

U.S. Customs and Border Protection



19 CFR PART 111

RIN 1651-AB17

CUSTOMS BROKER VERIFICATION OF AN IMPORTER'S IDENTITY

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend the U.S. Customs and Border Protection (CBP) regulations to require customs brokers to collect certain information from importers to enable the customs brokers to verify the identity of importers, including nonresident importers. CBP proposes these amendments, pursuant to section 116 of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), which directs CBP to promulgate regulations to require brokers to verify the identity of the importers who are their clients.

DATES: Comments must be received on or before October 15, 2019.

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

- Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the instructions for submitting comments via Docket No. USCBP-2019-0024.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC 20229-1177.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking

process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC 20229–1177. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Randy Mitchell, Director, Commercial Operations Revenue Entry Division, Office of Trade, U.S. Customs and Border Protection, 202–325–6532, Randy.mitchell@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

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

II. Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that individuals and business entities must hold a valid customs broker’s license and permit in order to transact customs business on behalf of others. The statute also sets forth standards for the issuance of broker’s licenses and permits, provides for disciplinary action against brokers in the form of suspension or revocation of such licenses and permits or assessment of monetary penalties, and provides for the assessment of monetary penalties against other persons for conducting customs business without the required broker’s license. Section 641 authorizes the Secretary of the Treasury to prescribe rules and regulations relating to the customs business of bro-

kers as may be necessary to protect importers and the revenue of the United States and to carry out the provisions of section 641.¹

The regulations issued under the authority of section 641 are set forth in part 111 of title 19 of the Code of Federal Regulations (CFR) (19 CFR part 111). Customs brokers serve many functions when acting on behalf of their clients, which include resident and nonresident importers. Customs brokers file information about their clients' merchandise and transactions with CBP. Customs brokers also track shipments, pay duties and fees to CBP, and keep current documents and records about the business they transact on behalf of their clients, all to help their clients comply with Federal import and export laws. *See* 19 CFR part 111 subpart C.

However, before a customs broker may transact customs business on behalf of a client, the broker must obtain a valid power of attorney (POA). 19 CFR 141.46. A POA authorizes the customs broker to become that client's agent and to prepare and file the necessary customs documents on their behalf.

A. Current POA Regulations

In the customs broker context, a valid POA is the written appointment of the broker as the true and lawful agent of the principal (*i.e.*, client) allowed to transact customs business on behalf of the principal. The regulations governing POAs are set forth in 19 CFR part 141 subpart C.

A POA may be executed for a specified part of the principal's business (limited power of attorney) or all of the principal's customs business (general power of attorney). *See* 19 CFR 141.31(a). Pursuant to 19 CFR 141.32, POAs can be executed through various means. CBP Form 5291 may be used to establish a power of attorney. If CBP Form 5291 is not used, a limited POA must be executed in the same manner and as explicit in its terms as CBP Form 5291. 19 CFR 141.32. A general POA with unlimited authority may be executed in any format. *See* 19 CFR 141.32.

¹ The Homeland Security Act of 2002 generally transferred the functions of the U.S. Customs Service from the Treasury Department to the Secretary of the Department of Homeland Security (DHS). *See* Pub. L. 107-296, 116 Stat. 2142. The Act provides that the Secretary of the Treasury retains customs revenue functions unless delegated to the Secretary of DHS. The regulation of customs brokers is encompassed within the customs revenue functions set forth in section 412 of the Homeland Security Act. On May 15, 2003, the Secretary of the Treasury delegated authority related to the customs revenue functions to the Secretary of DHS subject to certain exceptions. *See* Treasury Order No. 100-16 (Appendix to 19 CFR part 0). Since the authority to prescribe the rules and regulations related to customs brokers is not listed as one of the exceptions, this authority now resides with the Secretary of DHS.

A POA issued by a partnership is limited to a period not to exceed two years from the date of execution. 19 CFR 141.34. All other POAs may be granted for an unlimited period of time. 19 CFR 141.34.

A valid POA requires the principal to provide only limited information. The principal is required to provide:

(1) A statement from the principal authorizing the customs broker to act as the principal's agent and for the customs broker to file entry/entry summary in the principal's name for a shipment;

(2) The name of the individual or the authorized representative of the sole proprietorship, partnership, or corporation executing the POA; and

(3) The name and address of the individual or business on whose behalf the POA is being executed.

See 19 CFR 141.32; 141.36–.39.

B. Customs Brokers' Current Practice for Verifying Importer's Identity

While only a limited amount of information is required for a valid POA, the majority of customs brokers currently require additional information when a POA is obtained from an importer, which is used by the broker to verify the importer's existence and identity. Brokers require this additional information and have initiated processes and procedures to validate an importer's identity in order to protect the broker's business interests, reduce identity theft, and help to prevent the use of shell² or shelf³ companies to further a business fraud scheme. Additional information that a broker might request includes, but is not limited to, the registration of the importer's business with a state government and the Articles of Incorporation under which that business is formed.

CBP provides non-binding guidance on how brokers can validate importers when they obtain a POA. For example, CBP recommends that a broker should, whenever possible, do the following:⁴

(1) Complete POAs in-person and review personal identification (driver's license, passport, etc.);

(2) Check applicable websites to verify the business registration with State authorities;

² A shell company is a company without active business operations or significant assets, which may be used illegitimately to disguise business ownership or operations.

³ A shelf company is a company which was created and maintained by legal means, but is left dormant for a period of time before its sale to a buyer, which may serve to conceal the buyer's identity and history of business transactions so as not to appear as a new business entity.

⁴ See U.S. Customs and Border Protection, "Validating the Power of Attorney" for comprehensive list of recommendations. Last published May 25, 2018. Available at <https://www.cbp.gov/trade/programs-administration/customs-brokers/validating-power-attorney>.

(3) Confirm business's trade or fictitious names that may appear on the POA;

(4) Verify that the importer's name, importer number, and Employer Identification Number (EIN) (also known as the Federal Tax Identification Number) on the POA match what is in CBP's Automated Commercial Environment (ACE);

(5) Check whether an importer is named as a sanctioned or restricted person or entity by the U.S. Government.

Since the collection and verification of any additional information from the importer is voluntary, certain brokers do not require any additional information. As a result, an atmosphere of "broker shopping" has been created where an importer that does not wish to provide this additional information might refuse to provide the information to one broker in the hopes that another broker will not ask for that information. If the second broker does not request the additional information, that broker, with minimal knowledge about the importer, transacts customs business on the importer's behalf leading to the possible use of shell or shelf companies, revenue loss, increased security risks with the goods being imported into the United States, and an uneven playing field for brokers.

C. Section 116 of TFTEA

On February 24, 2016, Congress enacted the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), Section 116, Public Law 114–125, 130 Stat. 122 (19 U.S.C. 4301 note), which amended section 641 of the Tariff Act of 1930 (19 U.S.C. 1641). Section 116 of TFTEA, *Customs Broker Identification of Importers*, specifically requires the Secretary to promulgate regulations setting minimum standards to: (1) Identify the information that an importer, including a nonresident importer, is required to submit to a customs broker and that a broker is required to collect in order to verify the identity of the importer; (2) identify reasonable procedures that a broker is required to follow in order to verify the authenticity of the information collected from the importer; and (3) require the broker to maintain records of the information collected by the broker used to substantiate the importer's identity. Section 116 also empowers the Secretary to assess a monetary penalty for each violation for a broker that fails to collect the information, as well as revoke or suspend the license or permit of the broker.

III. Discussion of Proposed Amendments

CBP proposes to amend the CBP regulations to standardize the process by which customs brokers verify the identity of their clients,

specifically importers and nonresident importers. These proposed regulations illuminate, for the international trade community and the public in general, the important role customs brokers have in verifying prospective clients and in ensuring the quality and integrity of the information they keep. When brokers verify the *bona fides* of clients, CBP is better assured that importers are conducting legitimate trade transactions. By formalizing the verification process and requiring that a reverification process be carried out by brokers every year, CBP believes that a broker's knowledge of its importer client would be improved. This improved broker knowledge could allow for commercial fraud prevention and revenue protection and help prevent the use of shell or shelf companies by importers who attempt to evade the customs laws of the United States. Preventing the use of shell or shelf companies by importers would help reduce instances of a misclassification of merchandise to avoid duties, protect against intellectual property rights (IPR) violations, reduce antidumping/countervailing duty (AD/CVD) infractions, and reduce the importation of unsafe merchandise.

As the importer's and nonresident importer's agent, the customs broker is uniquely situated to collect the information necessary to authenticate their identity. CBP has determined that it is most efficient for the broker to collect and verify this information at the time the POA is obtained because the broker must both verify the client's identity and obtain a valid POA before transacting customs business on behalf of the client.

CBP is proposing to add a new section, 111.43, entitled *Importer identity verification*, to title 19 of the CFR to establish the identity collection criteria and to create a required verification process of importer and nonresident importer clients. These proposed regulations set forth the minimum requirements a customs broker must meet to verify the importer's identity prior to transacting customs business on behalf of the importer or nonresident importer client. As discussed above, most customs brokers already meet or exceed these minimum requirements. Customs brokers may continue to exceed the requirements in proposed section 111.43, regarding the collection of information and documents, or conducting research about a client.

Proposed paragraph (a) describes the general scope of the requirements for customs brokers to collect, verify, and maintain the information necessary to authenticate the identity of their clients.

Proposed paragraph (b) provides definitions for this section. In accordance with section 116(a)(i)(4) of TFTEA, the term "importer" is defined as one of the parties that qualifies to be an importer of record under 19 U.S.C. 1484(a)(2)(B) and "nonresident importer" is defined

as an importer of record that is not a citizen of the United States or an alien lawfully admitted for permanent residence in the United States; or a partnership, corporation, or other commercial entity that is not organized under the laws of a jurisdiction within the customs territory of the United States (as such term is defined in General Note 2 of the Harmonized Tariff Schedule of the United States) or in the Virgin Islands of the United States.⁵ The definition of the term “client” is the importer or nonresident importer of record who is seeking or employing the services of a customs broker to transact customs business on behalf of the importer or nonresident importer of record. The definition of the term “grantor” is the individual executing the power of attorney on behalf of the client.

A. Minimum Information That the Customs Broker Is Required To Collect From the Client

Proposed paragraph (c) of section 111.43 identifies the information that the customs broker is required to collect from the client at the time the POA is obtained by the broker. The broker collects this information to verify the client’s identity.

At the time the POA is obtained by the broker, the broker must collect, at a minimum, the following information from the client, if applicable:

- (1) The client’s name;
- (2) For a client who is an individual, the client’s date of birth;
- (3) For a client that is a partnership, corporation, or association, the grantor’s date of birth;
- (4) For a client that is a partnership, corporation, or association, the client’s trade or fictitious names;
- (5) The address of the client’s physical location (for a client that is a partnership, corporation, or association, the physical location would be the client’s headquarters) and telephone number;
- (6) The client’s email address and business website;
- (7) A copy of the grantor’s unexpired government-issued photo identification;
- (8) The client’s Internal Revenue Service (IRS) number, employer identification number (EIN), or importer of record (IOR) number;
- (9) The client’s publicly available business identification number (e.g., Data Universal Numbering System (DUNS) number, etc.);

⁵ We note that the definition for “nonresident importer” provided by Congress in section 116 of TFTEA differs from the definition of “nonresident” in 19 CFR 141.31 governing POAs. CBP does not discuss these differences in this notice of proposed rulemaking (NPRM) because the differing definitions of “resident” and “nonresident” in 19 CFR part 141 do not influence whether a broker is required to obtain a POA from a client on behalf of which it transacts customs business.

(10) A recent credit report;

(11) A copy of the client's business registration and license with state authorities; and

(12) The grantor's authorization to execute power of attorney on behalf of client.

The broker must collect all the information that is applicable to that particular client. Some information might not be applicable to a client depending on whether the client is an individual, partnership, corporation, or association. For example, a small business might not have a business website; or a client who is an individual would not have a business registration and license with state authorities or a publicly available business identification number. Additionally, if certain foreign jurisdictions do not provide credit reports, the broker is not required to collect a recent credit report from that client.

Under current practice, most brokers already collect all of the above applicable information from the client in the ordinary course of business. Most brokers currently require this information to ensure that the client is not concealing his or her identity, misusing another business owner's identity, or using a shell or shelf corporation to further a business fraud scheme. By requiring all of the applicable information above from all of the broker's clients, the proposed rule would also eliminate the ability of prospective clients to "broker shop."

B. Procedures That a Customs Broker Is Required To Perform To Verify the Information Collected

CBP is proposing procedures for a customs broker to use to verify the authenticity of the information collected from its clients. Proposed paragraph (d) of section 111.43 requires customs brokers to verify all the information collected from the client, under proposed paragraph (c), to ensure accurate identification of the client.

As explained in Section A. above, the broker must collect all the information set forth in proposed paragraph (c) that is applicable to that client. The broker would be required to verify each of the data points (*i.e.* client's name, address, etc.) that the broker collects from that particular client. The means of verification that the customs broker uses for each data point, however, are at the broker's discretion. There are various methods of verification that would satisfy CBP's requirement that the broker verify each data point that the broker collects. The means of verification that CBP recommends for each data point are set forth below and include in-person verification, review of the proper evidence of the grantor's authorization to execute the POA, and/ or research performed using various federal agency,

state government, and publicly available data sources. The broker must use as many of the recommended verification means as necessary to be reasonably certain of the client's identity.

In addition to verifying each data point collected, the broker would be required to check if the client is a sanctioned or restricted person or entity, or if the client is suspended or debarred from doing business with the U.S. Government.

Under the proposed rule, for any prospective client, the customs broker would be required to perform this verification before transacting customs business on the client's behalf. For existing clients with a POA issued by a partnership, brokers would have two years to verify this information and three years for all other existing clients.

1. The Client's Name, Address, Telephone Number, Email Address, Business Website, Trade or Fictitious Names

A customs broker could verify the client's name, address, telephone number, email, website, and trade or fictitious names, if applicable, through various means. A customs broker could use the Automated Broker Interface (ABI) to access ACE to verify a client's information. This means of verification is only available for a broker to access an existing client's information for transactions where the broker represented the client.

The broker could alternatively check the client's unexpired government-issued photo identification, the state licensing database or use open-source mapping. Customs brokers may also conduct research using reputable business information databases, individual state databases, and credit reporting entities or any other public or private database which provides accurate, timely, and relevant information about the client.

To verify the client's address, the broker could use various navigation and mapping functions available on public websites to verify the location. Warning signs could include an incomplete or inaccurate address, or providing only a post office box address. To verify the telephone number, the broker could verify whether the number is a landline as opposed to a cell phone and could use return call verification to ensure that the number is accurate. To verify the email address, the broker could ensure that there is a return email message.

If applicable, the broker could visit the client's place of business in-person to verify its existence and the client's identity. During this in-person visit, the broker would be looking for any possible indication that the client's identity is not what he or she provided; that the business is defunct or nonexistent; or that the company is a shell or

shelf company. To verify a business website, the broker could check the depth of the website, the business universal resource locator (URL), and the viability of any links provided.

2. The Client's or Grantor's Date of Birth

There are various ways that a customs broker could verify the client's or grantor's date of birth. The broker could perform an in-person review of the client's or grantor's unexpired government-issued photo identification to verify the date of birth. Alternatively, a broker could use individual state databases or open-source software.

3. The Grantor's Unexpired Government-Issued Photo Identification

The customs broker can perform an in-person review of the grantor's unexpired government-issued photo identification such as a passport or driver's license. During this in-person verification, the broker would be looking for any possible indications that the grantor's identity is not what he or she provided, or that there is fraud. Alternatively, the broker may conduct research using reputable databases to establish the veracity of the government-issued photo identification.

4. The Client's IRS Number, EIN, or IOR Number

A customs broker could use federal government databases or the client's tax forms to verify the client's IRS, EIN, or IOR number. The broker could also use the ABI to access ACE to verify an existing client's IRS number, EIN, or IOR number. This means of verification is only available for a broker to access an existing client's information for transactions where the broker represented the client. Alternatively, the broker could conduct research using reputable public or private databases and websites, such as *www.freeerisa.com*, which is a private website that provides free access to all Employee Retirement Income Security Act (ERISA) form 5500s filed with the Department of Labor over the past two years.

5. The Client's Publicly Available Business Identification Number

If the client provides a non-government issued business identifier, the broker can use the associated database to verify the relevant aspects of that client's identification. For example, if the client provides its DUNS number, the broker could use the Dun and Bradstreet website at *www.DNB.com* to verify the client's DUNS number, company name, address, and telephone number.

6. A Recent Credit Report

To check the client's credit report, the broker would check with a nationally recognized credit reporting entity. When checking the client's credit report, warning signs could include declarations of bankruptcy, and any delayed payment history. If the client informs the broker that a credit report cannot be provided because its jurisdiction does not provide credit reports, the broker must verify this by checking the address of the client's physical location.

7. The Client's Business Registration and License With State Authorities

A broker could use individual state databases to verify the business registration and license.

8. The Grantor's Authorization To Execute Power of Attorney on Behalf of Client

A broker is required to confirm that the grantor has the authority to execute the POA. When a representative appears on behalf of the client, the representative would be required to provide evidence of his or her authorization to sign the POA. This evidence should be notarized whenever possible; however, the person whose signature is required is dependent on the type of business. To determine the type of evidence required, the broker would review the business's public filings, for example, the articles of incorporation, to determine who holds the key positions. For a corporation, the evidence would be a corporate officer providing certification on the entity's letterhead. For a limited liability company (LLC), the evidence would be the managing partner or member providing certification on the entity's letterhead. For a partnership, authorization would be the general and/or managing partner providing certification on the entity's letterhead. For a sole proprietorship or individual, evidence of authorization would consist of a certification, notarized by the sole proprietor or individual, stating that the representative was authorized to sign on behalf of the individual or the sole proprietor.

9. Check if the Client is a Sanctioned or Restricted Person or Entity by the U.S. Government or if the Client is Suspended or Debarred From Doing Business With the U.S. Government

The broker would be required to check to determine if the client is a sanctioned or restricted person or entity, or if the client is suspended or debarred from doing business with the U.S. Government. The broker could check this information through any of the following

websites: *www.sam.gov*, a U.S. government website that may be used to search public records for company registrations; *https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx*, which is a U.S. Department of Treasury website identifying Office of Foreign Assets Control (OFAC) sanctioned companies and individuals; or *https://build.export.gov/main/ecr/eg_main_023148*, which is a consolidated screening list identifying entities that have been sanctioned by U.S. Department of Commerce, International Trade Administration.

C. Requirement To Implement Policies, Procedures and Internal Controls

Proposed paragraph (e) of section 111.43 requires customs brokers to implement policies, procedures, and internal controls to verify a client's identity before transacting customs business on behalf of that client. While most customs brokers already have such policies, procedures, and internal controls in place to collect and verify this information, this requirement is to ensure that all brokers implement these policies, procedures, and internal controls so that brokers are required to collect the required information from the client, and to ensure that the broker has established policies and procedures to verify and reverify the information.

D. Recordkeeping Requirements

Section 116 of TFTEA requires that the regulations also set minimum standards for customs brokers to maintain records of the information used to substantiate the client's identity. Accordingly, proposed paragraph (f) requires all customs brokers to make, retain, and update records containing the information the brokers collected to verify the client's identity.

1. Current Recordkeeping Requirements

Customs brokers must make, retain, and update certain records of their transactions with their clients and must comply with all recordkeeping requirements. For customs brokers, the relevant recordkeeping provisions are in part 111 and part 163 and each broker must comply with the provisions of those parts when maintaining records that reflect on his or her transactions as a broker. 19 CFR 111.21 and 163.2(d). Part 163 governs the maintenance, production, inspection, and examination of records, in general. Part 111 sets forth the specific recordkeeping requirements applicable to customs brokers, and the additional records that each customs broker must make and maintain, and make available for CBP examination.

Pursuant to part 111, customs brokers are required to keep current records of account reflecting all their transactions as a broker, and keep and maintain copies of all correspondence and other records relating to their customs business. 19 CFR 111.21. A broker is not required to file a POA with CBP but must retain the POA as part of his or her records and make it available to representatives of the Department of Homeland Security (DHS).⁶ See 19 CFR 141.46. Customs brokers must maintain all these records for the required retention periods, in a manner that allows CBP to readily examine them, and pursuant to an allowable method of storage. See 19 CFR 111.25 and 163.5. These records, except for POAs, must be retained for at least five years after the date of entry. See 19 CFR 111.23 and 163.4. POAs must be retained until revoked, and revoked POAs and letters of revocation must be retained for five years after the date of revocation or for five years after the date the client ceases to be an “active client” as defined in section 111.29(b)(2)(ii), whichever period is later. See 19 CFR 111.23 and 163.4.

The proposed regulations add additional records to 19 CFR part 111 that the customs broker must make, retain, update, and have readily available for CBP examination.

2. Retention of Identification and Verification Records

Proposed paragraphs (f)(1) and (2) of section 111.43 set forth the minimum identification and verification records that customs brokers must retain. At a minimum, customs brokers must retain the information required by proposed paragraph (c), including any identification records, which consists of the information presented to the broker used to identify the client as well as any certifications the client makes. Customs brokers must also retain verification records of the means and documents relied on to verify the client’s identity as required by proposed paragraph (d) and each record must indicate which information required pursuant to proposed paragraph (c) was verified by those means and documents. At a minimum, for the verification records, customs brokers must retain descriptions of any documents relied upon, any non-documentary methods, any results of measures undertaken, and any resolution of discrepancies as well as who performed the verification and the date the verification was performed. Brokers must indicate in the verification records which

⁶ Subpart C of 19 CFR part 111 provides that the POA and other records must be made available to representatives of the Department of the Treasury; however, pursuant to the Homeland Security Act of 2002 and Treasury Order No. 100–16 (Appendix to 19 CFR part 0), this was delegated to representatives of the Secretary of DHS as opposed to representatives of the Department of the Treasury. See Pub. L. 107–296, 116 Stat. 2142.

information required pursuant to proposed paragraph (c) was not collected from the client because it was inapplicable to that particular client.

3. Records Must Be Readily Available for CBP Examination

The identification and verification records collected by the broker must be retained in accordance with 19 CFR 111.23 and be made available upon request by CBP for examination. The period of retention for the identification and verification records shall be the same as for POAs. *See* 19 CFR 111.23 and 163.4.

4. Updating the POA, Identification and Verification Records

Proposed paragraph (f)(4) requires customs brokers to implement procedures to ensure the accuracy, timeliness, completeness, and relevancy of any POA and any information about the client. These procedures must include a requirement that customs brokers update their records annually with any changes to the client, POA, or the information in the records, and reverify the client's identity.

The customs broker would update this information with new information or records received through either the client or through the broker's independent research. Customs brokers must update their information on an annual basis about any client and its business to ensure that the information they have is timely, accurate, complete, and relevant, and they must reverify the client's identity annually using the procedures set forth in proposed section 111.43(d). Depending on the client, maintaining the information could include setting up news alerts about the client, confirming with a client the accuracy of information, or setting up automatic searches in specific databases. This ensures the quality and integrity of the information in the POA, and in the identification and verification records.

E. Penalties for Failure To Meet the Requirements

Section 116 of TFTA amended section 641 of the Tariff Act of 1930 (19 U.S.C. 1641) to authorize the Secretary, at his or her discretion, to hold any customs broker liable if the broker fails to collect the required information for a monetary penalty not to exceed \$10,000 for each violation and to revoke or suspend a license or permit of the customs broker pursuant to the procedures set forth in section 641(d). Further, it holds that the penalty shall be assessed in the same manner and under the same procedures as the monetary penalties provided for in section 641(d)(2)(A). *See* 19 U.S.C. 1641(d)(2)(A). The provisions relating to assessment of a monetary penalty under sec-

tions 641(b)(6) and (d)(2)(A), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)(6) and (d)(2)(A)), are set forth in 19 CFR 111, subpart E.

Proposed paragraph (g) sets forth the conditions under which CBP may assess a monetary penalty and the maximum amount that a penalty may be assessed for. CBP may, at its discretion, assess a monetary penalty for a broker's failure to collect, verify, secure, retain, update, or make available for inspection the information in this section in an amount not to exceed \$10,000 per client. CBP could also choose to revoke or suspend the customs broker's license or permit in accordance with 19 U.S.C. 1641(d)(2)(B).

F. Timing of Verifications

Proposed paragraph (h) of section 111.43 provides the different timing requirements for verifications based on whether it is a prospective or existing client. This is to allow customs brokers that are not already collecting, verifying, and maintaining the information, additional time to start complying with the requirements for existing clients.

For prospective clients, customs brokers would be required to comply with proposed 19 CFR 111.43 as of the effective date of the final rule. A customs broker would not be permitted to begin transacting customs business on behalf of that client until the broker collected the required information and verified the client's identity. The broker would also be required to reverify the client's identity on an annual basis.

For existing clients with a POA issued by a partnership, customs brokers would have two years from the effective date of the final rule to verify the client's identity, and to update the necessary identification and verification records. This is because, as discussed above, unlike all other POAs, a POA issued by a partnership is limited to a period not to exceed two years from the date of execution. *See* 19 CFR 141.34. Brokers would have to reverify the client's identity on an annual basis after the initial verification.

For all other existing clients, customs brokers would have three years from the effective date of the final rule to verify the client's identity, and to update the necessary identification and verification records. The three-year period is to allow brokers adequate time to verify existing client's identities pursuant to the new regulatory requirements taking into account the number of existing POAs and the number of hours per existing POA that the verification process will take (*see* Section IV. Executive Orders 13563, 12866, and 13771 for more detailed information). Brokers would have to reverify the client's identity on an annual basis after the initial verification.

IV. Executive Orders 13563, 12866, and 13771

Executive Orders 13563 (“Improving Regulation and Regulatory Review”) and 12866 (“Regulatory Planning and Review”) 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. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

This rule is not designated a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget. As this rule is not a significant regulatory action, it is exempt from the requirements of Executive Order 13771. *See* OMB’s Memorandum titled “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017). The regulatory amendments in this rule are the result of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114–125). This rule’s annualized net regulatory cost is \$11.7 million using a 7 percent discount rate and 2017 U.S. dollars. CBP has prepared the following analysis to help inform stakeholders of the impacts of this proposed rule.

1. Need and Purpose of Rule

CBP is one of several agencies that are responsible for issuing regulations governing the importation of goods into the United States. As this process is complex and involves compliance with numerous requirements ranging from agricultural safety to intellectual property rights, to the payment of appropriate duties and fees, CBP licenses customs brokers to assist importers with the importation process. As brokers are knowledgeable about the legal requirements and often have a great deal of visibility into their clients’ businesses, they are key partners to CBP in preventing fraud and ensuring that the correct amount of revenue is collected. However, brokers’ knowledge of their importer clients can vary as there is no current requirement that standardizes the collection and verification of broker’s information about their clients. Most brokers verify their clients’

information prior to conducting business with them, even absent a requirement to do so, but some do not and there is no universal standard for this verification. CBP has for many years provided guidance on this matter, but it is non-binding, and not all brokers follow it. We note that CBP's guidance closely follows industry best practice standards that many brokers have been following for years and CBP's guidance standardizes and publicizes the best practices. CBP does not have evidence indicating the guidance changed industry's behavior. As such, brokers who properly verify their importers impose a higher burden on themselves and their clients than brokers who do not properly verify their clients. Also, importers who intend to commit fraud or are otherwise reluctant to share their information likely gravitate toward brokers who do not thoroughly verify their clients' information. This puts brokers who properly verify importers' identities at a competitive disadvantage and makes it easier for fraudulent importers to remain undetected.

Section 116, *Customs Broker Identification of Importers*, of TFTEA requires CBP to prescribe regulations governing the customs broker identification of importers. This proposed rule would satisfy this requirement by setting minimum standards for importers to provide the information and for customs brokers to collect this information and verify the identity of their importer or nonresident importer clients. The definition of the term "client" is the importer or nonresident importer of record who is seeking or employing the services of a customs broker to transact customs business on behalf of the importer or nonresident importer of record. The definition of the term "grantor" is the individual executing the power of attorney on behalf of the client. This regulation would reduce fraud by helping to eliminate the use of shell or shelf companies, protect U.S. Government revenue, and ensure level competitiveness among brokers.

2. Background

Each year, approximately 350,000 importers actively transact customs business with CBP through one of approximately 2,093 permitted customs brokers.⁷ By regulation, each importer is required to have a Power of Attorney (POA) with the broker before the broker may transact customs business on behalf of the client. In addition to assisting the importer with its filings, the broker has an important function in preventing fraud. As an importer's agent and CBP-licensed entity, the broker is uniquely situated to verify specific data on its importer and nonresident importer clients. The most timely

⁷ Source: Email correspondence with CBP's Broker Management Branch, Office of Trade [hereinafter referred to as CBP's Broker Management Branch], on August 15, 2017.

and efficient way for a broker to request identity-verifying information is to do so at the point of the POA development. A valid POA is the written appointment of the broker as the true and lawful agent of the principal (*i.e.*, client) allowed to transact “customs business” in the name of that principal. The broker’s own professional business interest and continuing obligation to demonstrate reasonable care involves determining that a POA is valid. Currently, the information required for a valid POA is limited to:

(1) A statement from the principal authorizing the broker to act as the principal’s agent and for the customs broker to file entry/entry summary in the principal’s name for a shipment;

(2) The name of the individual or authorized representative of the sole proprietorship, partnership, or corporation executing the POA; and

(3) The name and address of the individual or business on whose behalf the POA is being executed.

As noted previously, the vast majority of customs brokers verify their clients’ identity and industry groups have established best practices for doing so over the years. While there is no current requirement for brokers to verify their client’s information prior to transacting customs business on their behalf and only a limited amount of information is required for a valid POA, the majority of brokers currently require importers to provide them with certain additional information when a POA is obtained from an importer, which is used by the broker to verify the importer’s existence and identity. This includes, but is not limited to, the registration of the importer’s business with a state government and the Articles of Incorporation under which that business is formed. As this validation is important to prevent fraud and to protect a broker’s business interests, CBP provides non-binding guidance on how brokers can validate importers when they obtain a POA. For example, CBP recommends that a broker should, whenever possible, do the following:⁸

(1) Complete POAs in-person and review personal identification (driver’s license, passport, etc.);

(2) Check applicable websites to verify the business registration with State authorities;

(3) Confirm business’s trade or fictitious names that may appear on the POA;

(4) Verify that the importer’s name, importer number, and Employer Identification Number (EIN) (also known as the Federal Tax

⁸ Source: U.S. Customs and Border Protection, “Validating the Power of Attorney.” Last published May 25, 2018. Available at <https://www.cbp.gov/trade/programs-administration/customs-brokers/validating-power-attorney>. Accessed May 31, 2018.

Identification Number) on the POA match what is in CBP's Automated Commercial Environment (ACE); and

(5) Check whether an importer is named as a sanctioned or restricted person or entity by the U.S. Government.

This proposed rule standardizes the process by which brokers verify the identities of their importer clients by requiring that the broker collect specified identity-verifying information from the client at the time the POA is obtained and mandating procedures for the broker to verify the importer client's identity. Since CBP has determined that it is most efficient for brokers to collect this information and verify at the time the POA is obtained, this analysis uses the number of POAs created and existing to determine when the importer client's identity must be verified pursuant to this proposed rule's requirements.

According to CBP's Broker Management Branch and conversations with members of the trade community, including one of the major broker associations and some individual brokers, for the vast majority—about 95 percent—of POAs obtained by brokers, the broker has sufficiently verified the importer client's identity, a process that takes about 2 hours per POA.⁹ The 2 hour time burden can be divided into four major categories which include time for recordkeeping. Brokers who sufficiently verify their clients' identity spend approximately 40 minutes to check state or local business status via appropriate channels, 20 minutes to check their clients' business profile via organizations such as Dun and Bradstreet,¹⁰ 40 minutes to access and review credit reports, and 20 minutes for internet research on the client's company. CBP requests comment on these estimates.

CBP estimates that approximately 100,000 new POAs are created annually when an importer either enters into a relationship with a broker for the first time or the particulars of the POA change and a new one is needed.¹¹ Therefore, CBP estimates that brokers currently spend approximately 190,000 hours per year validating 95 percent of the importer clients' identities at the time the POA is obtained. It also takes time for importers to provide their information to their brokers for a POA and the additional information required to verify the client's identity. Based on conversations with the trade community,

⁹ Source: Email correspondence with CBP's Broker Management Branch on August 15, 2017, and numerous conversations with the trade in August 2017. The exact percentage of customs brokers that do not properly verify importers and nonresident importer clients is unknowable, as no broker will readily admit that it is not adequately verifying importer and nonresident importer information.

¹⁰ Source: Dun and Bradstreet. Get a Dun & Bradstreet DUNS number. <https://www.dnb.com/duns-number/get-a-duns.html>. Accessed March 28, 2019.

¹¹ Source: Email correspondence with CBP's Broker Management Branch on August 16, 2017, and March 27, 2018. The actual number of new POAs varies each year. In 2015, there were 84,520 new POAs, in 2016 there were 101,945, and in 2017 there were 101,110.

CBP expects that it would take each importer approximately 1 hour to provide the broker with this verifying information. Accordingly, CBP estimates that importers currently spend approximately 95,000 hours per year gathering the necessary information to complete a POA and the additional information required to verify the client's identity.

3. Impacts of Rule

CBP proposes to formalize the process by which customs brokers verify importers and nonresident importer clients. This proposed rule would require the broker to collect specified information from the importer client and for the broker to verify the information from importers before it begins working under a new POA allowing the broker to transact customs business on behalf of the client.¹² In addition, within three years of the effective date of this proposed rule being finalized,¹³ brokers would also need to verify this information from existing clients.¹⁴ Additionally, brokers must continue to make and retain identification and verification records. This requirement would be enforceable according to the recordkeeping requirements of current broker regulations in 19 CFR part 111 and part 163. Finally, brokers will now be required to reverify the client's identity and update their records annually with any changes to the client, POA, or information in the records.

The information that the customs broker would now be required to collect, at minimum, from the importer client under this proposed rule is as follows, if applicable:

- The client's name;
- For a client who is an individual, the client's date of birth;
- For a client that is a partnership, corporation, or association, the grantor's date of birth;

¹² Many brokers currently collect more information than what this proposed rule requires and they may continue to do so. This proposed rule simply establishes a minimum threshold of information that the client must provide and that the broker must verify.

¹³ For any existing client with a POA issued by a partnership, the broker also must verify the client's identity. Existing clients with partnership POAs will need to have their identities verified within two years from the effective date of this proposed rule being finalized and reverified every year thereafter. However, according to subject matter experts from CBP's Broker Management Branch, partnership POAs represent less than 1% of active POAs, though we lack data on the precise number of partnership POAs. To the extent partnership POAs are affected, it will increase broker costs by a small amount because they may require verification sooner than estimated.

¹⁴ Source: Email correspondence with CBP's Broker Management Branch on May 17, 2017.

- For a client that is a partnership, corporation, or association, the client's trade or fictitious names;
- The address of the client's physical location (for a client that is a partnership, corporation, or association, the physical location would be the client's headquarters) and telephone number;
- The client's email address and business website;
- A copy of the grantor's unexpired government-issued photo identification;
- The client's Internal Revenue Service (IRS) number, Employer Identification Number (EIN), or Importer of Record (IOR) number;
- The client's publicly available business identification number (*e.g.*, DUNS number, etc.);
- A recent credit report;
- A copy of the client's business registration and license with state authorities; and
- The grantor's authorization to execute power of attorney on behalf of client.

Importer clients can obtain a DUNS number without cost and already report their DUNS number on CBP Form 5106. Brokers can verify the DUNS number online for free. The time it takes to do this is included in the estimated time to verify an importer client's information.

The broker must collect all the information that is applicable to that particular client. Some information might not be applicable to a client depending on whether the client is an individual, partnership, corporation or association. For example, a small business might not have a business website; and a client who is an individual would not have a business registration and license with state authorities or a publicly available business identification number. Additionally, certain foreign jurisdictions do not provide credit reports; accordingly, if the address of the client's physical location is located in one of those jurisdictions, the broker is not required to collect a recent credit report from that client.

Once customs brokers collect this data from importers and nonresident importers, brokers would need to check to determine whether the importer client is named as a sanctioned or restricted person or entity by the U.S. Government, or if the client is suspended or debarred from doing business with the U.S. Government, and would

need to verify all the information collected from the importer client using various federal agency, state government, and publicly available data sources. The means of verification are at the customs broker's discretion. The broker must use as many of the recommended verification means as necessary to be reasonably certain as to the client's identity. Some of the tools that are recommended for verifying this information include:

- A check of the appropriate websites to determine whether the client is named as a sanctioned or restricted person or entity by the U.S. Government, or if the client is suspended or debarred from doing business with the U.S. Government;
- An in-person review of the grantor's unexpired government-issued identification;
- An in-person client meeting;
- An in-person visit of the client's place of business;
- A review of the client's Articles of Incorporation; and
- A query of publicly available information, business information and credit reporting entities, Federal, state, and local databases or websites and any other relevant trade or business sources.

As previously stated, conscientious brokers already require information from the importer or nonresident importer client in order to verify the client's identity. According to CBP's Broker Management Branch and conversations with the trade community, for approximately 5 percent of POAs, the brokers do not require most or any of this additional information and the importer clients' identities are not currently verified or are only minimally verified.¹⁵ As a result of this rule, all brokers will be required to verify all of the specified information collected from the client to verify the client's existence and identity for all POAs granted by importers and nonresident importer clients and this information will need to be reverified annually. CBP analyzes the costs and benefits of these new requirements over a 5-year period of analysis spanning from 2019 to 2023.

¹⁵ Source: Email correspondence with CBP's Broker Management Branch on August 15, 2017. The exact percentage of customs brokers that do not properly verify importers and nonresident importer clients is unknowable because no broker will readily admit that it is not adequately verifying importer and nonresident importer information.

4. Costs

Costs to Brokers

Brokers currently have approximately 350,000 POAs with importer clients, for which brokers would now need to verify the client's identity under this rule within three years of the effective date of this proposed rule being finalized. CBP assumes that brokers would verify the importer client's identity for one-third of these existing POAs each year beginning in 2019—or about 116,666 each year from 2019 to 2021—to satisfy this rule's new verification requirement (see Table 1).¹⁶ These existing verifications would each take approximately 2 hours and can be divided into four distinct time-burden categories that were identified earlier.¹⁷ ¹⁸ There is a time cost of \$59.52 each, according to CBP's assumed hourly time value for customs brokers of \$29.76.¹⁹ ²⁰ Based on the historical number of POAs created each year, CBP estimates that 100,000 new POAs would be created each year between 2019 and 2023 (see Table 1). CBP estimates that in the absence of this rule, brokers would have verified 95 percent of the importer clients' identities for new POAs—or 95,000 POAs—while the remaining 5 percent—or 5,000—new POAs would have the cli-

¹⁶ Source: Email correspondence with CBP's Broker Management Branch on August 15, 2017.

¹⁷ The two hours includes the time to implement policies, procedures and internal controls for identity verification, and to keep records containing the information used to verify the importer.

¹⁸ Source: Email correspondence with CBP's Broker Management Branch on August 15, 2017.

¹⁹ 2-hour time burden for broker to verify information of the client's identity for an existing POA × \$29.76 hourly time value for customs brokers = \$59.52 time cost.

²⁰ CBP bases the \$29.76 hourly time value for customs brokers on the Bureau of Labor Statistics' (BLS) 2017 median hourly wage rate for Cargo and Freight Agents (\$20.11), which CBP assumes best represents the wage for brokers, by the ratio of BLS' average 2017 total compensation to wages and salaries for Office and Administrative Support occupations (1.4801), the assumed occupational group for brokers, to account for non-salary employee benefits, and rounded. Source of median wage rate: U.S. Bureau of Labor Statistics, Occupational Employment Statistics, "May 2017 National Occupational Employment and Wage Estimates, United States—Median Hourly Wage by Occupation Code: 43–5011." Updated March 30, 2018. Available at https://www.bls.gov/oes/2017/may/oes_nat.htm#43-0000. Accessed March 26, 2019. The total compensation to wages and salaries ratio is equal to the calculated average of the 2017 quarterly estimates (shown under Mar., June, Sep., Dec.) of the total compensation cost per hour worked for Office and Administrative Support occupations divided by the calculated average of the 2017 quarterly estimates (shown under Mar., June, Sep., Dec.) of wages and salaries cost per hour worked for the same occupation category. Source of total compensation to wages and salaries ratio data: U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. Employer Costs for Employee Compensation Historical Listing March 2004–December 2018, "Table 3. Civilian workers, by occupational group: Employer costs per hours worked for employee compensation and costs as a percentage of total compensation, 2004–2018 by Respondent Type: Office and administrative support occupations." Available at <https://www.bls.gov/web/cecc/ceccqrtn.pdf>. Accessed March 26, 2019.

ents' identities go unverified based on historical estimates. According to CBP's Broker Management Branch, this rule's verification requirements would not increase the time burden for the 95 percent of instances where brokers verify the importer client's identity for each new POA. The specific information brokers currently require may be different than the information required under this rule, but we estimate that it takes approximately two hours to verify either set of data. As such, this rule will have no additional time burden to do the initial validation of the importer client's identity for the POA. The remaining 5 percent of brokers who do not currently verify the client's identity would incur a two-hour time burden for the verification of the importer client's identity for a POA under this rule,²¹ at an added time cost of \$59.52 per new POA according to CBP's assumed hourly time value for customs brokers.²²

TABLE 1—PROJECTED NUMBER OF POAs REQUIRING BROKER VERIFICATION WITH RULE

Year	Existing POAs requiring identity-verification	New POAs requiring identity-verification	Total POAs requiring identity-verification
2019.....	116,667	5,000	121,667
2020.....	116,667	5,000	121,667
2021.....	116,666	5,000	121,667
2022.....	0	5,000	5,000
2023.....	0	5,000	5,000
Total.....	350,000	25,000	375,000

To estimate the total time cost for brokers to verify existing importer clients' identities, CBP multiplies the projected number of existing POAs requiring identity-verification during the period of analysis shown in Table 1 by the \$59.52 time cost to complete each identity-verification of an existing client by measuring the existing POAs.

Accordingly, CBP finds that brokers would incur undiscounted costs totaling \$20.8 million to verify existing clients' identities from 2019 to 2023 following this rule's implementation (see Table 2). Brokers who do not already conduct client identity verifications would sustain a total time cost of \$1.5 million for verification of the importer client's identity based on their \$59.52 added time burden and their projected number of client identities verified measured by the number of pro-

²¹ Source: Email correspondence with CBP's Broker Management Branch in March 2018. The 100,000 figure is a rounded average of the number of POAs that were filed in 2015 (84,520), 2016 (101,945), and 2017 (101,110).

²² 2-hour added time burden for broker to verify information of the importer's identity for a new POA × \$29.76 hourly time value for customs brokers = \$59.52 time cost.

jected POAs over the period of analysis (see Table 1 and Table 2). Altogether, the total undiscounted cost of this rule to brokers would measure \$22.3 million from 2019 to 2023.

TABLE 2—TOTAL COST FOR BROKERS TO VERIFY CLIENT’S IDENTITY FOR EXISTING AND NEW POAs WITH RULE
[Undiscounted 2017 U.S. dollars]

Year	Time cost to verify existing POAs	Time cost to verify new POAs	Total time cost for brokers to verify existing and new POAs
2019.....	\$6,944,020	\$297,600	\$7,241,620
2020.....	6,944,020	297,600	7,241,620
2021.....	6,944,020	297,600	7,241,620
2022.....	0	297,600	297,600
2023.....	0	297,600	297,600
Total.....	20,832,000	1,488,000	22,320,000

Additionally, as a result of this rule, customs brokers will need to update their records and reverify on an annual basis that the POA information, and the identification and verification records for their importer clients is accurate. According to CBP’s Broker Management Branch, there are approximately 350,000 active importers of record (IORs) in any given year and that is not expected to change significantly—on average any new IORs are offset by IORs that become inactive.²³ Brokers will now have to verify all 350,000 existing client’s identities as measured by the existing POAs within three years of the effective date of this proposed rule being finalized and reverify the client’s identity annually thereafter. As discussed earlier, we expect brokers to do the initial verification evenly over the course of the first three years (see Table 1). The reverifications, then, will lag the initial verifications by a year. As the new importers are offset by importers who become inactive, brokers will need to reverify 350,000 existing clients’ identities each year, after the initial 3-year verification window. Table 3 shows the number of verifications we estimate for each year. These verifications would each take approximately 45 minutes (.75 hours) to complete,²⁴ at a time cost of \$22.32 each, according to CBP’s assumed hourly time value for customs brokers of \$29.76.²⁵ Table 3 shows the estimated costs of this reverification. The

²³ Source: Email correspondence with CBP’s Broker Management Branch on April 12, 2018.

²⁴ Source: Email correspondence with CBP’s Broker Management Branch on March 20, 2018.

²⁵ 0.75-hour time burden for broker to verify information of the importer client’s identity for an existing POA × \$29.76 hourly time value for customs brokers = \$22.32 time cost.

total undiscounted cost to verify and update recordkeeping requirements for existing and prospective clients as measured by existing and new POAs is \$23,436,022 over the period of the analysis.

TABLE 3—TOTAL COST FOR BROKERS TO VERIFY AND UPDATE RECORDKEEPING REQUIREMENTS FOR EXISTING AND NEW CLIENTS WITH RULE
[Undiscounted 2017 U.S. dollars]

Year	Total POAs requiring annual reverification	Total time cost to reverify POAs
2019	0	\$0
2020	116,667	2,604,007
2021	233,334	5,208,015
2022	350,000	7,812,000
2023	350,000	7,812,000
Total	1,050,000	23,436,022

Costs to Importers

In addition to its costs to brokers, this rule would impose costs on the broker's existing and prospective importer clients now required to provide additional identity-verifying data to brokers for their existing and new POAs. Based on conversations with the trade community, CBP assumes that each existing POA corresponds to a unique importer of record.²⁶ As a result, CBP estimates that 350,000 existing importer clients would provide identity-verifying data to brokers for 350,000 existing POAs within three years of the effective date of this proposed rule being finalized (*see* Table 1). CBP expects that it would take each importer approximately one hour to provide the broker with this identity-verifying information, at a time cost of \$29.76 according to CBP's assumed hourly time value for importers of \$29.76.²⁷ ²⁸ Considering this time cost and the projected number of existing POAs where the importer's identity must be verified during

²⁶ Some importers have several importer of record numbers, but each requires its own POA.

²⁷ 1-hour time burden for importer to provide broker with the required information to verify the importer's identity for an existing POA \times \$29.76 hourly time value for importers = \$29.76 time cost.

²⁸ CBP bases the \$29.76 hourly time value for importers on the Bureau of Labor Statistics' (BLS) 2017 median hourly wage rate for Cargo and Freight Agents (\$20.11), which CBP assumes best represents the wage for importers, by the ratio of BLS' average 2017 total compensation to wages and salaries for Office and Administrative Support occupations (1.4801), the assumed occupational group for importers, to account for non-salary employee benefits, and rounded. Source of median wage rate: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, "May 2017 National Occupational Employment and Wage Estimates, United States—Median Hourly Wage by Occupation Code: 43–5011." Updated March 30, 2018. Available at https://www.bls.gov/oes/current/oes_nat.htm. Accessed March 26, 2019. The total compensation to wages and salaries ratio is equal to the calculated average of the 2017 quarterly estimates (shown under Mar., June, Sep., Dec.) of

the period of analysis (*see* Table 1), CBP finds that importers would incur a total cost of \$10.4 million to provide identity-verifying information to their brokers for existing POAs (*see* Table 4). For new POAs where the importer’s identity must be verified, CBP estimates that importers already provide most of the additional identity-verifying information required in this rule to brokers for 95 percent—or 95,000—of new POAs each year. As stated above, while the specific information brokers require currently may vary, it is generally very similar to what this rule requires that the brokers collect. Hence, CBP assumes these importers would not incur an added burden to provide identity-verifying information to their brokers with this rule beyond what they already bear. For the remaining 5 percent—or 5,000—of POAs where the importer’s identity is not currently verified, this rule would require brokers to collect such information from their clients. Like with existing POAs, CBP believes that it would take each importer approximately one hour to provide the broker with this identity-verifying information, at a time cost of \$29.76 according to CBP’s assumed hourly time value for importers of \$29.76.²⁹ By applying this time cost to the 5,000 new POAs where the importer’s identity would not be verified absent this rule, CBP estimates that some importers would sustain undiscounted costs totaling \$0.7 million over the period of analysis from this rule’s identity-verifying data submission requirement (*see* Table 4). In all, this rule would impose undiscounted costs of \$11.2 million on importers between 2019 and 2023, as illustrated in Table 4.

the total compensation cost per hour worked for Office and Administrative Support occupations divided by the calculated average of the 2017 quarterly estimates (shown under Mar., June, Sep., Dec.) of wages and salaries cost per hour worked for the same occupation category. Source of total compensation to wages and salaries ratio data: U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. Employer Costs for Employee Compensation Historical Listing March 2004–December 2018, “Table 3. Civilian workers, by occupational group: employer costs per hours worked for employee compensation and costs as a percentage of total compensation, 2004–2017 by Respondent Type: Office and administrative support occupations.” Available at <https://www.bls.gov/web/ecec/ececqrtn.pdf>. Accessed March 26, 2019.

²⁹ 1-hour time burden for importer to provide broker with information to verify the importer’s identity for a new POA × \$29.76 hourly time value for importers = \$29.76 time cost.

TABLE 4—TOTAL COST FOR IMPORTERS TO PROVIDE IDENTITY-VERIFYING DATA FOR EXISTING AND NEW POAs WITH RULE
[Undiscounted 2017 U.S. dollars]

Year	Time cost for existing importers to provide verifying data for existing POAs	Time cost for new importers to provide data for verification	Total time cost for importers to provide data for verification of existing and new POAs
2019.....	\$3,472,010	\$148,800	\$3,620,810
2020.....	3,472,010	148,800	3,620,810
2021.....	3,471,980	148,800	3,620,810
2022.....	0	148,800	148,800
2023.....	0	148,800	148,800
Total.....	10,416,000	744,000	11,160,000

Brokers are required to obtain recent credit reports from their client importers for use in the verification process. We next estimate the cost of running credit reports to the importer. It is common practice among businesses to periodically run their own credit report, so we expect most importers to simply provide the broker with a previously run credit report. For the purposes of this analysis, we again assume that 95% of importers are already providing their credit report to the broker or that they routinely run their own credit report for their own purposes. There is not a financial cost to these importers.³⁰ The remaining 5 percent or approximately 5,000 importers will incur a costs by purchasing credit reports with credit scores from each of the credit bureaus (Equifax, Experian, and Transunion). The three reports costs approximately \$40.³¹ Table 5 shows the costs to importers working with brokers not currently accessing free credit reports from their clients.

TABLE 5—COST OF CREDIT REPORT FOR IMPORTERS
[Undiscounted 2017 U.S. dollars]

Year	New POAs requiring identity-verification	Credit report costs
2019.....	5,000	\$200,000
2020.....	5,000	200,000

³⁰ Source: Communication with CBP's Broker Management Branch on March 23, 2019, and numerous conversations with the trade in August 2017. During the March 23, 2019 discussion with the Broker Management Branch, the branch noted that there can be a cost to brokers for collecting credit reports that range between \$35 to \$50 depending on the source.

³¹ Source: Experian. Consumer Products. <https://www.experian.com/consumer-products/experian-equifax-transunion-credit-report-and-score.html>. Accessed March 27, 2019.

Year	New POAs requiring identity-verification	Credit report costs
2021	5,000	200,000
2022	5,000	200,000
2023	5,000	200,000
Total	25,000	1,000,000

Total Costs

Table 6 summarizes the costs of this rule to brokers and importers. Altogether, this rule would impose a total undiscounted cost of \$57.9 million on the trade community from 2019 to 2023.

TABLE 6—TOTAL COST OF RULE TO BROKERS AND IMPORTERS
[Undiscounted 2017 U.S. dollars]

Year	Total cost of importer ID rule
2019.....	\$11,062,430
2020.....	13,666,437
2021.....	16,270,355
2022.....	8,458,400
2023.....	8,458,400
Total.....	57,916,022

When discounted, as shown in Table 7, this cost would measure \$51.4 million in present value and \$11.7 million on an annualized basis (using a 7 percent discount rate and 2017 U.S. dollars).

TABLE 7—TOTAL MONETIZED PRESENT VALUE AND ANNUALIZED COSTS OF RULE, 2019–2023
[2017 U.S. dollars]

	3% Discount rate	7% Discount rate
Present Value Cost	\$54,922,999	\$51,403,406
Annualized Cost.....	11,643,386	11,716,647

Note: The estimates in this table are contingent upon CBP’s projections as well as the discount rates applied.

5. Benefits

Most brokers are already verifying the identity of their prospective clients when they begin their business relationship, but there are some who do not. Based on conversations with the broker community, CBP estimates that five percent of importers’ identities are not currently verified or are only minimally verified. Those who do not wish to be thoroughly verified sometimes “broker shop” for a broker that

does not require the same amount of verifying information. While some importers simply do not want to share more information with their brokers than is required, others intend to commit fraud and import illicit and/or counterfeit goods into the United States. These fraudulent importers seek out brokers who do not ask for verifying information in order to use a shell or shelf company to import fraudulent goods into the United States. When the customs broker or CBP discovers the illegal activities and attempts to penalize the shell or shelf company, it disappears. By formalizing the verification process for importers and requiring that it be carried out every year, this proposed rule would help prevent the use of shell or shelf companies by importers who attempt to commit fraud against the United States.

The fraud this proposed rule is intended to prevent can take a number of forms. It can range from misclassifying merchandise to avoid duties to intellectual property rights (IPR) violations, to antidumping/countervailing duty (AD/CVD) infractions, to the importation of unsafe merchandise. CBP believes that this proposed rule would improve brokers' knowledge of the importers. This improved broker knowledge could allow for commercial fraud prevention and revenue protection. According to CBP's Broker Management Branch, from approximately 2007 to 2017, there was about \$3.3 billion in uncollected duties related to AD/CVD violations by shell companies. Fifteen percent of these business entities are out of business. Their business model is to open, import merchandise subject to AD/CVD for a short period of time, and then shut down operations and disappear to avoid paying the required duties.³² As CBP cannot find the party responsible for importing, the duties can remain unpaid forever. Similarly, these shell companies frequently engage in the trade of counterfeit and pirated goods. The Organization for Economic Cooperation and Development estimates that counterfeit and pirated products accounted for as much as \$461 billion dollars in world trade in 2013.³³ This proposed rule will help prevent companies from engaging in these types of fraud because they will need to share real, verified information with their broker, which will make it much more difficult for those liable to disappear.

When shell or shelf companies importing goods into the United States do disappear before paying outstanding customs bills for duties, taxes and fees, CBP must collect the outstanding debt from sureties who issue bonds for the imported merchandise. The amount

³² Source: Email correspondent with CBP's Broker Management Branch on April 20, 2018.

³³ Source: Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact. Accessed April 25, 2018. <http://www.oecd.org/industry/global-trade-in-fake-goods-worth-nearly-half-a-trillion-dollars-a-year.htm>.

of duties, taxes, and fees that CBP may collect from sureties is limited by the value of the bond. In some instances, the bond value is insufficient to cover all outstanding duties, taxes, and fees owed by the importer. Consequently, there is a loss of revenue for CBP. At the same time, sureties incur additional costs to cover the duties, taxes, and fees collected against the bonds. This proposed rule will allow brokers to more effectively vet importers and reduce the number of bad actors. This will decrease revenue loss for the government and reduce costs incurred by sureties.

Reducing fraud by shell or shelf companies is a benefit to all parts of the economy. The United States Government would benefit by collecting the appropriate revenue for imported merchandise. To the extent that it avoids fruitless enforcement actions against shell or shelf companies that disappear, it would also save on enforcement costs. Brokers would benefit as they would have better knowledge of their importers and would be better able to avoid engaging in business with fraudulent companies. Brokers would also benefit through the leveling of the playing field in obtaining new clients or retaining current clients. Currently, brokers who properly verify their importer client's identity when the POA is obtained incur costs verifying the importer's identity and can lose customers to brokers who do not ask importers for information to verify their identity. This proposed rule would eliminate the opportunity to "broker shop" for a broker that does not require as much identifying information from the importers. The larger trade community would benefit from this proposed rule as it would reduce identity theft, the number of counterfeit or IPR-violative imports, and it would help enforce AD/CVD laws. The American public would benefit through any reduction in unsafe merchandise that results from this proposed rule. Finally, this proposed rule fulfills the congressional mandate in TFTEA that CBP issue regulations governing the broker identification of importers.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations 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 per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This proposed rule will affect all customs brokers and IORs. The vast majority of customs brokers and importers are small businesses,

so this rule would have an impact on a substantial number of small entities. However, these impacts will not be significant. As stated above, as a result of this rule, brokers would need to collect identity-verifying information from both their existing importer clients and prospective importer clients within three years of the effective date of this proposed rule being finalized.³⁴ CBP estimates that the monetized value of time spent by importers to provide this data costs \$29.76 per POA. Additionally about five percent of importers not currently working with brokers requesting credit reports with scores might incur a \$40 fee, as noted above. CBP does not consider the time cost of \$29.76 and possibly a \$40 fee to be a significant cost to importers. It is possible that some importers may have more than one IOR number and therefore more than one POA where their identity would need to be verified, but that is less likely for small businesses. We note that even in an extreme case where a small business has 10 POAs for each of its IOR numbers, the time cost would be only \$297.60 (or even less if there are efficiencies in submitting similar information multiple times) with a possible \$40 credit report fee, which CBP also does not consider a significant impact.

Brokers would incur costs associated with verifying their importer client's identity whether they are prospective or existing clients. Above, as seen in Tables 2 and 3 we estimate that in the most costly year (2021), 2,093 permitted brokers bear total costs of \$12,449,635 for an average of \$5,948.22 per permitted broker. However, it is unlikely that the burden is spread evenly among brokers; those with more clients would need to verify more importer clients' identities, so their costs would be higher. To estimate the burden per broker and to assess whether the burden is significant, we will go through the following steps:

- Estimate the number of small brokers in various revenue categories.
- Per each category of brokers, estimate the additional number of POAs for which brokers will need to verify the importer client's identity.
- Estimate the cost per permitted broker of these verifications.

³⁴ For any existing client with a POA issued by a partnership, the broker also must verify the client's identity. Existing clients with partnership POAs will need to have their identities verified within two years from the effective date of this proposed rule being finalized and reverified every year thereafter. However, according to subject matter experts from CBP's Broker Management Branch, partnership POAs represent less than 1% of active POAs, though we lack data on the precise number of partnership POAs. To the extent partnership POAs are affected, it will increase broker costs by a small amount.

- Estimate the ratio of costs to annual revenue to assess whether the costs are significant.

To estimate the number of small brokers in different size categories, we use data from the U.S. Census Bureau. The U.S. Census Bureau categorizes customs brokers under the North American Industry Classification System (NAICS) code 488510, which also includes other businesses such as freight forwarders.³⁵ The Small Business Administration (SBA) considers a business entity classified under the 488510 NAICS code as small if it has less than \$15 million in annual receipts.³⁶ As shown in Table 8, 95 percent of businesses classified under this NAICS code are small businesses. For the purposes of this analysis, we will assume that all brokers are small businesses. To the extent some are not, the impact on small businesses will be smaller than estimated in this analysis. We estimate the number of firms in each revenue category by allocating the 2,093 permitted brokers proportionally to the number of total firms in the NAICS code.

TABLE 8—BUSINESS ENTITY DATA FOR NAICS CODE 488510

Annual revenue (\$) (midpoint)	Number of firms	Small	Estimated number of permitted brokers
<100,000 (50,000)	2,195	Yes	323
100,000–499,999 (300,000)	4,935	Yes	727
500,000–999,999 (750,000)	2,330	Yes	343
1,000,000–2,499,999 (1,750,000)	2,429	Yes	358
2,500,000–4,999,999 (3,750,000)	1,208	Yes	178
5,000,000–7,499,999 (6,250,000)	540	Yes	80
7,500,000–9,999,999 (8,750,000)	284	Yes	42
10,000,000–14,999,999 (12,500,000)	282	Yes	42
>15,000,000	815	No	0
Total	15,018	* (14,203/15,018)	2,093

Source: U.S. Census Bureau. 2012 SUSB Annual Data Tables by Establishment Industry. <https://www.census.gov/data/tables/2012/econ/susb/2012-susb-annual.html>.

* 95 percent are small.

Now that we have estimated the number of permitted brokers in each size category, we estimate how much of each type of IOR verification will be done by brokers in each category. We use total annual revenue as a proxy for the number of clients (IORs) each broker has.

³⁵ Source: U.S. Census. <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=488510&search=2012%20NAICS%20Search>. Accessed August 8, 2018.

³⁶ Source: U.S. Small Business Administration. Table of Small Business Size Standards Matched to North American Industry Classification System Codes. https://www.sba.gov/sites/default/files/files/Size_Standards_Table_2017.pdf. Accessed March 21, 2019.

While cases may exist where a broker generates a lot of revenue from just a few IORs or conversely that a broker generates little revenue from many IORs, on average we expect that the number of clients is well correlated with the broker's revenue. To estimate total revenue for each size category, we use the category's revenue midpoint. We determine the different types of client identities that need to be verified as existing importer clients; clients that need their POAs, information and records to be annually reverified and updated; and prospective clients, and we allocate these to the different types of POAs (existing POAs requiring identity-verification, POAs needing annual verification, and new POAs needing identity-verification) proportionally to the total revenue for each size category. Table 9 shows the number of brokers in each revenue category, their total revenue, and the number of each type of POA for which the brokers would need to verify the importer client's identity under this proposed rule. Note that we present estimates for 2021, which is the most costly year for brokers.

TABLE 9—POAs BY SIZE CATEGORY IN 2021

Annual revenue (\$) (midpoint)	Estimated number of brokers	Total revenue (000 ')	Exist-ing POAs	POAs requiring annual reverification	New POAs requiring verification
<100,000 (50,000)...	323	\$16,150	593	1,186	25
100,000–499,999 (300,000)	727	218,100	8,007	16,013	343
500,000–999,999 (750,000)	343	257,250	9,444	18,888	405
1,000,000–2,499,999 (1,750,000)	358	626,500	22,999	45,999	986
2,500,000–4,999,999 (3,750,000)	178	667,500	24,504	49,009	1,050
5,000,000–7,499,999 (6,250,000)	80	500,000	18,355	36,711	787
7,500,000–9,999,999 (8,750,000)	42	367,500	13,491	26,982	578
10,000,000–14,999,999 (12,500,000)	42	525,000	19,273	38,546	826
Total	2,093	3,178,000	116,667	233,334	5,000

We next estimate the costs per broker. In the analysis above, we estimated that the cost per verification for existing clients' identities for each POA and the initial verification of the prospective client's identity for new POAs was each \$59.52. Additionally, as shown in the analysis above, the cost for each reverification of the client's identity

was \$22.32. We multiply these costs to the number of POAs from Table 9 to reach the total costs for each broker category, shown in Table 10 below.

TABLE 10—BROKER COSTS BY SIZE CATEGORY IN 2021

Annual revenue (\$) (midpoint)	Cost for existing POAs	Cost for annual revalidation	Cost for new POAs requiring verification	Total cost
<100,000 (50,000)	\$35,288	\$26,466	\$1,512	\$63,267
100,000–499,999 (300,000)....	476,555	357,416	20,424	854,394
500,000–999,999 (750,000)....	562,099	421,574	24,090	1,007,762
1,000,000–2,499,999 (1,750,000).....	1,368,920	1,026,690	58,668	2,454,278
2,500,000–4,999,999 (3,750,000).....	1,458,506	1,093,880	62,507	2,614,893
5,000,000–7,499,999 (6,250,000).....	1,092,514	819,386	46,822	1,958,722
7,500,000–9,999,999 (8,750,000).....	802,998	602,248	34,414	1,439,660
10,000,000–14,999,999 (12,500,000).....	1,147,140	860,355	49,163	2,056,658
Total	6,944,020	5,208,015	297,600	12,449,635

We next calculate the cost per broker and assess whether it is a significant impact. To calculate the cost per broker for each size category, we simply divide the total cost for the category from Table 10 by the number of brokers in it. Then we compare the cost per broker by the revenue per broker (again using the midpoint for each range) to assess whether the costs significant. The results are presented in Table 11. As shown, the costs are about 0.4 percent of revenue. CBP does not consider this to be significant.

TABLE 11—COSTS PER BROKER IN 2021

Annual revenue (\$) (midpoint)	Estimated number of brokers	Total cost	Cost per broker	Cost to revenue ratio
<100,000 (50,000)	323	\$63,267	\$195.87	0.004
100,000–499,999 (300,000)....	727	854,394	1,175.23	0.004
500,000–999,999 (750,000)....	343	1,007,762	2,938.08	0.004
1,000,000–2,499,999 (1,750,000).....	358	2,454,278	6,855.53	0.004
2,500,000–4,999,999 (3,750,000).....	178	2,614,893	14,690.41	0.004
5,000,000–7,499,999 (6,250,000).....	80	1,958,722	24,484.02	0.004

Annual revenue (\$) (midpoint)	Estimated number of brokers	Total cost	Cost per broker	Cost to revenue ratio
7,500,000–9,999,999 (8,750,000).....	42	1,439,660	34,277.63	0.004
10,000,000–14,999,999 (12,500,000).....	42	2,056,658	48,968.04	0.004
Total	2,093	12,449,635	5,948.22

In summary, this proposed rule would affect a substantial number of importers and brokers. However, the costs do not rise to the level of economic significance. Therefore, CBP certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. CBP welcomes comments on this conclusion and any additional data.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct, 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 OMB. The collections of information and recordkeeping requirements related to this NPRM will be submitted for approval by OMB under a revision and extension of collection number 1651–0034 (CBP Regulations Pertaining to Customs Brokers). The likely respondents are importers and customs brokers.

Customs Brokers Verification Burden

Number of Respondents: 121,667.

Number of Responses per Respondent: 1.

Total Number of Responses: 121,667.

Time per Response: 2 hours.

Total Annual Burden Hours: 243,334.

The estimated total annual burden associated with the collection of information in this NPRM is 243,334 hours.

VII. Signing Authority

This document is being issued in accordance with 19 CFR 0.1(b)(1), which provides that the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority to prescribe and approve regulations relating to customs revenue functions on behalf of the Secretary of the Treasury for when the subject matter is not listed as provided by Treasury Department Order No. 100–16. Accordingly, this proposed rule to amend such regulations may be signed by the Secretary of Homeland Security (or his or her delegate).

List of Subjects in 19 CFR Part 111

Administrative practice and procedure, Brokers, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth above, CBP proposes to amend 19 CFR part 111 as set forth below:

PART 111—CUSTOMS BROKERS

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

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

* * * * *

■ 2. Add § 111.43 to read as follows:

§ 111.43 Importer identity verification.

(a) *Scope.* This section sets forth the minimum requirements for importer and nonresident importer clients to provide information and for customs brokers to collect, verify, and maintain information about the identities of their resident and nonresident importer clients. The customs broker must collect certain information from the importer client when the importer client provides the customs broker with a power of attorney and the customs broker must verify all of the information collected before the broker may transact customs business on behalf of that client.

(b) *Definitions.* (1) *Importer and nonresident importer.* For purposes of this section, “importer” is defined as one of the parties qualifying as an importer of record under 19 U.S.C. 1484(a)(2)(B). “Nonresident importer” is defined as an importer of record that is not a citizen of the United States or an alien lawfully admitted for permanent residence in the United States; or a partnership, corporation, or other commercial entity that is not organized under the laws of a jurisdiction within the customs territory of the United States (as such term is defined in General Note 2 of the Harmonized Tariff Schedule of the United States) or in the Virgin Islands of the United States.

(2) *Client.* For purposes of this section, the “client” is defined as the importer or nonresident importer of record who is seeking or employing the services of a customs broker to transact customs business on behalf of the importer or nonresident importer of record.

(3) *Grantor.* For purposes of this section, the “grantor” is defined as the individual executing the power of attorney on behalf of the client.

(c) *Minimum information that the customs broker must collect from the client.* The customs broker must collect, at minimum, the follow-

ing information, if applicable, from the client to allow the customs broker to verify the client's identity when the customs broker, as required by § 141.46 of this chapter, obtains a power of attorney:

- (1) The client's name;
- (2) For a client who is an individual, the client's date of birth;
- (3) For a client that is a partnership, corporation, or association, the grantor's date of birth;
- (4) For a client that is a partnership, corporation, or association, the client's trade or fictitious names;
- (5) The address of the client's physical location (for a client that is a partnership, corporation, or association, the physical location would be the client's headquarters) and telephone number;
- (6) The client's email address and business website;
- (7) A copy of the grantor's unexpired government-issued photo identification;
- (8) The client's Internal Revenue Service (IRS) number, employer identification number (EIN), or importer of record (IOR) number;
- (9) The client's publicly available business identification number;
- (10) A recent credit report;
- (11) A copy of the client's business registration and license with state authorities; and
- (12) The grantor's authorization to execute power of attorney on behalf of client.

(d) *Verification of information by customs broker.* Before transacting customs business on behalf of a client, the customs broker must authenticate the client's identity by verifying all the information collected from the client pursuant to paragraph (c) of this section. The customs broker must verify all the information collected from the client or the inapplicability of the information to that client. The customs broker also must check to determine whether the client is named as a sanctioned or restricted person or entity by the U.S. Government, or if the client is suspended or debarred from doing business with the U.S. Government. The means of verification are at the customs broker's discretion; however, the broker must use as many of the recommended verification means as necessary to be reasonably certain as to the client's identity. These means include:

- (1) A check of the appropriate websites to determine whether the client is named as a sanctioned or restricted person or entity by the U.S. Government, or if the client is suspended or debarred from doing business with the U.S. Government;
- (2) An in-person review of the grantor's government-issued photo identification;
- (3) An in-person client meeting;

(4) An in-person visit of the client's place of business;

(5) A review of the client's Articles of Incorporation;

(6) A query of publicly available information, business information and credit reporting entities, Federal, state, and local databases or websites and any other relevant trade or business sources.

(e) *Establishment of policies, procedures and internal controls.* All customs brokers must implement policies, procedures, and internal controls to identify and verify a client's identity before transacting customs business on behalf of that client. The policies, procedures, and internal controls must also fulfill the recordkeeping requirements in paragraph (f) of this section, particularly the requirement for updating information and records, and reverifying the client's identity.

(f) *Recordkeeping.* All customs brokers must make, retain, and update records containing the required information used to identify and to verify the client's identity.

(1) *Identification records.* At a minimum, customs brokers must retain any information collected pursuant to paragraph (c) of this section, including any identifying information presented to the customs broker, as well as any certifications the client has made.

(2) *Verification records.* At a minimum, customs brokers must retain descriptions of any documents relied upon, any non-documentary methods relied upon, any results of measures undertaken, and any resolution of discrepancies used to verify the client's identity as required by paragraph (d) of this section. The verification records must indicate which information collected pursuant to paragraph (c) was verified, who performed the verification, and the date the verification was performed.

(3) *Compliance with other recordkeeping provisions.* All customs brokers must comply with the recordkeeping provisions of this part, part 141 of this chapter, and part 163 of this chapter. The identification and verification records must be retained and made available upon request for CBP examination in accordance with parts 111, 141, and 163 of this chapter. The required retention period for the identification and verification records is the same period as is required for a power of attorney in §§ 111.23 and 163.4 of this chapter.

(4) *Updating information.* All customs brokers must implement procedures to update the records required in this section and to reverify the information collected from the client pursuant to the procedures set forth in paragraph (d) annually to ensure that the information is accurate, timely, and complete.

(g) *Penalties for noncompliance.* Failure to collect, verify, secure, retain, update, or make available for inspection the information re-

quired in this section is grounds for a monetary penalty to be assessed against the customs broker not to exceed \$10,000 per client in accordance with 19 U.S.C. 1641(d)(2)(A), or revocation or suspension of the customs broker's license or permit in accordance with 19 U.S.C. 1641(d)(2)(B).

(h) *Timing of verifications.* (1) *Prospective clients.* For all prospective clients, customs brokers must verify the information required in this section before the customs broker may begin to transact customs business on behalf of that client. The customs broker must comply with all the requirements in this section for that client including updating all records and information.

(2) *Existing clients.* For existing clients with a power of attorney issued by a partnership, customs brokers must, within two years of the final rule being effective, update and verify the information required in this section. For all other existing clients, customs brokers must, within three years of the final rule being effective, update and verify the information required in this section. By these dates, the customs broker must have complied with all the requirements in this section, including the updating of all records and information, and must continue to comply.

(3) *Reverification.* Reverification must occur annually after the initial verification required by this section.

Dated: August 6, 2019.

KEVIN K. McALEENAN,
Acting Secretary.

[Published in the Federal Register, August 14, 2019 (84 FR 40302)]



**TEST CONCERNING ENTRY OF SECTION 321
LOW-VALUED SHIPMENTS THROUGH AUTOMATED
COMMERCIAL ENVIRONMENT (ACE)**

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

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) is conducting a test of new functionalities related to the electronic entry filing for low-valued shipments through the Automated Commercial Environment (ACE). The Section 321 *de minimis* administrative exemption admits free from duty and tax, shipments of merchandise (other than bona-fide gifts and certain personal and household goods) imported by one person on one day having an aggregate fair retail value in the country of shipment of not

more than \$800. During this test, an owner, or purchaser of a Section 321 low-valued shipment or, when appropriately designated, a customs broker appointed by an owner, purchaser, or consignee, will be able to file a new type of informal entry in ACE for Section 321 low-valued shipments. Section 321 low-valued shipments subject to Partner Government Agency (PGA) requirements will also be able to be entered using this new Section 321 informal entry type. This notice provides a description of the test, the requirements for filing the new informal entry type, and the regulations that will be waived for test participants. CBP invites public comment concerning the test program. The test will be known as the ACE Entry Type 86 Test.

DATES: The test will commence no earlier than September 28, 2019 and will continue until concluded by an announcement published in the **Federal Register**. Comments will be accepted throughout the duration of the test.

ADDRESSES: Comments concerning this notice and any aspect of this test may be submitted at any time during the test via email to *OTENTRYSUMMARY@cbp.dhs.gov*. In the subject line of your email, please indicate, “Comment on the ACE Entry Type 86 Test.”

FOR FURTHER INFORMATION CONTACT: Randy Mitchell, Director, Commercial Operations, Revenue and Entry Division, Office of Trade, U.S. Customs and Border Protection, 202–325–6532, *Randy.Mitchell@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION: This document announces that U.S. Customs and Border Protection (CBP) is conducting a test to allow Section 321 low-valued shipments, including those shipments subject to Partner Government Agency (PGA) data requirements, to be entered by filing a new type of informal entry electronically in the Automated Commercial Environment (ACE). This will allow CBP to address the growing volume of Section 321 low-valued shipments resulting from the global shift in trade to an e-commerce platform, test the new functionality in ACE, facilitate cross-border e-commerce, and allow Section 321 low-valued shipments subject to PGA data requirements to utilize a Section 321 *de minimis* entry process for the first time.

I. Administrative Exemption for Section 321 Low-Valued Shipments

Section 321(a)(2)(C) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)(C)), as amended by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), Section 901, Public Law 114– 125, 130 Stat. 122 (19 U.S.C. 4301 note), authorizes CBP to provide an

administrative exemption to admit free from duty and tax, shipments of merchandise (other than bona-fide gifts and certain personal and household goods) imported by one person on one day having an aggregate fair retail value in the country of shipment of not more than \$800. The regulations issued under the authority of section 321(a)(2)(C) are set forth in sections 10.151 and 10.153 of title 19 of the Code of Federal Regulations (19 CFR 10.151 and 10.153).

Section 10.151 of the regulations implements the administrative exemption provided for in 19 U.S.C. 1321. A shipment of merchandise valued at \$800 or less, which qualifies for informal entry under 19 U.S.C. 1498 and meets the requirements in 19 U.S.C. 1321(a)(2), including 19 CFR 10.151, is referred to in this document as a “Section 321 low-valued shipment.” Unless a CBP official has reason to believe that a Section 321 low-valued shipment fails to comply with any pertinent law or regulation, section 10.153 sets forth the guidance to be applied by a CBP officer in determining whether an article or parcel shall be exempted from duty and tax under section 10.151 and qualify as a Section 321 low-valued shipment. Accordingly, consolidated shipments addressed to one consignee shall be treated as one importation; alcoholic beverages and cigars (including cheroots and cigarillos) and cigarettes containing tobacco, cigarette tubes, cigarette papers, smoking tobacco (including water pipe tobacco, pipe tobacco, and roll-your-own tobacco), snuff, or chewing tobacco are not exempt; any merchandise subject to antidumping and countervailing duties is not exempt; any merchandise of a class or kind provided for in any absolute or tariff-rate quota, whether the quota is open or closed, is not exempt; and, there is no exemption from any tax imposed under the Internal Revenue Code that is collected by other agencies on imported goods.

“Release from manifest” Process for Section 321 Low-Valued Shipments

Pursuant to 19 CFR 10.151, merchandise subject to the Section 321 administrative exemption shall be entered under informal entry procedures unless formal entry is deemed necessary. The relevant informal entry procedures for Section 321 low-valued shipments are set forth in 19 CFR 128.24 and 19 CFR part 143, subpart C. A Section 321 low-valued shipment may be entered, using reasonable care, by the owner, purchaser, or consignee of the shipment, or, when appropriately designated by one of these persons, a customs broker licensed under 19 U.S.C. 1641. *See* 19 CFR 143.26(b).

Section 321 low-valued shipments may be entered by presenting the bill of lading or a manifest listing each bill of lading. *See* 19 CFR 143.23(j)(3). This type of informal entry is termed the “release from

manifest” process. Generally, such shipments are released from CBP custody based on the information provided on the manifest or bill of lading. Such information may be provided by express consignment operators, carriers, or brokers. The following information must be provided as part of the “release from manifest” process: The country of origin of the merchandise; shipper name, address and country; ultimate consignee name and address; specific description of the merchandise; quantity; shipping weight; and value. *See* 19 CFR 128.21(a) and 19 CFR 143.23(k). No Harmonized Tariff Schedule of the United States (HTSUS) subheading or entry summary is required on an advance manifest for Section 321 low-valued shipments. *See* 19 CFR 143.23(k) and 19 CFR 128.24(e).

A Section 321 low-valued shipment is not exempt from PGA requirements. Many agencies do not have *de minimis* exemptions for their PGA reporting requirements, and require strict accountability of imported goods for national security, health and safety reasons and to identify specific shipments of potential violative products for reporting or enforcement targeting purposes. Low-valued shipments may also require the payment of applicable PGA duties, fees or applicable excise taxes collected by other agencies. These shipments that have PGA data reporting requirements, or require the payment of any duties, fees, or taxes may not benefit from the use of a less complex Section 321 *de minimis* entry process and must currently be entered using the appropriate informal or formal entry process to ensure that the PGA requirements are met. All shipments subject to PGA requirements are currently ineligible for entry under the “release from manifest” process.

II. Establishment of an Electronic Entry Process for Section 321 Low-Valued Shipments Through ACE

This document announces CBP’s plan to conduct a test to authorize a new Section 321 *de minimis* entry process for Section 321 low-valued shipments in ACE through the development of a new informal entry type “86.” This test will be called the ACE Entry Type 86 Test. The ACE Entry Type 86 Test creates a means for Section 321 low-valued shipments, including those subject to PGA data requirements, to benefit from the use of a Section 321 *de minimis* entry process for the first time. Prior to the development of entry type “86,” Section 321 low-valued shipments subject to PGA requirements were required to be entered using the more complex informal entry type “11” or formal entry. The ACE Entry Type 86 Test will provide a less complex entry and release process for Section 321 low-valued shipments, including

those subject to PGA data requirements, and will expedite the clearance of compliant Section 321 low-valued shipments into the United States through the use of ACE. Merchandise imported by mail is excluded from the ACE Entry Type 86 Test and may not be entered under the entry type “86.”

In developing the ACE Entry Type 86 Test, CBP has coordinated with the Commercial Customs Operations Advisory Committee (COAC), trade industry representatives, and PGAs, and has considered the public comments received from the “Administrative Exemption on Value Increased for Certain Articles” interim final rule (Administrative Exemption IFR). On August 26, 2016, CBP published the Administrative Exemption IFR in the **Federal Register** (81 FR 58831), which amended the CBP regulations to implement section 901 of TFTEA by raising the value of the Section 321 administrative exemption from \$200 to \$800, and solicited comments regarding the collection of data on behalf of PGAs for shipments valued at \$800 or less. CBP received eight public comments. A more detailed analysis of the comments received and CBP’s responses to the public comments will be addressed at a later date. In summary, of the eight public comments, seven addressed the collection of data for Section 321 low-valued shipments. Among these seven comments, five commenters encouraged the automated clearance of Section 321 low-valued shipments using ACE and the collection of PGA data using a Section 321 *de minimis* entry process.

Five of the commenters encouraged CBP to automate Section 321 clearance using ACE. These commenters pointed out that automating Section 321 clearance through ACE will increase CBP’s ability to provide risk-based targeting of inbound shipments, assure supply chain security, enforce trade laws, and protect intellectual property rights. Various ACE clearance processes were suggested by the commenters, including using the Automated Broker Interface (ABI) to allow the owner, purchaser, consignee, or designated customs broker to file the necessary information.

Most commenters also asserted that any ACE Section 321 clearance process should allow for the submission of PGA data. One commenter pointed out that unless Section 321 low-valued shipments subject to PGA requirements could be cleared under a Section 321 *de minimis* entry process, the *de minimis* exemption would be of little use to the greater public because a large percentage of these imported shipments are regulated by PGAs. Commenters also noted that the primary purpose of increasing the Section 321 administrative exemption was to benefit e-commerce micro and small businesses engaging in global trade and the vast majority of these businesses lack the capacity to comply with complex trade rules.

CBP believes that the development of the new entry type “86” effectively addresses the public comments; facilitates legitimate trade while also allowing CBP to enhance its targeting capabilities; ensures that PGAs can identify potential violative products for reporting or enforcement targeting purposes while allowing filers to utilize a less complex entry process; and decreases the challenges faced by CBP in targeting, locating and examining Section 321 low-valued shipments by collecting necessary data. Processing Section 321 low-valued shipments in ACE utilizes the “single window” system, thereby granting all government agencies involved with the importation of goods into the United States access to data concerning the shipments and gives the trade a single mechanism to enter data.

Authorization for the Test

The test described in this notice is authorized pursuant to 19 CFR 101.9(a), which grants the Commissioner of CBP the authority to impose requirements different from those specified in the CBP regulations for purposes of conducting a test program or procedure designed to evaluate the effectiveness of new technology or operational procedures regarding the processing of passengers, vessels, or merchandise.

The ACE Entry Type 86 Test will allow CBP to test ACE functionality, and to test the new operational procedures involved with the new entry type, including any challenges that may result and any coordination that is necessary with PGAs. Additionally, the test will allow CBP to determine if entry type “86” effectively addresses the threats and complexities resulting from the global shift in trade to an e-commerce platform, the vast increase in Section 321 low-valued shipments, and facilitates cross-border e-commerce.

The Process To File an Entry Type “86”

A Section 321 low-valued shipment may be entered by the owner, purchaser, or consignee of the shipment, or, when appropriately designated by one of these persons, a customs broker licensed under 19 U.S.C. 1641. *See* 19 CFR 143.26(b). For purposes of the ACE Entry Type 86 Test, CBP is deviating from this regulation and requiring that consignees intending to file an entry type “86” appoint a customs broker to act as the importer of record (IOR) for the shipment. Customs brokers must be designated to enter qualifying shipments through a valid power of attorney, and must comply with all other applicable broker statutory and regulatory requirements. *See* 19 CFR

141.46; *see e.g.*, 19 U.S.C. 1641; 19 U.S.C. 1484; 19 CFR part 111; 19 CFR part 141. The filing of entry type “86” is considered “customs business” under 19 U.S.C. 1641.¹

To participate in this test, an owner, purchaser, or customs broker appointed by an owner, purchaser, or consignee will file an informal entry type “86” in ACE through ABI. ABI allows participants to electronically file all required import data with CBP, and transfers that data into ACE. To participate in ABI, a filer must meet the requirements and procedures set forth in 19 CFR part 143, subpart A, and must meet the technical requirements set forth in the Customs and Trade Automated Interface Requirements (CATAIR).²

The test is open to all owners, purchasers, consignees, and designated customs brokers of Section 321 low-valued shipments, including those subject to PGA requirements, imported by all modes of cargo transportation. CBP encourages all eligible parties to participate in this test to test the functionality of the new entry type. Importers of Section 321 low-valued shipments that do not contain any PGA data requirements may continue to utilize the “release from manifest” process or may utilize the ACE Entry Type 86 Test.

When filing an entry type “86,” a bond and entry summary documentation are not required. Under entry type “86,” the importing party is exempt from payment of the harbor maintenance tax and merchandise processing fee for merchandise released as a Section 321 low-valued shipment. *See* 19 CFR 24.23(c)(1)(v) and 24.24(d)(3). However, any merchandise that is not exempt from the payment of any applicable PGA duties, fees, or taxes imposed under applicable statute or regulation by other agencies on imported goods does not qualify as a Section 321 low-valued shipment. An entry type “86” filing that is determined to owe any duties, fees, or taxes will be rejected by CBP and must be re-filed using the appropriate informal or formal entry process. Additionally, CBP may require formal entry for any merchandise if it is deemed necessary for import admissibility enforcement purposes, revenue protection, or the efficient conduct of customs business. *See* 19 CFR 143.22.

¹ Pursuant to 19 U.S.C. 1641, “customs business” is defined as those activities involving transactions with CBP concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by CBP on merchandise by reason of its importation, or the refund, rebate, or drawback of those duties, taxes, or other charges. “Customs business” also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with CBP in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to CBP.

² *See* General Notice of August 26, 2008 (73 FR 50337) for a complete discussion on the procedures for obtaining an ACE Portal Account.

An entry type “86” requires the owner, purchaser, or customs broker appointed by the owner, purchaser, or consignee to file the following data elements with CBP at any time prior to, or upon arrival, or up to 15 days after arrival of the cargo:

- (1) The bill of lading or the air waybill number;
- (2) Entry number;
- (3) Planned port of entry;
- (4) Shipper name, address, and country;
- (5) Consignee name and address;
- (6) Country of origin;
- (7) Quantity;
- (8) Fair retail value in the country of shipment;
- (9) 10-digit HTSUS number;
- (10) IOR number of the owner, purchaser, or broker when designated by a consignee (conditional).

The IOR number is a conditional ACE Entry Type 86 Test data element and is required when the shipment is subject to PGA data reporting requirements. The IOR number provided must be that of the shipment’s owner, purchaser, or broker when designated by a consignee.

Upon receipt of the data in an entry type “86” filing, CBP will determine whether the shipment is subject to PGA data reporting requirements. Any PGA data reporting requirements would be satisfied by the PGA Message Set and the filing of any supporting documentation via the Document Image System (DIS). The PGA Message Set enables the trade community to electronically submit all data required by the PGAs only once to CBP, eliminating the necessity for the submission and subsequent manual processing of paper documents, and makes the required data available to the relevant PGAs for import and transportation-related decision making. *See* the December 13, 2013 **Federal Register** notice (78 FR 75931) for a further discussion of the PGA Message Set and the October 15, 2015 **Federal Register** notice (80 FR 62082) for a further discussion of DIS.

A “CBP release” message indicates that CBP has determined that the Section 321 low-valued goods may be released from CBP custody. All merchandise released by CBP is released conditionally and remains subject to recall through the issuance of a Notice of Redelivery. Merchandise that is regulated by one or more PGAs may not proceed into commerce until CBP releases the merchandise and all PGAs that regulate the merchandise have issued a “may proceed” message.

The definitions of the ACE data elements, the technical requirements for submission, and information describing how filers receive transmissions are set forth in the CATAIR guidelines for ACE, which may be found at <https://www.cbp.gov/trade/ace/catair>.

III. Waiver of Regulation Under the Test

For purposes of this test, 19 CFR 10.151 will be waived for test participants only insofar as the informal entry procedures for “release from manifest” are inconsistent with the requirements in this notice. Additionally, 19 CFR 128.21(a), 128.24(e), 143.23(j) and (k), and 143.26(b) will be waived for test participants to the extent such procedures are inconsistent with the requirements of this notice.

IV. 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 new entry process.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct, 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 OMB. The collections of information for the ACE Entry Type 86 Test are included in an existing collection for CBP Form 3461 (OMB control number 1651–0024).

VI. Misconduct Under This Test

A test participant may be subject to civil and criminal penalties, administrative sanctions, or liquidated damages for any of the following:

- (1) Failure to follow the rules, requirements, terms, and conditions of this test;
- (2) Failure to exercise reasonable care in the execution of participant obligations; or
- (3) Failure to abide by applicable laws and regulations that have not been waived.

Dated: August 7, 2019.

BRENDA B. SMITH,
Executive Assistant Commissioner,
Office of Trade.

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING; SOFTWARE PRODUCTS

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of CIS Secure Computing, Inc.’s software products for use on mobile devices and on servers and other similar network devices. Based upon the facts presented, CBP has concluded that the software products are substantially transformed in the United States for purposes of U.S. Government procurement.

DATES: The final determination was issued on August 7, 2019. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination no later than September 13, 2019.

FOR FURTHER INFORMATION CONTACT: James Kim, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade (202) 325-0158.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on August 7, 2019, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of CIS Secure Computing, Inc.’s software products, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H301776, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18). In the final determination, CBP concluded that CIS Secure Computing, Inc.’s software products are substantially transformed in the United States for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: August 7, 2019.

Alice A. Kipel,
Executive Director,
Regulations and Rulings, Office of Trade.

HQ H301776

August 7, 2019

OT:RR:CTF:VS H301776 JK

CATEGORY: Origin

JOHN TURNER, CTO
CIS SECURE COMPUTING, INC.
21050 ASHBURN CROSSING DRIVE, SUITE 145
ASHBURN, VA 20147

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, CBP Regulations; Substantial Transformation

DEAR MR. TURNER:

This is in response to your letter, dated September 19, 2018, requesting a final determination on behalf of CIS Secure Computing, Inc. (“CIS Secure Computing” or “Company”), pursuant to subpart B of Part 177 of the U.S. Customs and Border Protection (CBP) Regulations (19 C.F.R. Part 177). As a U.S. importer, CIS Secure Computing is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

CIS Secure Computing requests a final determination on two software products that it intends to produce for government procurement purposes: software for use on mobile devices (“Mobile Device Software”), and software for use on servers and other similar network devices (“Server Software”). The Mobile Device Software includes a customized version of the Android operating system and mobile configuration management software, which provide advanced security features and functions to a mobile device. The Server Software includes configuration management software for remotely controlling certain functions and operations of a mobile device configured with the Mobile Device Software.

Both software products are produced in a four-step process that involves: (1) writing original source code, or modifying open source software code in the United States; (2) writing or modifying source code in Canada; (3) compiling the source code into executable object code in the United States; and (4) delivering the finished software to the purchaser. The source code will be written by the Company’s employees at its offices located in Ashburn, Virginia and in Canada.¹

In a submission dated May 21, 2019, CIS Secure Computing provided additional information on the processes involved in writing source code and compiling it into executable object code in steps (1) through (3).

Writing the source code for the Mobile Device Software will involve the following steps:

¹ In your original submission dated September 18, 2018, you stated that the writing of source code in Canada was performed by a contract Canadian software development company. In your submission dated May 21, 2019, you stated that CIS Secure Computing had completed acquisition of this contract Canadian software development company, and that any software writing, software compilation, or other operations that were originally described as performed by the Canadian software development company are now performed by employees of CIS Secure Computing.

1. The Company's software developers in Ashburn, Virginia will download certain open source software code for the Android operating system, also known as Operating System code ("OS code"). The Company will modify the OS code and write original source code in Ashburn, Virginia. Modifying the OS code includes deleting or modifying one or more portions of the original source code to produce modified OS code.

2. The Company's software developers in Canada will access the modified OS code and the original source code stored in a collaborative software development environment and may further modify the OS code and write original source code.

3. In performing steps 1 and 2, software programmers write computer code using tools such as Android Studio, Eclipse and Text Editors. The software programmers may also write the computer code in C++, C, Java, Kotlin, Python and Perl programming languages. User interface designers design and write computer code for a graphical layout using tools such as Android Studio and Eclipse. Software developers modify Android Open Source Code Project (AOSP) build scripts using tools such as GNU Make and Blueprint.

4. Once the modified OS code and the original source code are completed, the Company will download all of the modified OS code and the original source code to computers located at its offices in Ashburn, Virginia. Completed code is checked into the Company's software repository for storage. The result of the combination will be the source code for the Mobile Device Software; however, it will not be executable software code.

Writing the source code for the Server Software will involve the following steps:

1. The Company's software developers in Ashburn, Virginia will write original source code. The original source code will be stored in a collaborative software development environment.

2. The Company's software developers in Canada will also write original source code. The original source code written by the Company's software developers in Canada will also be stored in the same collaborative software development environment.

3. In performing steps 1 and 2, software programmers write computer code using tools such as IntelliJ, Eclipse and Text Editors. The software programmers may also write the computer code in Scala, Java and JavaScript languages. User interface designers design and write computer code for a graphical layout using Angular JS and related tools such as Node, NPM, Bower and Grunt.

4. When the source code is complete, the Company will download all of the original source code to one or more computers in Ashburn, Virginia. Completed code is checked into the Company's software repository for storage. The downloaded original source code will comprise the source code for the Server Software; however, it will not be executable software code.

CIS Secure Computing will then perform a software build on computers located in its offices in Ashburn, Virginia. During this step, the source code for the Mobile Device Software and the Server Software will each be compiled into executable object code.

Compiling the source code into executable object code for the Mobile Device Software involves the following steps:

1. The Company's software developers in Ashburn, Virginia sign into a Jenkins build server and schedule a build action to perform the compilation process. The Jenkins build server also performs a nightly build action.

2. The Jenkins build server retrieves the latest version of the source code from the Company's software repository and, if needed, from a source code repository for AOSP.

3. The build server performs a compilation process using AOSP compilation tools such as gcc, Jack, Proguard and Python to compile the source code into object code for each relevant platform on Android ARM 32-bit CPU and ARM 64-bit CPU.

4. The Company's software developers perform work to address any incompatibilities or errors that emerge during compilation. If needed, they verify or rectify the source code, and may re-perform steps 1 through 3.

Compiling the source code into executable object code for the Server Software involves the following steps:

1. The Company's software developers in Ashburn, Virginia sign into the Jenkins build server and schedule a build action to perform the compilation process. The Jenkins build server also performs a nightly build action.

2. The Jenkins build server retrieves the latest version of the source code from the Company's software repository.

3. The build server performs a compilation process using a Scala build tool or Java compiler for the Linux platform to compile the source code into object code.

4. The build server transcodes and minifies² Javascript using a Grunt compiler.

5. The Company's software developers perform work to address any incompatibilities or errors that emerge during compilation. If needed, they verify or rectify the source code, and may re-perform steps 1 through 4.

As a final step, CIS Secure Computing will deliver the finished software to the purchaser. For the Mobile Device Software, the Company will load the object code onto mobile devices at its offices in Ashburn, Virginia. Then the Company will provide the mobile devices with the object code to the purchaser.

For the Server Software, CIS Secure Computing will deliver the object code to the purchaser in one of the following ways, depending on the purchaser's requirements: (1) the Company will load the object code onto a server device at its offices in Ashburn, Virginia and may provide the server device to a purchaser; (2) the Company will transmit the object code electronically to a purchaser server; and/or (3) the Company will load the object code to a storage medium, such as a CD or a disk drive, and may deliver the CD or disk drive containing the object code to the purchaser.

ISSUE:

Whether the Mobile Device Software and Server Software are substantially transformed in the United States for government procurement purposes.

² Minification refers to the process of removing unnecessary or redundant data without affecting how the resource is processed by the browser -e.g., code comments and formatting, removing unused code, using shorter variable and function names, and so on. See <https://developers.google.com/speed/docs/insights/MinifyResources> (last accessed August 6, 2019).

LAW AND ANALYSIS:

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 C.F.R. § 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*) (TAA).

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with Federal Acquisition Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government’s purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 C.F.R. § 25.403(c)(1). The Federal Acquisition Regulations define “U.S.-made end product” as:

... an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

The issue in this case is whether the source code written for the Mobile Device Software and Server Software is substantially transformed in the United States when the Company performs a “software build” in the United States, *i.e.*, compiles the source code written in Canada (along with source code written in the United States) into executable object code. At the outset, we note that “source code” and “object code” differ in several important ways. Source code is a “computer program written in a high level human readable language.” *See, e.g.*, Daniel S. Lin, Matthew Sag, and Ronald S. Laurie, *Source Code versus Object Code: Patent Implications for the Open Source Community*, 18 Santa Clara High Tech. L.J. 235, 238 (2001). While it is easier for humans to read and write programs in “high level human readable languages,” computers cannot execute these programs. *See Note, Copyright Protection of Computer Program Object Code*, 96 Harv. L. Rev. 1723, 1724 (1983). Computers can execute only “object code,” which is a program consisting of clusters of “0” and “1” symbols. *Id.* Programmers create object code from source code by feeding it into a program known as a “compiler.” *Id.* In this case, the writing of source code in Canada (and the United States) involves the creation of computer instructions in a high level human readable language, whereas the software build performed in the United States involves the compilation of those instructions into a format that computers can execute.

CBP has consistently held that conducting a software build—compiling source code into object code—results in substantial transformation. For example, in HQ H268858, dated Feb. 12, 2016, four software products were produced using the same three-step process: (1) writing the source code in Malaysia; (2) compiling the source code into usable object code in the United States; and (3) installing the finished software on U.S.-origin discs in the United States. CBP held that all four software products were substantially transformed in the United States, finding that the software build conducted in the United States was sufficient to create a new and different article with a new name, character, and use. *See also* HQ H243606, dated Dec. 4, 2013 (source code programmed in China and then compiled into object code in the United States was substantial transformation).

Consistent with the rulings cited above, we find that the Mobile Device Software and Server Software are substantially transformed in the United States as a result of the software build: the name of the product changes from source code to object code, the character changes from computer code to finished software, and the use changes from instructions to an executable program.

HOLDING:

Based on the information provided, the Mobile Device Software and Server Software are substantially transformed in the United States for U.S. government procurement purposes.

Notice of this final determination will be given in the **Federal Register**, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

ALICE A. KIPPEL,

Executive Director,

Regulations and Rulings, Office of Trade.

[Published in the Federal Register, August 14, 2019 (84 FR 40427)]

**MODIFICATION OF THE NATIONAL CUSTOMS
AUTOMATION PROGRAM TEST REGARDING
POST-SUMMARY CORRECTIONS FOR EXTENSIONS OF
LIQUIDATION**

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) modification to the National Customs Automation Program (NCAP) test pertaining to the processing of post-summary corrections (PSCs). The modification in this notice expands the time period in which a PSC must be filed by allowing a PSC to be transmitted up to 15 days prior to the scheduled date of liquidation when liquidation has been extended. Except to the extent expressly announced or modified by this document, all aspects, rules, terms and conditions announced in previous notices regarding the PSC test remain in effect.

DATES: The modifications announced in this test will become operational on August 14, 2019.

ADDRESSES: Comments concerning this notice and any aspect of this test may be submitted at any time during the test via email to Randy Mitchell, Director, Commercial Operations, Revenue and Entry Division, Trade Policy and Programs, Office of Trade, via email at *OTENTRYSUMMARY@cbp.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: For policy-related questions, contact Randy Mitchell, Director, Commercial Operations, Revenue and Entry Division, Trade Policy and Programs, Office of Trade, via email at *OTENTRYSUMMARY@cbp.dhs.gov*. For technical questions related to Automated Broker Interface transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to the Client Representative Branch at *CLIENTREPOUTREACH@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization in the North American Free Trade Agreement (NAFTA) Implementation Act (Customs Modernization Act) (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (19 U.S.C. 1411). Through NCAP, the 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) as the CBP-authorized electronic data interchange (EDI) system. 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 specific legacy ACS functions and add new functionality. Section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) provides for the testing of NCAP components. *See* T.D. 95-21, 60 FR 14211 (March 16, 1995).

On June 24, 2011, CBP published a notice in the **Federal Register** (76 FR 37136) that announced a plan to conduct an NCAP test concerning new ACE capabilities allowing importers to file a post-summary correction (PSC) for certain entry summaries using the Automated Broker Interface. Through a series of subsequent **Federal Register** notices, CBP has modified and clarified various aspects of the PSC test. Originally, a PSC had to be transmitted within 270 days after the date of entry, but could not be filed within 20 days prior to the scheduled date of liquidation. However, on November 1, 2017, CBP published a notice in the **Federal Register** (82 FR 50656) modifying the PSC test to require filing within 300 days after the date of entry or up to 15 days prior to the scheduled liquidation date, whichever date is earlier. In the event that liquidation was extended, there was no change to the PSC deadline.

II. Modification of the PSC Test

This document announces that CBP is extending the deadline for filing a PSC in cases where an importer requests and is granted an extension of liquidation pursuant to 19 CFR 159.12. With this modification, after an importer is granted an extension of liquidation, a PSC must be transmitted up to 15 days prior to the scheduled liquidation date. Accordingly, for test participants, a PSC must be transmitted within 300 days after the date of entry or up to 15 days prior to the scheduled liquidation date, whichever is earlier, except in situations involving an extension of liquidation, in which case a PSC must be transmitted up to 15 days prior to the scheduled liquidation date.

This change is being made to increase the amount of time a filer has to submit a PSC in situations involving extensions of liquidation. Except to the extent expressly announced or modified by this document, all aspects, rules, terms, requirements, obligations and conditions announced in previous notices regarding the PSC test remain in effect.

Dated: August 2, 2019.

BRENDA B. SMITH,
*Executive Assistant Commissioner,
Office of Trade.*

[Published in the Federal Register, August 14, 2019 (84 FR 40430)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Arrival and Departure Record (Forms I-94, I-94W) and Electronic System for Travel and Authorization (ESTA)

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

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

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection 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 of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than October 15, 2019) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0111 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: CBP_PRA@cbp.dhs.gov.

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protec-

tion, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

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

OMB Number: 1651-0111.

Form Number: CBP Forms I-94 and I-94W.

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

Type of Review: Extension (with no change).

Affected Public: Individuals.

Abstract: Forms I-94 (Arrival/ Departure Record) and I-94W (Nonimmigrant Visa Waiver Arrival/ Departure Record) are used

to document a traveler's admission into the United States. These forms are filled out by aliens and are used to collect information on citizenship, residency, passport, and contact information. The data elements collected on these forms enable the Department of Homeland Security (DHS) to perform its mission related to the screening of alien visitors for potential risks to national security and the determination of admissibility to the United States. The Electronic System for Travel Authorization (ESTA) applies to aliens seeking to travel to the United States under the Visa Waiver Program (VWP) and requires that VWP travelers provide information electronically to CBP before embarking on travel to the United States without a visa. Travelers who are entering the United States under the VWP in the air or sea environment, and who have a travel authorization obtained through ESTA, are not required to complete the paper Form I-94W. I-94 is provided for by 8 CFR 235.1(h), ESTA is provided for by 8 CFR 217.5.

Recent Changes

On November 27, 2017, the Secretary of State designated DPRK, as a State Sponsor of Terrorism, or SST. Countries determined by the Secretary of State "to have repeatedly provided support for acts of international terrorism" are considered to have been designated as "state sponsors of terrorism."

Section 217(a)(12)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. 1187(a)(12)(A)(i) bars from travel under the Visa Waiver Program (VWP) nationals of VWP program countries who have "been present, at any time on or after March 1, 2011," . . . "in a country that is designated by the Secretary of State" as a SST.

To meet the requirements and intent of the law and to keep ESTA and Form I-94W aligned, DHS is strengthening the security of the United States through enhancements to the ESTA application, and Form I-94W. Existing questions that request information from applicants/enrollees about countries to which they have traveled on or after March 1, 2011; countries of which they are citizens/nationals; and countries for which they hold passports are being revised to include, the DPRK.

Under the Emergency Clearance request process DHS has recently added DPRK to the following question to ESTA and Form I-94W (no change has been made to Form I-94): "Have you traveled to, or been present in Iran, Iraq, Syria, Sudan, Libya, Somalia, Yemen, or the Democratic People's Republic of Korea (North Korea) on or after March 1, 2011? If yes, provide the country, date(s) of travel, and reason for travel."

Form I-94 (Arrival and Departure Record):

Estimated Number of Respondents: 4,387,550.

Estimated Time per Response: 8 minutes.

Estimated Burden Hours: 583,544.

Estimated Annual Cost to Public: \$26,325,300.

I-94 website:

Estimated Number of Respondents: 3,858,782.

Estimated Time per Response: 4 minutes.

Estimated Annual Burden Hours: 254,679.

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

Estimated Number of Respondents: 941,291.

Estimated Time per Response: 16 minutes.

Estimated Annual Burden Hours: 251,325.

Estimated Annual Cost to the Public : \$5,647,746.

Electronic System for Travel Authorization (ESTA):

Estimated Number of Respondents: 23,010,000.

Estimated Time per Response: 23 minutes.

Estimated Total Annual Burden Hours: 8,812,830.

Estimated Annual Cost to the Public: \$265,020,000.

Dated: August 12, 2019.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, August 15, 2019 (84 FR 41727)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Electronic Visa Update System

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

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

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection 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 of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than October 15, 2019) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0139 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: CBP_PRA@cbp.dhs.gov.

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection tech-

niques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Electronic Visa Update System.

OMB Number: 1651–0139.

Form Number: N/A.

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

Type of Review: Extension (with no change).

Affected Public: Individuals.

Abstract: The Electronic Visa Update System (EVUS) allows for the collection of biographic and other information from nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category. Nonimmigrant aliens subject to this requirement must periodically enroll in EVUS and obtain a notification of compliance with EVUS prior to travel to the United States. The EVUS requirement is currently limited to nonimmigrant aliens holding unrestricted, maximum validity B–1 (business visitor), B–2 (visitor for pleasure), or combination B–1/B–2 visas contained in a passport issued by the People’s Republic of China.

EVUS provides for greater efficiencies in the screening of international travelers by allowing DHS to identify nonimmigrant aliens who may be inadmissible before they depart for the United States, thereby increasing security and reducing traveler delays upon arrival at U.S. ports of entry. EVUS aids DHS in facilitating legitimate travel while also enhancing public safety and national security.

Recent Changes

On November 27, 2017, the Secretary of State designated DPRK, as a State Sponsor of Terrorism, or SST. Countries determined by the Secretary of State “to have repeatedly provided support for acts of international terrorism” are considered to have been designated as “state sponsors of terrorism.”

To meet the requirements and intent of the law and in light of the designation of DPRK as a SST, DHS is strengthening the security of the United States through enhancements to the EVUS enrollment.

Under the Emergency Clearance request process DHS has recently added DPRK to the following question to EVUS “Have you traveled

to, or been present in Iran, Iraq, Syria, Sudan, Libya, Somalia, Yemen, or the Democratic People's Republic of Korea (North Korea) on or after March 1, 2011? If yes, provide the country, date(s) of travel, and reason for travel.”

Estimated Number of Respondents: 3,595,904.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 3,595,904.

Estimated Time per Response: 25 minutes.

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

Dated: August 12, 2019.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, August 15, 2019 (84 FR 41729)]

AGENCY INFORMATION COLLECTION ACTIVITIES:
Application for Identification Card

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.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection 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 of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than October 15, 2019) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0008 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov*.

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number (202) 325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application for Identification Card.

OMB Number: 1651-0008.

Form Number: CBP Form 3078.

Action: CBP proposes to extend the expiration date of this information collection with no change to the estimated burden hours or to CBP Form 3078.

Type of Review: Extension (without change).

Abstract: CBP Form 3078, *Application for Identification Card*, is filled out in order to obtain an Identification Card which is used to

gain access to CBP security areas. This form collects biographical information and is usually completed by licensed Cartmen or Lightermen whose duties require receiving, transporting, or otherwise handling imported merchandise which has not been released from CBP custody. This form is submitted to the local CBP office at the port of entry that the respondent will be requesting access to the Federal Inspection Section. Form 3078 is authorized by 19 U.S.C. 66, 1551, 1555, 1565, 1624, 1641; and 19 CFR 112.41, 112.42, 118, and 122.182. This form is accessible at: <https://www.cbp.gov/newsroom/publications/forms?title=3078&=Apply>.

Affected Public: Businesses.

Estimated Number of Respondents: 150,000.

Estimated Number of Total Annual Responses: 150,000.

Estimated Time per Response: 17 minutes.

Estimated Total Annual Burden Hours: 42,450.

Dated: August 12, 2019.

SETH RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, August 15, 2019 (84 FR 41728)]