBP can accept electronically are set forth in the **Federal Register** (77 FR 20835) notice announcing the Document Image System (DIS) Test (*see* Section XV below) and in the Automated Invoice Interface Chapter of the CATAIR. If CBP cannot accept the additional information electronically, the filer must file the additional information by paper.

VII. Waiver of Regulation Under the Test

For purposes of this test, 19 CFR 12.74(b) will be waived for test participants only insofar as eliminating the requirement to file the paper version of EPA Form 3520–21 and requiring in its place the electronic submission of the data elements contained in EPA Form 3520–21.

This document does not waive any recordkeeping requirements found in part 163 of title 19 of the CFR (19 CFR part 163) and the Appendix to part 163 (commonly known as the “(a)(1)(A) list”).

VIII. Test Participant Eligibility and Selection Criteria

To be eligible to apply for this test, the applicant must:

- Be a self-filing importer who has the ability to file ACE Entry Summaries certified for cargo release or a broker who has the ability to file ACE Entry Summaries certified for cargo release; and
- File entries for EPA and FSIS commodities that are the subject of this test.

Except for those interested in participating in the ODS portion of the test, CBP will accept an unlimited number of participants for the test. CBP will accept less than ten (10) participants in the ODS

portion of the test. For the ODS test applicants, CBP will give consideration to the order in which participation requests are received.

Test applicants must meet the eligibility criteria described in this document to participate in the test program.

IX. Application Process

Any party seeking to participate in the PGA Message Set test should email their CBP Client Representative, ACE Business Office (ABO), Office of International Trade. Interested parties without an assigned client representative should submit an email to Susan Maskell at susan.c.maskell@cbp.dhs.gov. All email communications should include the subject heading “*PGA Message Test FRN—Request to Participate in the Vehicles and Engines Portion of the Test*”, “*PGA Message Test FRN—Request to Participate in the ODS Portion of the Test*”, or “*PGA Message Test FRN—Request to Participate in the FSIS Form 9540–1 Portion of the Test.*”

Parties who have previously responded to the FSIS notice published in the **Federal Register** (78 FR 19182) on March 29, 2013, need not resubmit a request to participate in this test. CBP will obtain the list of interested participants from FSIS and will follow up with them directly.

Emails sent to the CBP client representative or Susan Maskell must include the applicant’s filer code and the port(s) at which they are interested in filing the appropriate PGA Message Set information. Client representatives will work with test participants to provide information regarding the transmission of this data.

CBP will begin to accept applications upon the date of publication of this notice and will continue to accept applications throughout the duration of the test. CBP will notify the selected applicants by email of their selection and the starting date of their participation. Selected participants may have different starting dates. Anyone providing incomplete information, or otherwise not meeting participation requirements, will be notified by email and given the opportunity to resubmit their application.

X. Test Duration

For both EPA and FSIS, the initial phase of the test will begin on January 13, 2014 and is intended to last approximately two years from the January 13, 2014.

At the conclusion of the test, an evaluation will be conducted to assess the effect that the PGA Message Set has on expediting the submission of EPA and FSIS importation-related data elements and the processing of EPA and FSIS entries. The final results of the

evaluation will be published in the **Federal Register** and the *Customs Bulletin* as required by section 101.9(b)(2) of the CBP regulations (19 CFR 101.9(b)(2)).

Any future expansion in ACE including but not limited to any additional PGA commodities and eligible environments (i.e., truck, rail, air) will be announced via a separate **Federal Register** notice.

XI. Comments

All interested parties are invited to comment on any aspect of this test at any time. CBP requests comments and feedback on all aspects of this test, including the design, conduct and implementation of the test, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this program.

XII. Paperwork Reduction Act

The collections of information for all aspects of this test, except for the collections concerning the ODS portion of the test, are approved by the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, under the following OMB control numbers:

- EPA Form 3520–1: OMB Number 2060–0095
- EPA Form 3520–21: OMB Number 2060–0320
- FSIS Form 9540–1: OMB Number 0583–0094

The ODS portion of the test will be exempt from the requirements of the Paperwork Reduction Act of 1995, Public Law 104–13 because CBP will be accepting less than 10 (ten) participants.

XIII. Confidentiality

All data submitted and entered into the ACE Portal is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. As stated in previous notices, participation in this or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act (FOIA) request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

XIV. Misconduct Under the Test

A test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, and/or discontinuance from participation in this test for any of the following:

- Failure to follow the terms and conditions of this test.

- Failure to exercise reasonable care in the execution of participant obligations.
- Failure to abide by applicable laws and regulations that have not been waived.
- Failure to deposit duties or fees in a timely manner.

If the Director, Business Transformation, ACE Business Office (ABO), Office of International Trade finds that there is a basis for discontinuance of test participation privileges, the test participant will be provided a written notice proposing the discontinuance with a description of the facts or conduct warranting the action. The test participant will be offered the opportunity to appeal the Director's decision in writing within 10 calendar days of receipt of the written notice. The appeal must be submitted to Executive Director, ABO, Office of International Trade by emailing *BrendaBrockman.Smith@cbp.dhs.gov*. The Executive Director will issue a decision in writing on the proposed action within 30 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed discontinuance of a test participant's privileges will not take effect unless the appeal process under this paragraph has been concluded with a written decision adverse to the test participant.

In the case of willfulness or those in which public health, interest, or safety so requires, the Director, Business Transformation, ABO, Office of International Trade, may immediately discontinue the test participant's privileges upon written notice to the test participant. The notice will contain a description of the facts or conduct warranting the immediate action. The test participant will be offered the opportunity to appeal the Director's decision within 10 calendar days of receipt of the written notice providing for immediate discontinuance. The appeal must be submitted to Executive Director, ABO, Office of International Trade by emailing *BrendaBrockman.Smith@cbp.dhs.gov*. The immediate discontinuance will remain in effect during the appeal period. The Executive Director will issue a decision in writing on the discontinuance within 15 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

XV. Development of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 70 FR 5199 (February 1, 2005); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE), 78 FR 44142, published July 23, 2013.

- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction; 78 FR 53466, published August 29, 2013.
- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039, published November 4, 2013.
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434, published November 19, 2013.

Dated: December 9, 2013.

RICHARD F. DiNUCCI,
*Acting Assistant Commissioner,
Office of International Trade.*

[Published in the Federal Register, December 13, 2013 (78 FR 75931)]



AGENCY INFORMATION COLLECTION ACTIVITIES:

Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release

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: 1651-0013.

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 and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release (CBP Form 7523). 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. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (78 FR 59365) on September 26, 2013, 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 15, 2014 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this 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 U.S. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: CBP invites 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; 44 U.S.C. 3507). 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 and Manifest of Merchandise Free of Duty, Carrier's Certificate of Release.

OMB Number: 1651-0013.

Form Number: CBP Form 7523.

Abstract: CBP Form 7523, Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate of Release, is used by carriers and importers as a manifest for the entry of merchandise free of duty under certain conditions. CBP Form 7523 is also used by carriers to show that articles being imported are to be released to the importer or consignee, and as an inward foreign manifest for vehicles weighing less than 5 tons arriving from Canada or

Mexico with merchandise conditionally free of duty. CBP uses this form to authorize the entry of such merchandise. CBP Form 7523 is authorized by 19 U.S.C. 1433, 1484 and 1498. It is provided for by 19 CFR 123.4 and 19 CFR 143.23. This form is accessible at http://forms.cbp.gov/pdf/CBP_Form_7523.pdf.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected on CBP Form 7523.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 4,950.

Estimated Number of Responses per Respondent: 20.

Estimated Total Annual Responses: 99,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 8,247.

Dated: December 11, 2013.

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

[Published in the Federal Register, December 16, 2013 (78 FR 76153)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit

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: 1651-0003.

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: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit. 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. This document is published to obtain comments from the public and affected agencies. This information collection was

previously published in the **Federal Register** (78 FR 57405) on September 18, 2013, 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 15, 2014 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this 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 U.S. 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: CBP invites 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; 44 U.S.C. 3507). 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: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit.

OMB Number: 1651-0003.

Form Number: CBP Forms 7512 and 7512A.

Abstract: CBP Forms 7512 and 7512A are used by carriers and brokers to serve as the manifest and transportation entry for cargo moving under bond within the United States. The data on the form is used by CBP to identify the carrier who initiated the bonded movement and to document merchandise moving in-bond. These forms provide documentation that CBP uses for enforcement, targeting, and protection of revenue. Forms 7512 and 7512A collect information such as the names of the importer and consignee; a description of the merchandise moving in-bond; and the ports of lading and unloading. These forms are provided for by 19 CFR 10.60, 19 CFR 10.61, 19 CFR 18.11, 19 CFR 18.20 and 19 CFR 18.25, and can be found at <http://www.cbp.gov/xp/cgov/toolbox/forms/>.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected on CBP Form 7512.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 6,200.

Estimated Number of Responses per Respondent: 871.

Estimated Number of Total Annual Responses: 5,400,001.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 896,400 hours.

Dated: December 11, 2013.

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

[Published in the Federal Register, December 16, 2013 (78 FR 76152)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

BP Regulations Pertaining to Customs Brokers

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

ACTION: 60-day notice and request for comments; extension of an existing collection of information: 1651-0034.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the CBP Regulations Pertaining to Customs Brokers (19 CFR

Part 111). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507).

DATES: Written comments should be received on or before February 18, 2014, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: CBP Regulations Pertaining to Customs Brokers (19 CFR Part 111).

OMB Number: 1651–0034.

Form Number: CBP Forms 3124 and 3124E.

Abstract: The information contained in Part 111 of the CBP regulations governs the licensing and conduct of customs brokers. Specifically, an individual who wishes to take the broker exam must complete CBP Form 3124E, “Application for Customs Broker License Exam,” or to apply for a broker license, CBP

Form 3124, "Application for Customs Broker License." The procedures to request a local or national broker permit can be found in 19 CFR 111.19, and a triennial report is required under 19 CFR 111.30. This information collected from customs brokers is provided for by 19 U.S.C. 1641. CBP Forms 3124 and 3124E may be found at <http://www.cbp.gov/xp/cgov/toolbox/forms/>. Further information about the customs broker exam and how to apply for it may be found at http://www.cbp.gov/xp/cgov/trade/trade_programs/broker/broker_exam/.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to this collection of information.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals.

CBP Form 3124E, "Application for Customs Broker License Exam"

Estimated Number of Respondents: 2,300.

Total Number of Estimated Annual Responses: 2,300.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 2,300.

Estimated Total Annual Cost to the Public: \$460,000.

CBP Form 3124, "Application for Customs Broker License"

Estimated Number of Respondents: 300.

Total Number of Estimated Annual Responses: 300.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 300.

Estimated Total Annual Cost to the Public: \$6,000.

Triennial Report (19 CFR 111.30)

Estimated Number of Respondents: 3,833.

Total Number of Estimated Annual Responses: 3,833.

Estimated Time per Response: .5 hours.

Estimated Total Annual Burden Hours: 1,917.

Estimated Total Annual Cost to the Public: \$383,300.

National Broker Permit Application (19 CFR 111.19)

Estimated Number of Respondents: 500.

Total Number of Estimated Annual Responses: 500.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annual Cost to the Public: \$112,500.

Dated: December 16, 2013.

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

[Published in the Federal Register, December 19, 2013 (78 FR 76851)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

**Haitian Hemispheric Opportunity Through Partnership
Encouragement Act of 2006**

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

ACTION: 60-day notice and request for comments; extension of an existing collection of information: 1651–0129.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (“Haiti HOPE Act”). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507).

DATES: Written comments should be received on or before February 18, 2014, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2006 ("Haiti Hope Act").

OMB Number: 1651-0129.

Abstract: Title V of the Tax Relief and Health Care Act of 2006 amended the Caribbean Basin Economic Recovery Act (CBERA 19 U.S.C. 2701-2707) and authorized the President to extend additional trade benefits to Haiti. This trade program, the Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2006 ("Haiti HOPE Act"), provides for duty-free treatment for certain apparel articles and certain wire harness automotive components from Haiti.

Those wishing to claim duty-free treatment under this program must prepare a declaration of compliance which identifies and details the costs of the beneficiary components of production and non-beneficiary components of production to show that the 50% value content requirement was satisfied. The information collected under the Haiti Hope Act is provided for in 19 CFR 10.848.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours. There is no change to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 12.

Estimated Number of Annual Responses per Respondent: 17.

Estimated Number of Total Annual Responses: 204.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 67.

Dated: December 16, 2013.

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

[Published in the Federal Register, December 19, 2013 (78 FR 76851)]