

U.S. Customs and Border Protection



REQUEST FOR INFORMATION ON U.S. CUSTOMS AND BORDER PROTECTION PROCESSES, PROGRAMS, REGULATIONS, COLLECTIONS OF INFORMATION AND POLICIES PURSUANT TO 19 CFR PART I

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

ACTION: Request for information.

SUMMARY: U.S. Customs and Border Protection (CBP) is issuing this Request for Information (RFI) to receive input from the public on specific CBP processes, programs, regulations, collections of information, and policies for the agency to consider modifying, streamlining, expanding, or repealing in light of recent executive orders. This RFI is intended to ensure that CBP processes, programs, regulations, collections of information, and policies issued under CBP's regulations, authority contain necessary, properly tailored, and up-to-date requirements that effectively achieve CBP's mission in a manner that furthers the goals of advancing equity for all, including those in underserved communities; protecting public health and the environment; restoring science; and bolstering resilience from the effects of climate change, particularly for those disproportionately affected by climate change, and promoting and protecting our public health and the environment by advancing and prioritizing environmental justice.

DATES: Written comments are requested on or before June 21, 2022. Comments received after this date will be considered for future advisory, communicative, and outreach efforts to the extent practicable.

ADDRESSES: Please submit any comments, identified by Docket No. USCBP-2022-0017, by one of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments via Docket No. USCBP-2022-0017.

- *Mail:* Trade and Commercial Regulations Branch, 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 Request for Information. All comments received by mail will be posted without change to <https://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 <https://www.regulations.gov>. Due to the relevant COVID-19-related restrictions, CBP has temporarily suspended on-site public inspections of the public comments.

FOR FURTHER INFORMATION CONTACT: Marty Chavers, Deputy Executive Director, Office of Policy, U.S. Customs and Border Protection, (202) 325-1395, or CBP-PUBLIC-RFI-QUESTIONS@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to comment on this notice by submitting written data, views, or arguments using a method identified in the **ADDRESSES** section.

Instructions: All submissions must include the agency name and docket number for this notice. Comments that will provide the most assistance to U.S. Custom and Border Protection (CBP) will reference the specific portion of the Request for Information (RFI) that is being addressed, explain the reason(s) for any recommended changes to CBP processes, programs, regulations, collections of information, and policies, and include data, information, or authorities that support any recommended changes.

All comments received will be posted without change to <https://www.regulations.gov>. Commenters are encouraged to identify, by number, the specific question or questions to which they are responding.

Docket: For access to the docket to read comments, go to <https://www.regulations.gov>.

II. Background

On January 20, 2021, the President issued Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (E.O. 13985),¹ designed to pursue

¹ 86 FR 7009 (Jan. 25, 2021).

a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. E.O. 13985 defines “equity” as “the consistent and systemic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as: Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.” E.O. 13985 further defines “underserved communities” as “populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the . . . definition of ‘equity.’”

E.O. 13985 requires each agency to assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups with the goal of developing policies and programs that deliver resources and benefits equitably to all. This executive order requires agencies to consult with members of communities that have been historically underrepresented in the Federal Government and underserved by, or subject to discrimination in, Federal policies and programs.

Also on January 20, 2021, the President issued Executive Order 13990 “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis” (E.O. 13990).² This executive order requires agencies to review and take action to address the promulgation of Federal regulations and other actions in conflict with the objectives of improving public health and protecting the environment by, among other things, bolstering resilience to the effects of climate change. In taking these actions, agencies were directed to seek input from the public and stakeholders, including State, local, Tribal, and territorial officials, scientists, labor unions, environmental advocates, and environmental justice groups.

Subsequently, on January 27, 2021, the President issued Executive Order 14008 “Tackling the Climate Crisis at Home and Abroad” (E.O. 14008).³ This executive order directs agencies to move quickly to build resilience, at home and abroad, against effects of climate change

² 86 FR 7037 (Jan. 25, 2021).

³ 86 FR 7619 (Feb. 1, 2021).

and to prioritize action on climate change in policymaking. This executive order specifically directs the Secretary of Homeland Security to consider the implications of climate change to the Arctic, along our Nation's borders, and to National Critical Functions, including any relevant information from the Climate Risk Analysis, in developing strategy, planning and programming. Additionally, the executive order directs agencies that engage in extensive international work to develop strategies and plans for integrating climate considerations into their international work, as appropriate and consistent with applicable law. To facilitate these actions, agencies are required to engage with State, local, Tribal, and territorial governments; workers and communities; and leaders across all sectors of our economy.

These executive orders are consistent with the mandates found in other executive orders such as Executive Order 13563 (January 18, 2011), "Improving Regulation and Regulatory Review," which directs agencies to "identify the best, most innovative, and least burdensome tools for achieving regulatory ends."⁴ Executive Order 13563 is affirmed in the President's Memorandum of January 20, 2021, Modernizing Regulatory Review.⁵ Further, Executive Order 13707 (September 15, 2015), "Using Behavioral Insights to Better Serve the American People," directs agencies to design "programs and policies to reflect our best understanding of how people engage with, participate in, use, and respond to those policies and programs."⁶ Executive Order 13707 is affirmed in the President's Memorandum of January 27, 2021, Restoring Trust in Government through Scientific Integrity and Evidence-Based Policymaking.⁷

Pursuant to these executive orders and presidential memoranda, CBP is issuing this RFI to gather information on the extent to which the existing agency processes, programs, regulations, collections of information, and policies under the authority of title 19 of the CFR, chapter I: (1) Perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups; (2) do not bolster resilience to the effects of climate change; and (3) address the disproportionately high and adverse climate-related effects on disadvantaged communities. Among other things, CBP seeks concrete information about unnecessary or unjustified administrative burdens that may create systemic barriers to the importation of merchandise into the United States.

⁴ 76 FR 3821 (Jan. 21, 2011).

⁵ 86 FR 7223 (Jan. 26, 2021).

⁶ 80 FR 56365 (Sep. 18, 2015).

⁷ 86 FR 8845 (Feb. 10, 2021).

It is important to note that CBP continually evaluates its programs and policies, as well as its regulatory framework, for rules that are candidates for modification, streamlining, expansion, or repeal. CBP does so through legally mandated review requirements (e.g., Unified Agenda reviews, 5 U.S.C. 601, *et seq.*, and reviews under section 610 of the Regulatory Flexibility Act, 5 U.S.C. 610) and through other informal and long-established mechanisms (e.g., use of Federal Advisory Committees such as the Commercial Customs Operations Advisory Committee (COAC), feedback from CBP field personnel, input from internal working groups, and outreach to regulated entities and the public). This **Federal Register** notice supplements these existing, extensive CBP regulatory and program review efforts.

III. CBP's Operational Programs

CBP operates in 106 countries; serves at 328 ports of entry within the United States; safeguards roughly 7,000 miles of land border and 95,000 miles of shoreline; and patrols the associated air and maritime spaces. On a typical day in fiscal year (FY) 2021, CBP: Welcomed into the United States 121,516 incoming international air passengers and crew; 8,094 passengers arriving on ships/boats; 362,078 incoming land travelers; stopped more than 264 pests at U.S. ports of entry and quarantined 2,548 materials, including plant, meat, animal byproduct, and soil; and seized 4,732 pounds of drugs, approximately \$342,000 of illicit currency, and approximately \$9,000,000 worth of merchandise that was in violation of the Intellectual Property Rights laws.⁸ As part of its law enforcement function, on a typical day in FY 2021, CBP conducted 1,703 apprehensions between U.S. ports of entry; 25 arrests of wanted criminals at U.S. ports of entry; and 723 refusals of inadmissible persons at U.S. ports of entry.⁹ As part of its trade enforcement and revenue protection responsibilities, on a typical day in FY 2021, CBP collected approximately \$256 million in duties, taxes, and other fees, including approximately \$234 million in duties.¹⁰

CBP's mission is to protect the American people, safeguard our borders, and enhance the Nation's economic prosperity. As a part of CBP's law enforcement mission, and in order to protect the American people and safeguard our borders, it is CBP's policy to prohibit the consideration of race or ethnicity in law enforcement, investigation,

⁸ <https://www.cbp.gov/newsroom/stats/typical-day-fy2021> (describing CBP's typical activities on an average day from October 1, 2020 through September 30, 2021, including those conducted during the COVID-19 pandemic, as compiled and reported by CBP on January 3, 2022).

⁹ *Id.*

¹⁰ *Id.*

and screening activities, in all but the most exceptional circumstances.¹¹ To enhance the Nation's economic mission, CBP continuously works to develop legal and operational changes that embrace 21st Century processes and emerging technologies to better secure national and economic security, enhance data integrity, account for emerging actors and business practices, and better facilitate trade by reducing financial and administrative burdens and constraints in customs transactions.

CBP's core values are vigilance, service to country, and integrity. CBP's vision is to enhance the Nation's security through innovation, intelligence, collaboration and trust.¹² The agency carries out its trade mission under the authority of title 19 of the CFR, Chapter I¹³ through the Air and Marine Operations (AMO), United States Border Patrol (BP), Office of Field Operations (OFO), the Office of Trade (OT), multiple program offices, and ten regional offices located throughout the United States.¹⁴

Of CBP's four operational offices (AMO, BP, OFO, and OT), AMO applies advanced aeronautical and maritime capabilities and employs its unique skill sets to preserve America's security interests. With 1,800 Federal agents and mission support personnel, 240 aircraft and 300 marine vessels operating throughout the United States, Puerto Rico, and the U.S. Virgin Islands, AMO uses its sophisticated fleets to detect, sort, intercept, track and apprehend criminals in diverse environments at and beyond U.S. borders. AMO program offices include Operations, Mission Support, National Air Security Operations, and Training and Safety Standards.

BP is the primary Federal law enforcement organization responsible for preventing terrorists and their weapons from entering the United States between official CBP ports of entry. BP is also responsible for preventing the illicit trafficking of people and contraband between the official ports of entry. BP, which has a work force of more than 20,000 agents and 2,000 mission support personnel, is specifically responsible for patrolling the 6,000 miles of Mexican and Canadian international land borders and 2,000 miles of coastal waters surrounding the Florida Peninsula and the island of Puerto Rico. Agents work around the clock on assignments, in all types of terrain

¹¹ <https://www.cbp.gov/about/eo-diversity/policies/nondiscrimination-law-enforcement-activities-and-all-other-administered> (describing CBP Policy on Nondiscrimination in Law Enforcement Activities and all other Administered Programs).

¹² <https://www.cbp.gov/about>.

¹³ CBP's immigration authority can be found in title 8 of the CFR, Chapter I.

¹⁴ *About CBP | U.S. Customs and Border Protection.*

and weather conditions. Agents also work in many isolated communities throughout the United States.

OFO was built upon the legacy U.S. Customs Service and traces its history back to when the agency was established on July 31, 1789. On March 1, 2003, a majority of employees from the legacy U.S. Customs Service were transitioned into CBP under DHS. The merger also included and incorporated the separate border inspection functions of the Department of Agriculture and the former Immigration and Naturalization Service into CBP's OFO. Today, OFO has more than 32,000 employees, uniformed and non-uniformed, located throughout the United States and around the world. By guarding America's borders, welcoming lawful visitors, and facilitating legitimate trade, OFO plays a vital role in protecting our national security and ensuring our economic prosperity. OFO is comprised of the following program offices: Admissibility and Passenger Programs; Agriculture Programs and Trade Liaison; Cargo and Conveyance Security; Mission Support; National Targeting Center; Operations; and Planning, Program Analysis and Evaluation.

OFO also houses the 10 CBP Centers of Excellence and Expertise (Centers): (1) Agriculture and Prepared Products; (2) Apparel, Footwear and Textiles; (3) Automotive and Aerospace; (4) Base Metals; (5) Consumer Products and Mass Merchandising; (6) Electronics; (7) Industrial and Manufacturing Materials; (8) Machinery; (9) Petroleum, Natural Gas and Minerals; and (10) Pharmaceuticals, Health and Chemicals.¹⁵ The Centers are responsible for performing certain trade functions and making certain determinations as set forth in particular regulatory provisions regarding importations by importers who are considered by CBP to be in the industry sector, regardless of the ports of entry at which the importations occur. Industry sectors are categorized by the Harmonized Tariff Schedule of the United States (HTSUS) numbers representing an industry sector.¹⁶

OT consolidates the trade policy, program development, and compliance measurement functions of CBP into one office and provides uniformity and clarity for the development of CBP's national strategy to facilitate legitimate trade. OT manages the design and implementation of results-driven strategic initiatives for trade compliance and enforcement. OT also directs national enforcement responses through effective targeting of goods crossing the border as well as strict, swift punitive actions against companies participating in predatory trade practices. Through coordination with international partners and other U.S. government agencies, OT directs the enforcement of intel-

¹⁵ <https://www.cbp.gov/trade/centers-excellence-and-expertise-information/cee-directory>.

¹⁶ 19 CFR 101.10.

lectual property rights, the identification of risks to detect and prevent the importation of contaminated agricultural or food products, and the enforcement of trade agreements.

By promoting trade facilitation through partnership programs, OT streamlines the flow of legitimate shipments and fosters corporate self-governance as a means of achieving compliance with trade laws and regulations. OT's risk-based audit program is used to respond to allegations of commercial fraud and to conduct corporate reviews of internal controls to ensure importers comply with trade laws and regulations. OT provides the legal tools to promote trade facilitation and compliance with customs, trade and border security requirements through the issuance of all CBP regulations, legally binding advance rulings and administrative decisions, informed compliance publications (ICPs) and structured programs for external CBP training, and outreach on international trade laws and CBP regulations.

OT is comprised of the following Directorates that interact with the public: Operations, Regulations and Rulings, Trade Remedy Law Enforcement, Trade Policy and Programs, Trade Transformation Office, and Regulatory Audit and Agency Advisory Services. OT directs the development and implementation of matters relating to CBP's Priority Trade Initiatives (PTIs), which include: (1) Agriculture and Quota; (2) Antidumping and Countervailing Duty (AD/CVD); (3) Import Safety; (4) Intellectual Property Rights; (5) Revenue; (6) Textiles/Wearing Apparel; and (7) Trade Agreements.¹⁷ In addition to the PTIs, OT is responsible for the Single Window (*e.g.*, the Automated Commercial Environment), audit programs, and the development of CBP's vision under the 21st Century Customs Framework. Additionally, OT has a legal responsibility to issue administrative rulings in response to requests from the trade community; to respond to petitions for relief from the seizure and forfeiture of merchandise and the assessment of civil penalties;¹⁸ to inform the public about CBP trade policies through ICPs;¹⁹ to ensure that its rulings are made publicly available through the Customs Rulings Online Search System (CROSS);²⁰ and to maintain a public directory of recorded trademarks and copyrights that receive border enforcement through CBP's e-Recordation program.²¹

¹⁷ <https://www.cbp.gov/trade/priority-issues>.

¹⁸ <https://www.cbp.gov/trade/programs-administration/penalties>.

¹⁹ <https://www.cbp.gov/trade/rulings/informed-compliance-publications>.

²⁰ <https://rulings.cbp.gov/home>.

²¹ <https://iprr.cbp.gov/>; <https://iprs.cbp.gov/>; <https://www.cbp.gov/trade/priority-issues/ipr/protection>.

There are two offices that provide essential support to CBP's operational offices, which are described above. The first is the Office of Operations Support, which includes the Laboratories and Scientific Services Directorate, Office of Intelligence, Office of International Affairs, CBP Watch, Planning, Analysis, and Requirements Evaluation Directorate, Law Enforcement Safety and Compliance Directorate, Mission Support Division, and Office of the Chief Medical Officer. The second is Enterprise Services (ES). The offices under ES, including Accountability, Acquisition, Facilities and Asset Management, Human Resources Management, Information and Technology, Programming, and Training and Development, provide key support for both CBP's frontline operators and non-frontline entities.

CBP seeks specific input from the public regarding the processes, programs, regulations, collections of information, and policies implemented by its operational and support offices under the authorities specified in title 19 of the CFR, chapter I. CBP is seeking information and input from the public regarding these key programs and the related regulations and policies as part of the agency's efforts to ensure that it is operating its programs in compliance with the executive orders detailed above.

IV. Public Participation

A. Importance of Public Feedback

A central tenet of each of the executive orders discussed above is the critical and essential role of public input in driving and focusing CBP review of its existing processes, programs, regulations, collections of information, and policies. Because the effects of Federal regulations and policies tend to be widely dispersed in society, members of the public are likely to have useful information, data, and perspectives on the benefits and burdens of CBP's existing processes, programs, regulations, information collections, and policies. Given the importance of public input, CBP is seeking specific public feedback to facilitate these program reviews in the context of equity for all, including those in underserved communities, bolstering resilience to the effects of climate change, particularly for those disproportionately affected by climate change, and that advance and prioritize environmental justice. This is especially of concern in these times of racial unrest and uncertainty, and in this period in which disasters of many kinds have become more common, and where science has been called into question as a reliable factor upon which to base our decisions. It is essential to reevaluate CBP's programs to reduce unnecessary barriers to participation and effectiveness, and to serve all communities, to increase equity.

B. Maximizing the Value of Public Feedback

This notice contains a list of questions, the answers to which will assist CBP in identifying those processes, programs, regulations, collections of information, and policies under its title 19 of the CFR, chapter I authorities that may benefit from modification, streamlining, expansion, or repeal in light of the executive orders. CBP encourages public comment on these questions and seeks any other data that commenters believe are relevant to CBP's efforts to review whether CBP policies and actions: (1) Create or exacerbate barriers to full and equal participation by all eligible individuals; (2) rely upon science to ensure access to clean air and water; limit exposure to dangerous chemicals and pesticides; hold polluters accountable; reduce greenhouse emissions; hinder or bolster resilience to the impacts of climate change; restore and expand our national treasures and monuments, and prioritize both environmental justice and the creation of well-paying union jobs to deliver on these goals; and (3) factor the effects of climate change in the Arctic, along our Nation's borders, and to National critical functions—including climate risks.

The type of feedback that is most useful to the agency includes feedback that identifies specific processes, programs, regulations, information collections, and/or policies that could benefit from reform; feedback that refers to specific barriers to participation; feedback about how to improve risk perception; feedback that offers actionable data; and feedback that specifies viable alternatives to existing approaches that meet statutory obligations. For example, feedback that simply states that a stakeholder feels strongly that CBP should change a regulation, but does not contain specific information on how the proposed change would affect the costs and benefits of the regulation, is much less useful to CBP. CBP is looking for new information and new data to support any proposed changes that further the goals of advancing equity for all, including those in underserved communities, protecting public health and the environment, restoring science, and bolstering resilience from the effects of climate change, particularly for those disproportionately affected by climate change, and advancing and prioritizing environmental justice.

Highlighted below are a few of those points, noting comments that are most useful to CBP, guided by corresponding principles. Commenters should consider these principles as they answer and respond to the questions in this notice.

- Commenters should identify, with specificity, the program, regulation, information collection, and/or policy at issue, providing the applicable Code of Federal Regulation (CFR) citation where appropriate.
- Commenters should identify, with specificity, administrative burdens, program requirements, information collection burdens, waiting time, or unnecessary complexity that may impose unjustified barriers in general, or that may have adverse effects on equity for all, including individuals who belong to underserved communities that have been denied equitable treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.
- Commenters should identify, with specificity, small or large reforms that might be justified in light of the risks posed by climate change, whether those reforms involve preparedness, mitigation, or other steps to reduce suffering.
- Commenters should provide specific data that document the costs, burdens, and benefits of existing requirements to the extent they are available. Commenters might also address how CBP can best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing programs and regulations and whether there are existing sources of data that CBP can use to evaluate the post-promulgation effects of its regulations over time as they affect advancing equity for all, including those in underserved communities, protecting public health and the environment, restoring science, and bolstering resilience from the effects of climate change, particularly for those disproportionately affected by climate change and environmental justice.
- Particularly where comments relate to a program's costs or benefits, comments will be most useful if there are data and experience under the program available to ascertain the program's actual effect on the goals of advancing equity for all, including those in underserved communities, protecting public health and the environment, restoring science, and bolstering resilience from the effects of climate change, particularly for those disproportionately affected by climate change, and promoting and pro-

protecting our public health and the environment by advancing and prioritizing environmental justice.

C. List of Questions for Commenters

The below non-exhaustive list of questions is meant to assist members of the public in the formulation of comments regarding whether CBP's policies and actions advance equity for all, including those in underserved communities; protect public health and the environment; restore science; and bolster resilience from the effects of climate change, particularly for those disproportionately affected by climate change; and promoting and protecting our public health and the environment by advancing and prioritizing environmental justice. This list is not intended to restrict the issues that commenters may address. CBP compiled a list of specific questions that may be answered as if applicable to any of CBP's programs under its title 19 of the CFR, chapter I authorities.

Specific Questions

(1) Are there CBP processes, programs, regulations, information collections, forms, required documentation, guidance and/or policies that perpetuate systemic barriers to opportunities and benefits for people of color and/or other underserved groups as defined in Executive Order 13985 and, if so, what are they? How can those programs, regulations, and/or policies be modified, expanded, streamlined, or repealed to deliver resources and benefits more equitably?

(2) Are there CBP processes, programs, regulations, information collections, forms, required documentation, guidance and/or policies that hinder or do not bolster resilience to the effects of climate change, particularly for those disproportionately affected by climate change, and, if so, what are they? How can those programs, regulations, and/or policies be modified, expanded, streamlined, or repealed to bolster resilience to the effects of climate change?

(3) Are there CBP processes, programs, regulations, information collections, forms, required documentation, guidance and/or policies that do not promote environmental justice? How can those programs, regulations, and/or policies be modified, expanded, streamlined, or repealed to promote environmental justice?

(4) Are there CBP processes, programs, regulations, information collections, forms, required documentation, guidance and/or policies that are unnecessarily complicated or that could be streamlined to achieve the objectives of equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, so as to bol-

ster resilience to climate change and/or address the disproportionately high and adverse climate change-related effects on disadvantaged communities in more efficient ways? If so, what are they and how can they be made less complicated and/or streamlined?

(5) Are there any CBP regulations and/or policies that create duplication, overlap, complexity, or inconsistent requirements within CBP programs, other DHS components, or any other Federal Government agencies that affect equity, resilience to the effects of climate change, and/or environmental justice? If so, what are they and how can they be improved or updated to meet the required objectives of racial equity, resiliency, and environmental justice?

(6) Are there existing sources of data that CBP can use to evaluate the post-promulgation effects of regulations over time? Or are there sources of data that CBP can use to evaluate the effects of CBP policies or regulations on equity for all, including individuals who belong to underserved communities?

(7) What successful approaches to advance equity and climate resilience have been taken by State, local, Tribal, and territorial governments, and in what ways do CBP's programs present barriers or opportunities to successful implementation of these approaches?

CBP notes that this RFI is solely for information and program-planning purposes. While CBP intends to fully consider all input received from the public in response to this RFI, CBP will not respond individually to comments and none of the comments submitted will bind CBP to take any specific actions.

Chris Magnus, Commissioner, having reviewed and approved this document, is delegating the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

Dated: April 19, 2022.

ROBERT F. ALTNEU,
Director,
Regulations & Disclosure Law Division,
Regulations & Rulings, Office of Trade, U.S.
Customs and Border Protection.

[Published in the Federal Register, April 22, 2022 (85 FR 24185)]

19 CFR CHAPTER I

NOTIFICATION OF TEMPORARY TRAVEL RESTRICTIONS APPLICABLE TO LAND PORTS OF ENTRY AND FERRIES SERVICE BETWEEN THE UNITED STATES AND MEXICO

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

ACTION: Notification of temporary travel restrictions.

SUMMARY: This Notification announces the decision of the Secretary of Homeland Security (“Secretary”), after consulting with inter-agency partners, to continue to temporarily restrict travel by certain noncitizens into the United States at land ports of entry, including ferry terminals, (“land POEs”) along the United States-Mexico border. These restrictions only apply to noncitizens who are neither U.S. nationals nor lawful permanent residents (“noncitizen non-LPRs”). Under the temporary restrictions, DHS will allow the processing for entry into the United States of only those noncitizen non-LPRs who are fully vaccinated against COVID–19 and can provide proof of being fully vaccinated against COVID–19 upon request at arrival. According to the Centers for Disease Control and Prevention (“CDC”), vaccines remain the most effective public health measure to protect people from severe illness or death from COVID–19, slow the transmission of COVID–19, and reduce the likelihood of new COVID–19 variants emerging. These restrictions help protect the health and safety of both the personnel at the border and other travelers, as well as U.S. destination communities. These restrictions provide for limited exceptions, largely consistent with the limited exceptions currently available with respect to COVID–19 vaccination in the international air travel context.

DATES: These restrictions will become effective at 12:00 a.m. Eastern Daylight Time (EDT) on April 22, 2022, and may be amended or rescinded at any time, including to conform these restrictions to any intervening changes in Presidential Proclamation 10294 and implementing CDC orders and consistent with the requirements of 19 U.S.C. 1318.

FOR FURTHER INFORMATION CONTACT: Greta Campos, Office of Field Operations, U.S. Customs and Border Protection (CBP), 202–344–2775.

SUPPLEMENTARY INFORMATION:**Background**

On March 24, 2020, the Department of Homeland Security (“DHS”) published a Notification of its decision to temporarily limit the travel of certain noncitizen non-LPRs into the United States at land POEs along the United States-Mexico border to “essential travel,” as further defined in that document.¹ The March 24, 2020 Notification described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak, continued transmission, and spread of the virus associated with COVID–19 within the United States and globally, DHS had determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Mexico posed a specific threat to human life or national interests. Under the March 24, 2020 Notification, DHS continued to allow certain categories of travel, described as “essential travel.” Essential travel included travel to attend educational institutions, travel to work in the United States, travel for emergency response and public health purposes, and travel for lawful cross-border trade. Essential travel also included travel by U.S. citizens and lawful permanent residents returning to the United States.

From March 2020 through October 2021, in consultation with interagency partners, DHS reevaluated and ultimately extended the restrictions on non-essential travel each month. On October 21, 2021, DHS extended the restrictions until 11:59 p.m. EST on January 21, 2022.² In that document, DHS acknowledged that notwithstanding the continuing threat to human life or national interests posed by COVID–19—as well as then-recent increases in case levels, hospitalizations, and deaths due to the Delta variant—COVID–19 vaccines are effective against Delta and other known COVID–19 variants. These vaccines protect people from becoming infected with and severely ill from COVID–19 and significantly reduce the likelihood of hospitalization and death. DHS also acknowledged the White House COVID–19 Response Coordinator’s September 2021 announcement regarding the United States’ plans to revise standards and procedures for incoming international air travel to enable the air travel of

¹ 85 FR 16547 (Mar. 24, 2020). That same day, DHS also published a Notification of its decision to temporarily limit the travel of certain noncitizen non-LPR persons into the United States at land POEs along the United States-Canada border to “essential travel,” as further defined in that document. 85 FR 16548 (Mar. 24, 2020).

² See 86 FR 58216 (Oct. 21, 2021) (extending restrictions for the United States-Mexico border); 86 FR 58218 (Oct. 21, 2021) (extending restrictions for the United States-Canada border).

travelers fully vaccinated against COVID–19 beginning in early November 2021.³ DHS further stated that the Secretary intended to do the same with respect to certain travelers seeking to enter the United States from Mexico and Canada at land POEs to align the treatment of different types of travel and allow those who are fully vaccinated against COVID–19 to travel to the United States, whether for essential or non-essential reasons.⁴

On October 29, 2021, following additional announcements regarding changes to the international air travel policy by the President of the United States and CDC,⁵ DHS announced that beginning November 8, 2021, non-essential travel of noncitizen non-LPRs would be permitted through land POEs, provided that the traveler is fully vaccinated against COVID–19 and can provide proof of full COVID–19 vaccination status upon request.⁶ DHS also announced in October 2021 that beginning in January 2022, inbound noncitizen non-LPRs traveling to the United States via land POEs—whether for essential or non-essential reasons—would be required to be fully vaccinated against COVID–19 and provide proof of full COVID–19 vaccination status. In making this announcement, the Department provided fair notification of the anticipated changes, thereby allowing ample time for noncitizen non-LPR essential travelers to get fully vaccinated against COVID–19.⁷

³ See Press Briefing by Press Secretary Jen Psaki (Sept. 20, 2021), <https://www.whitehouse.gov/briefing-room/press-briefings/2021/09/20/press-briefing-by-press-secretary-jen-psaki-september-20-2021/> (“As was announced in a call earlier today . . . [we] — starting in . . . early November [will] be putting in place strict protocols to prevent the spread of COVID–19 from passengers flying internationally into the United States by requiring that adult foreign nationals traveling to the United States be fully vaccinated.”).

⁴ See 86 FR 58218; 86 FR 58216.

⁵ Changes to requirements for travel by air were implemented by, *inter alia*, Presidential Proclamation 10294 of October 25, 2021, 86 FR 59603 (Oct. 28, 2021) (“Presidential Proclamation 10294”), and a related CDC order, 86 FR 61224 (Nov. 5, 2021) (“CDC Order”). See also CDC, *Requirement for Proof of Negative COVID–19 Test or Recovery from COVID–19 for All Air Passengers Arriving in the United States*, <https://www.cdc.gov/quarantine/pdf/Global-Testing-Order-10-25-21-p.pdf> (Oct. 25, 2021); *Requirement for Airlines and Operators to Collect Contact Information for All Passengers Arriving into the United States*, <https://www.cdc.gov/quarantine/pdf/CDC-Global-Contact-Tracing-Order-10-25-2021-p.pdf> (Oct. 25, 2021). CDC later amended its testing order following developments related to the Omicron variant. See CDC, *Requirement for Proof of Negative COVID–19 Test Result or Recovery from COVID–19 for All Airline Passengers Arriving into the United States*, https://www.cdc.gov/quarantine/pdf/Amended-Global-Testing-Order_12-02-2021-p.pdf (Dec. 2, 2021).

⁶ See 86 FR 72843 (Dec. 23, 2021) (describing the announcement with respect to Mexico); 86 FR 72842 (Dec. 23, 2021) (describing the announcement with respect to Canada).

⁷ See DHS, DHS Releases Details for Fully Vaccinated, Non-Citizen Travelers to Enter the U.S. at Land and Ferry Border Crossings, <https://www.dhs.gov/news/2021/10/29/dhs-releases-details-fully-vaccinated-non-citizen-travelers-enter-us-land-and-ferry> (Oct. 29, 2021); DHS, Fact Sheet: Guidance for Travelers to Enter the U.S. at Land Ports of Entry

On December 14, 2021, at DHS's request, CDC provided a memorandum to DHS describing the current status of the COVID-19 public health emergency. The CDC memorandum warned of "case counts and deaths due to COVID-19 continuing to increase around the globe and the emergence of new and concerning variants," and emphasized that "[v]accination is the single most important measure for reducing risk for SARS-CoV-2 transmission and avoiding severe illness, hospitalization, and death."⁸ Consistent with these considerations and in line with DHS's October 2021 announcement, CDC recommended that proof of COVID-19 vaccination requirements be expanded to cover both essential and non-essential noncitizen non-LPR travelers.

In support of this conclusion, CDC cited studies indicating that individuals vaccinated against COVID-19 are five times less likely to be infected with COVID-19 and more than eight times less likely to require hospitalization than those who are unvaccinated. Conversely, unvaccinated people are 14 times more likely to die from COVID-19 than those who are vaccinated.⁹ Per CDC, "proof of vaccination of travelers helps protect the health and safety of both the personnel at the border and other travelers, as well as U.S. destination communities. Border security and transportation security work is part of the Nation's critical infrastructure and presents unique challenges for ensuring the health and safety of personnel and travelers."¹⁰ In a January 14, 2022 update, CDC confirmed its prior recommendation. Specifically, CDC noted the "rapid increase" of COVID-19 cases across the United States that have contributed to high levels of community transmission and increased rates of new hospitalizations and deaths. According to CDC, between January 5 and January 11, 2022, the seven-day average for new hospital admissions of patients with confirmed COVID-19 increased by 24 percent over the prior week, and the seven-day average for new COVID-19-related deaths rose to 2,991, an increase of 33.7 percent compared to the prior week. CDC emphasized that this increase had exacerbated the strain on the United States' healthcare system and again urged that "[v]accination of the broadest number of people best protects all individuals and preserves the United States' critical infrastructure, including health-care systems and essential workforce." CDC thus urged "the most

and Ferry Terminals, <https://www.dhs.gov/news/2021/10/29/fact-sheet-guidance-travelers-enter-us-land-ports-entry-and-ferry-terminals> (updated Jan. 20, 2022); see also DHS, Frequently Asked Questions: Guidance for Travelers to Enter the U.S., <https://www.dhs.gov/news/2021/10/29/frequently-asked-questions-guidance-travelers-enter-us> (updated Jan. 20, 2022).

⁸ See Memorandum from CDC to CBP re Public Health Recommendation for Proof of COVID-19 Vaccination at U.S. Land Borders (Dec. 14, 2021).

⁹ *Id.*

¹⁰ *Id.*

comprehensive requirements possible for proof of vaccination” and specifically recommended against exceptions to travel restrictions for specific worker categories as a public health matter.¹¹

Given these recommendations, and after consultation with inter-agency partners and consideration of all relevant factors, including economic considerations, DHS announced the decision of the Secretary to temporarily restrict travel by noncitizen non-LPRs into the United States at land POEs along the United States-Mexico border by requiring proof of COVID–19 vaccination upon request at arrival.¹² This requirement was put in place at 12:00 a.m. EST on January 22, 2022 and will remain in effect until 11:59 p.m. EDT on April 21, 2022, unless amended or rescinded prior to that time.

CDC’s Public Health Assessment and Recommendation To Continue COVID–19 Vaccination Requirement for Entry of Noncitizen Non-LPR Travelers

In considering whether to extend the travel restrictions, DHS solicited, and CDC provided to DHS, an updated public health assessment and recommendations regarding the DHS requirement for noncitizen non-LPRs to be fully vaccinated and to provide proof of COVID–19 vaccination for entry at land POEs. CDC sent a memorandum to the Commissioner of U.S. Customs and Border Protection on March 21, 2022 with its recommendations.¹³ CDC reiterated that vaccination protects the public from severe illness, including deaths and hospitalizations.¹⁴ Of note, a recent CDC study found that, for those people hospitalized with COVID–19, severe outcomes, as measured by length of hospital stay and number of intensive care unit stays, appeared lower at the time when the Omicron variant was initially surging than during previous periods of high transmission associated with previous variants—something that CDC attributed in part to wider vaccination coverage and up-to-date boosters.¹⁵ This is consistent with CDC’s assessment that vaccines remain the most effective public health measure to protect people from severe illness

¹¹ Memorandum from CDC to CBP re Public Health Recommendation for Proof of COVID–19 Vaccination at U.S. Land Borders—Addendum (Jan. 18, 2022).

¹² See 87 FR 3425 (Jan. 24, 2022); 87 FR 3429 (Jan. 24, 2022) (parallel Canada notification).

¹³ See Memorandum from CDC to CBP, Update: Public Health Recommendation for Proof of COVID–19 Vaccination at U.S. Land Borders under Title 19 (March 21, 2022).

¹⁴ See Memorandum from CDC to CBP (March 21, 2022).

¹⁵ *COVID Data Tracker Weekly Review: Interpretive Summary for February 11, 2022*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/past-reports/02112022.html> (Feb. 11, 2022); see Memorandum from CDC to CBP (March 21, 2022).

or death from COVID–19, slow transmission of COVID–19, and reduce the likelihood of new COVID–19 variants emerging.¹⁶

CDC also noted that the U.S. Government’s actions and guidance in response to COVID–19 have evolved over the course of the pandemic as more scientific information has become available. During earlier phases of the pandemic, pharmaceutical interventions were unavailable, and the United States had to instead rely on largely nonpharmaceutical interventions, including limits on gatherings and school closures, masking, and testing. Expanded epidemiologic data, advances in scientific knowledge, and the availability of pharmaceutical interventions (both vaccines and effective treatments), however, have permitted many of those early actions to be dialed back in favor of a more nuanced and narrowly tailored set of tools that provide a less burdensome means of preventing and controlling COVID–19. In CDC’s judgment, maintaining high vaccination coverage is essential to sustaining the use of less burdensome measures. To ensure sustained vaccine coverage, CDC recommends continuing both domestic efforts to increase vaccine uptake (primary series and booster doses) among U.S. residents and measures to ensure high rates of vaccination coverage among persons entering the United States.¹⁷

Echoing prior assessments, CDC’s March 21, 2022 recommendation “encourages continued implementation of comprehensive requirements for proof of vaccination for *all* [noncitizen non-LPRs] seeking entry into the United States,” whether by land or by air.¹⁸ CDC also once again recommended a “comprehensive” proof-of-vaccination requirement and recommended against “further exceptions for specific worker categories at this time,” as global vaccination rates continue to rise.¹⁹

Of particular importance to this analysis, COVID–19 vaccines—which according to CDC are “the single most important measure” for responding to COVID–19²⁰—are widely available and have been increasingly available for months. As of April 8, 2022, in Canada, 81.39 percent of the entire population was fully vaccinated against COVID–19, while 85.59 percent of individuals five years and older are fully vaccinated against COVID–19.²¹ According to the U.S. Department of State, as of March 28, 2022, Mexico administered at least one

¹⁶ COVID–19 Vaccines Work, December 23, 2021. <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/work.html> (accessed March 22, 2022).

¹⁷ See Memorandum from CDC to CBP (March 21, 2022).

¹⁸ *Id.*

¹⁹ See *id.*

²⁰ See Memorandum from CDC to CBP (Dec. 14, 2021).

²¹ Canadian statistics may be found at: <https://health-infobase.canada.ca/covid-19/vaccination-coverage/> (accessed Apr. 17, 2022).

vaccine dose to 85.5 million people (90 percent of the adult target population) and fully vaccinated 79.6 million (87.8 percent of the adult target population). Approximately 61.8 percent of Mexico's total population is fully vaccinated.

On April 14, 2022, DHS asked CDC whether CDC's March 21, 2022 recommendations had changed over the preceding three weeks. CDC responded that its recommendations had not changed. CDC had reviewed the available data and concluded that its recommendations remain the same. CDC wrote that it "encourages continued implementation of comprehensive requirements for proof of vaccination for all [noncitizen non-LPRs] seeking entry into the United States for travel or commerce, whether by land or by air. Doing so will help maintain high vaccination coverage across the United States, which is essential to sustaining the advances we have made thus far and have allowed some early actions to be revised. CDC does not recommend further exceptions for specific worker categories at this time."²²

Analysis of Temporary Travel Restrictions Under 19 U.S.C. 1318

DHS has consulted with interagency partners, taking into account relevant factors, including the above-mentioned CDC public health assessment, economic considerations, and operational impacts,²³ and concludes that a broad COVID-19 vaccination requirement at land POEs remains necessary and appropriate. In reaching this conclusion, DHS also reviewed a range of concerns, including those related to potential impacts on employers seeking H-2A temporary agricultural workers and entities that employ or rely on long-haul truck drivers engaged in cross-border transportation of goods. After careful review, DHS has determined not to provide industry-specific exceptions for the following two key reasons: (1) Workers engaged in trucking and agriculture continue to present a public health risk if not vaccinated; and (2) the vaccination requirement that has been in place since January 22, 2022 has not materially disrupted cross-border economic activity, according to data analysis that included input from DHS and other federal agencies.

²² See Memorandum from CDC to CBP, Update: Public Health Recommendation for Proof of COVID-19 Vaccination at U.S. Land Borders under Title 19 (Apr. 14, 2022).

²³ Consistent with its assessment in January, CBP continues to assess that a testing option is not operationally feasible given the significant number of land border crossers that go back and forth on a daily or near-daily basis, for work or school. A negative COVID-19 test requirement would mean that such individuals would have to get tested just about every day. This is not currently feasible, given the cost and supply constraints, particularly in smaller rural locations. Further, CBP reports additional operational challenges associated with verifying test results, given the wide variation in documentation.

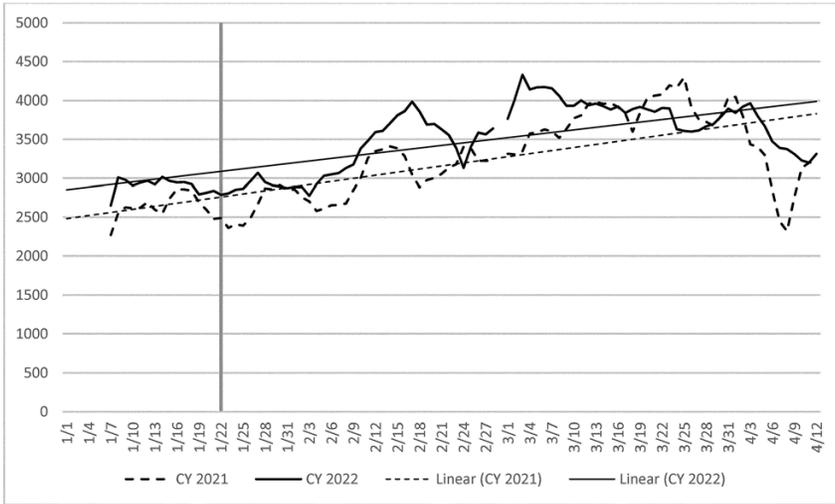
First, even if particular workers do not engage in extended interaction with others, they still engage in activities that involve contact with others, thereby increasing the risk of being infected and spreading COVID–19. It is for this reason, and because vaccines are widely available, that as a public health matter, CDC once again did not recommend further exceptions for specific worker categories at this time.²⁴ Such workers also may enter the United States after contracting COVID–19 elsewhere, become seriously ill after arrival, and require hospitalization and use of limited healthcare resources as a result. A COVID–19 vaccination requirement at land POEs helps protect the health and safety of personnel at the border, other travelers, and the U.S. communities where these persons may be traveling and spending time among members of the public. Such a requirement also reduces potential burdens on local healthcare resources in U.S. communities.

Second, DHS data, as well as that provided by other federal agencies, does not indicate a material disruption to cross-border economic activity and movement resulting from the vaccination requirement imposed in January 2022, including among temporary agriculture workers and commercial truck drivers. In fact, there has been an increase, not decrease, in the number of H–2A nonimmigrant workers admitted to the United States as compared to last year. While it is possible that there are individual-level effects on a subset of workers who are not fully vaccinated or their current or prospective employers, such impacts appear marginal based on the aggregate data.

As shown in *Figure 1* (where the vertical line represents the date the vaccination requirement for noncitizen non-LPRs went into full effect), H–2A admissions this fiscal year generally track seasonal patterns, which have reflected a longer-term increase in H–2A admissions since 2019, as shown in *Figure 2*. In fact, as stated above, H–2A admissions were generally higher between January 22, 2022 and March 31, 2022 when the COVID–19 vaccination requirement has been in place, as compared to H–2A admission numbers for the same time in 2021.

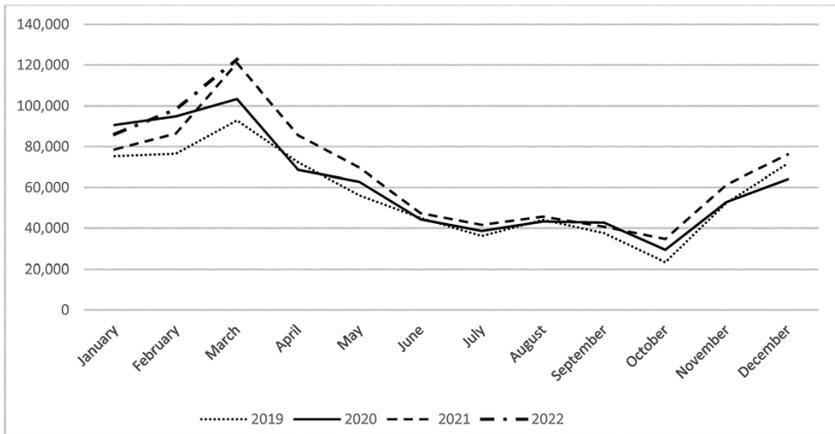
²⁴ See Memorandum from CDC to CBP (Mar. 21, 2022).

Figure 1. Rolling Average of H-2A Admissions (7 days)



Data Source: BorderStat. April 13, 2022.

Figure 2. Total Monthly H-2A Admissions

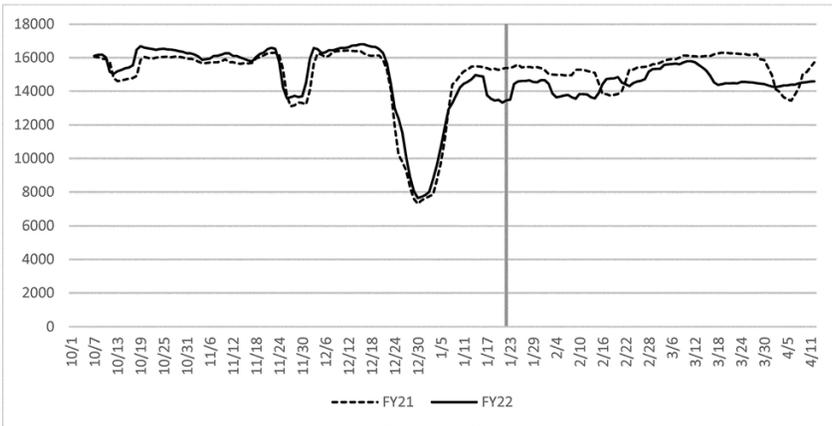


Data Source: BorderStat. April 13, 2022.

Likewise, there was no significant decrease in border crossings by commercial truck following the vaccination requirement that went into effect on January 22, 2022. Figures 3 and 4 cover the months before the new vaccination requirement was implemented as well as the months when the new vaccination requirement was implemented. This data shows regular fluctuations generally consistent with what is seen in data for the same time in Fiscal Year 2021 and in the

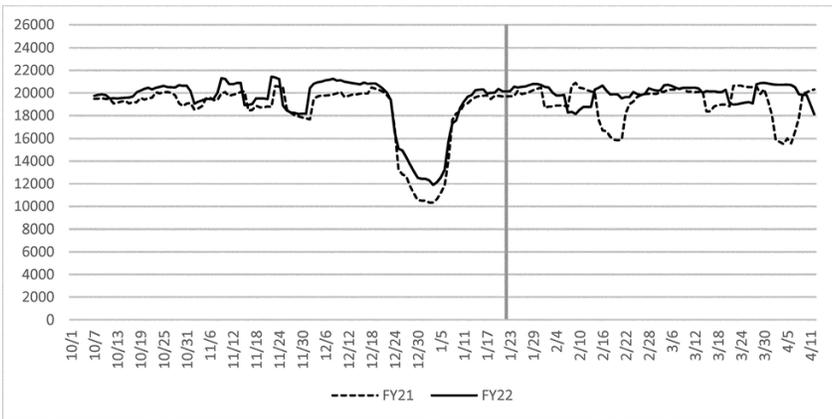
months in 2022 before the new vaccination requirement went into effect. And while the aggregate number of commercial trucks entering the United States from Canada in 2022 is lower than 2021, this initial decrease predates the implementation of the new vaccination requirement on January 22, 2022, and is not mirrored on the Southern border, where commercial truck traffic appears to have slightly increased in 2022.

Figure 3. Rolling Average of Northern Border Truck Crossings (7 days) by Fiscal Year



Data Source: BorderStat. April 13, 2022.

Figure 4. Rolling Average of Southern Border Truck Crossings (7 days) by Fiscal Year



Data Source: BorderStat. April 13, 2022.

DHS, in consultation with interagency partners, also has considered the operational effect of these requirements. In the January

2022 Notification, DHS projected minimal short-term operational impact. The relevant data that DHS and other federal agency partners have analyzed indicate that these projections were accurate. DHS has closely monitored wait times at land POEs, examined cross-border movement, and analyzed available data on border crossings since the vaccination requirement went into effect at land POEs on January 22, 2022, and has observed very minimal operational disruptions. As travelers become more familiar with the vaccination requirement and vaccination rates continue to increase globally, DHS projects any operational impacts to further diminish.

Based on the foregoing analysis and CDC recommendations, with this Notification, DHS will continue to align COVID–19 travel restrictions applicable to land POEs with those that apply to incoming international air travel,²⁵ ensuring more consistent application of COVID–19 vaccination requirements across travel domains. As a result, with limited exception, all noncitizen non-LPRs will be required, upon request, to show proof of full vaccination against COVID–19 to enter the United States.

Notice of Action

Following consultation with CDC and other interagency partners, and after having considered and weighed the relevant factors, I have determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Mexico poses an ongoing “specific threat to human life or national interests.” Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),²⁶ I have determined, in consultation with CDC and other interagency partners, that it is necessary to respond to the ongoing threat at land POEs along the United States–

²⁵ See Presidential Proclamation 10294, *supra*, at n.5.

²⁶ 19 U.S.C. 1318(b)(1)(C) provides that “[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests,” is authorized to “[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.” On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. See 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities “related to Customs revenue functions” were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. See Treas. Dep’t Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that “[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.” Congress has vested in the Secretary of Homeland Security the “functions of all officers, employees, and organizational units of the Department,” including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

Mexico border by allowing the processing of travelers to the United States for only those noncitizen non-LPRs who are “fully vaccinated against COVID–19” and can provide “proof of being fully vaccinated against COVID–19” upon request, as those terms are defined under Presidential Proclamation 10294 and CDC’s implementing Order (“CDC Order”).²⁷ This action does not apply to U.S. citizens, U.S. nationals, lawful permanent residents of the United States, or American Indians who have a right by statute to pass the borders of, or enter into, the United States. In addition, I hereby authorize exceptions to these restrictions for the following categories of noncitizen non-LPRs:²⁸

- Certain categories of persons on diplomatic or official foreign government travel as specified in the CDC Order;
- persons under 18 years of age;
- certain participants in certain COVID–19 vaccine trials as specified in the CDC Order;
- persons with medical contraindications to receiving a COVID–19 vaccine as specified in the CDC Order;
- persons issued a humanitarian or emergency exception by the Secretary of Homeland Security;
- persons with valid nonimmigrant visas (excluding B–1 [business] or B–2 [tourism] visas) who are citizens of a country with limited COVID–19 vaccine availability, as specified in the CDC Order;
- members of the U.S. Armed Forces or their spouses or children (under 18 years of age) as specified in the CDC Order; and,
- persons whose entry would be in the U.S. national interest, as determined by the Secretary of Homeland Security.

In administering such exceptions, DHS will not require the Covered Individual Attestation currently in use by CDC for noncitizen non-LPRs seeking to enter the United States by air travel, or similar form, but DHS may, in its discretion, require any person invoking an ex-

²⁷ 86 FR 61224 (Nov. 05, 2021).

²⁸ The exceptions to this temporary restriction are generally aligned with those outlined in Presidential Proclamation 10294 and further described in the CDC Order, with modifications to account for the unique nature of land border operations where advance passenger information is largely not available.

ception to this requirement to provide proof of eligibility consistent with documentation requirements outlined in CDC's Technical Instructions.²⁹

This Notification does not apply to air or sea travel (except ferries and pleasure craft) between the United States and Mexico. This Notification does apply to passenger/freight rail, passenger ferry travel, and pleasure boat travel between the United States and Mexico. These restrictions address temporary conditions and may be amended or rescinded at any time, including to conform these restrictions to any intervening changes in Presidential Proclamation 10294 and implementing CDC orders and consistent with the requirements of 19 U.S.C. 1318.³⁰ In conjunction with interagency partners, DHS will closely monitor the effect of the requirements discussed herein, and the Secretary will, as needed and warranted, exercise relevant authority in support of the U.S. national interest.

I intend for this Notification and the restrictions discussed herein to be given effect to the fullest extent allowed by law. In the event that a court of competent jurisdiction stays, enjoins, or sets aside any aspect of this action, on its face or with respect to any person, entity, or class thereof, any portion of this action not determined by the court to be invalid or unenforceable should otherwise remain in effect for the duration stated above.

This action is not a rule subject to notice and comment under the Administrative Procedure Act. It is exempt from notice and comment requirements because it concerns ongoing discussions with Canada and Mexico on how best to control COVID-19 transmission over our shared borders and therefore directly "involve[s] . . . a . . . foreign affairs function of the United States." Even if this action were subject to notice and comment, there is good cause to dispense with prior public notice and the opportunity to comment. Given the ongoing public health emergency caused by COVID-19, including the rapidly evolving circumstances associated with fluctuating rates of infection due to the Omicron variant and other potential future variants, it

²⁹ CDC, Technical Instructions for Implementing Presidential Proclamation Advancing the Safe Resumption of Global Travel During the COVID-19 Pandemic and CDC's Order, <https://www.cdc.gov/quarantine/order-safe-travel/technical-instructions.html> (last reviewed Mar. 3, 2022).

³⁰ Although past notifications of this type have sunset on dates certain, DHS has determined, in light of the analysis above, to instead engage in regular reviews of this policy, guided by public health data and other relevant inputs. In determining whether and when to lift the requirements imposed under this notification, DHS anticipates that it will take account of whether Presidential Proclamation 10294 remains in effect, among all relevant factors, consistent with the requirements of 19 U.S.C. 1318. DHS anticipates lifting the requirements imposed under this notification no later than when Presidential Proclamation 10294 is revoked.

would be impracticable and contrary to the public health, and the public interest, to delay the issuance and effective date of this action.

The CBP Commissioner is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the implementation of the temporary measures set forth in this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian or emergency reasons or for other purposes in the national interest, permit the processing of travelers to the United States who would otherwise be subject to the restrictions announced in this Notification.

ALEJANDRO N. MAYORKAS,
Secretary,
U.S. Department of Homeland Security.

[Published in the Federal Register, April 22, 2022 (85 FR 24041)]

19 CFR CHAPTER I

NOTIFICATION OF TEMPORARY TRAVEL RESTRICTIONS APPLICABLE TO LAND PORTS OF ENTRY AND FERRIES SERVICE BETWEEN THE UNITED STATES AND CANADA

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

ACTION: Notification of temporary travel restrictions.

SUMMARY: This Notification announces the decision of the Secretary of Homeland Security (“Secretary”), after consulting with interagency partners, to continue to temporarily restrict travel by certain noncitizens into the United States at land ports of entry, including ferry terminals, (“land POEs”) along the United States-Canada border. These restrictions only apply to noncitizens who are neither U.S. nationals nor lawful permanent residents (“noncitizen non-LPRs”). Under the temporary restrictions, DHS will allow the processing for entry into the United States of only those noncitizen non-LPRs who are fully vaccinated against COVID–19 and can provide proof of being fully vaccinated against COVID–19 upon request at arrival. According to the Centers for Disease Control and Prevention (“CDC”), vaccines remain the most effective public health measure to protect people from severe illness or death from COVID–19, slow the transmission of COVID–19, and reduce the likelihood of new COVID–19 variants emerging. These restrictions help protect the health and safety of both the personnel at the border and other travelers, as well

as U.S. destination communities. These restrictions provide for limited exceptions, largely consistent with the limited exceptions currently available with respect to COVID–19 vaccination in the international air travel context.

DATES: These restrictions will become effective at 12:00 a.m. Eastern Daylight Time (EDT) on April 22, 2022, and may be amended or rescinded at any time, including to conform these restrictions to any intervening changes in Presidential Proclamation 10294 and implementing CDC orders and consistent with the requirements of 19 U.S.C. 1318.

FOR FURTHER INFORMATION CONTACT: Greta Campos, Office of Field Operations, U.S. Customs and Border Protection (CBP), 202–344–2775.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, the Department of Homeland Security (“DHS”) published a Notification of its decision to temporarily limit the travel of certain noncitizen non-LPRs into the United States at land POEs along the United States-Canada border to “essential travel,” as further defined in that document.¹ The March 24, 2020, Notification described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak, continued transmission, and spread of the virus associated with COVID–19 within the United States and globally, DHS had determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Canada posed a specific threat to human life or national interests. Under the March 24, 2020, Notification, DHS continued to allow certain categories of travel, described as “essential travel.” Essential travel included travel to attend educational institutions, travel to work in the United States, travel for emergency response and public health purposes, and travel for lawful cross-border trade. Essential travel also included travel by U.S. citizens and lawful permanent residents returning to the United States.

From March 2020 through October 2021, in consultation with interagency partners, DHS reevaluated and ultimately extended the restrictions on non-essential travel each month. On October 21, 2021, DHS extended the restrictions until 11:59 p.m. EST on January 21,

¹ 85 FR 16548 (Mar. 24, 2020). That same day, DHS also published a Notification of its decision to temporarily limit the travel of certain noncitizen non-LPR persons into the United States at land POEs along the United States-Mexico border to “essential travel,” as further defined in that document. 85 FR 16547 (Mar. 24, 2020).

2022.² In that document, DHS acknowledged that notwithstanding the continuing threat to human life or national interests posed by COVID-19—as well as then-recent increases in case levels, hospitalizations, and deaths due to the Delta variant—COVID-19 vaccines are effective against Delta and other known COVID-19 variants. These vaccines protect people from becoming infected with and severely ill from COVID-19 and significantly reduce the likelihood of hospitalization and death. DHS also acknowledged the White House COVID-19 Response Coordinator’s September 2021 announcement regarding the United States’ plans to revise standards and procedures for incoming international air travel to enable the air travel of travelers fully vaccinated against COVID-19 beginning in early November 2021.³ DHS further stated that the Secretary intended to do the same with respect to certain travelers seeking to enter the United States from Mexico and Canada at land POEs to align the treatment of different types of travel and allow those who are fully vaccinated against COVID-19 to travel to the United States, whether for essential or non-essential reasons.⁴

On October 29, 2021, following additional announcements regarding changes to the international air travel policy by the President of the United States and CDC,⁵ DHS announced that beginning November 8, 2021, non-essential travel of noncitizen non-LPRs would be permitted through land POEs, provided that the traveler is fully vaccinated against COVID-19 and can provide proof of full

² See 86 FR 58218 (Oct. 21, 2021) (extending restrictions for the United States-Canada border); 86 FR 58216 (Oct. 21, 2021) (extending restrictions for the United States-Mexico border).

³ See Press Briefing by Press Secretary Jen Psaki (Sept. 20, 2021), <https://www.whitehouse.gov/briefing-room/press-briefings/2021/09/20/press-briefing-by-press-secretary-jen-psaki-september-20-2021/> (“As was announced in a call earlier today . . . [w]—starting in . . . early November [will] be putting in place strict protocols to prevent the spread of COVID-19 from passengers flying internationally into the United States by requiring that adult foreign nationals traveling to the United States be fully vaccinated.”).

⁴ See 86 FR 58218; 86 FR 58216.

⁵ Changes to requirements for travel by air were implemented by, *inter alia*, Presidential Proclamation 10294 of October 25, 2021, 86 FR 59603 (Oct. 28, 2021) (“Presidential Proclamation 10294”), and a related CDC order, 86 FR 61224 (Nov. 5, 2021) (“CDC Order”). See also CDC, *Requirement for Proof of Negative COVID-19 Test or Recovery from COVID-19 for All Air Passengers Arriving in the United States*, <https://www.cdc.gov/quarantine/pdf/Globa-Testing-Order-10-25-21-p.pdf> (Oct. 25, 2021); *Requirement for Airlines and Operators to Collect Contact Information for All Passengers Arriving into the United States*, <https://www.cdc.gov/quarantine/pdf/CDC-Global-Contact-Tracing-Order-10-25-2021-p.pdf> (Oct. 25, 2021). CDC later amended its testing order following developments related to the Omicron variant. See CDC, *Requirement for Proof of Negative COVID-19 Test Result or Recovery from COVID-19 for All Airline Passengers Arriving into the United States*, https://www.cdc.gov/quarantine/pdf/Amended-Global-Testing-Order_12-02-2021-p.pdf (Dec. 2, 2021).

COVID–19 vaccination status upon request.⁶ DHS also announced in October 2021 that beginning in January 2022, inbound noncitizen non-LPRs traveling to the United States via land POEs—whether for essential or non-essential reasons—would be required to be fully vaccinated against COVID–19 and provide proof of full COVID–19 vaccination status. In making this announcement, the Department provided fair notice of the anticipated changes, thereby allowing ample time for noncitizen non-LPR essential travelers to get fully vaccinated against COVID–19.⁷

On December 14, 2021, at DHS’s request, CDC provided a memorandum to DHS describing the current status of the COVID–19 public health emergency. The CDC memorandum warned of “case counts and deaths due to COVID–19 continuing to increase around the globe and the emergence of new and concerning variants,” and emphasized that “[v]accination is the single most important measure for reducing risk for SARS–CoV–2 transmission and avoiding severe illness, hospitalization, and death.”⁸ Consistent with these considerations and in line with DHS’s October 2021 announcement, CDC recommended that proof of COVID–19 vaccination requirements be expanded to cover both essential and non-essential noncitizen non-LPR travelers.

In support of this conclusion, CDC cited studies indicating that individuals vaccinated against COVID–19 are five times less likely to be infected with COVID–19 and more than eight times less likely to require hospitalization than those who are unvaccinated. Conversely, unvaccinated people are 14 times more likely to die from COVID–19 than those who are vaccinated.⁹ Per CDC, “proof of vaccination of travelers helps protect the health and safety of both the personnel at the border and other travelers, as well as U.S. destination communities. Border security and transportation security work is part of the Nation’s critical infrastructure and presents unique challenges for ensuring the health and safety of personnel and travelers.”¹⁰ In a

⁶ See 86 FR 72842 (Dec. 23, 2021) (describing the announcement with respect to Canada); 86 FR 72843 (Dec. 23, 2021) (describing the announcement with respect to Mexico).

⁷ See DHS, DHS Releases Details for Fully Vaccinated, Non-Citizen Travelers to Enter the U.S. at Land and Ferry Border Crossings, <https://www.dhs.gov/news/2021/10/29/dhs-releases-details-fully-vaccinated-non-citizen-travelers-enter-us-land-and-ferry> (Oct. 29, 2021); DHS, Fact Sheet: Guidance for Travelers to Enter the U.S. at Land Ports of Entry and Ferry Terminals, <https://www.dhs.gov/news/2021/10/29/fact-sheet-guidance-travelers-enter-us-land-ports-entry-and-ferry-terminals> (updated Jan. 20, 2022); see also DHS, Frequently Asked Questions: Guidance for Travelers to Enter the U.S., <https://www.dhs.gov/news/2021/10/29/frequently-asked-questions-guidance-travelers-enter-us> (updated Jan. 20, 2022).

⁸ See Memorandum from CDC to CBP re Public Health Recommendation for Proof of COVID–19 Vaccination at U.S. Land Borders (Dec. 14, 2021).

⁹ *Id.*

¹⁰ *Id.*

January 14, 2022, update, CDC confirmed its prior recommendation. Specifically, CDC noted the “rapid increase” of COVID–19 cases across the United States that have contributed to high levels of community transmission and increased rates of new hospitalizations and deaths. According to CDC, between January 5 and January 11, 2022, the seven-day average for new hospital admissions of patients with confirmed COVID–19 increased by 24 percent over the prior week, and the seven-day average for new COVID–19-related deaths rose to 2,991, an increase of 33.7 percent compared to the prior week. CDC emphasized that this increase had exacerbated the strain on the United States’ healthcare system and again urged that “[v]accination of the broadest number of people best protects all individuals and preserves the United States’ critical infrastructure, including healthcare systems and essential workforce.” CDC thus urged “the most comprehensive requirements possible for proof of vaccination” and specifically recommended against exceptions to travel restrictions for specific worker categories as a public health matter.¹¹

Given these recommendations, and after consultation with inter-agency partners and consideration of all relevant factors, including economic considerations, DHS announced the decision of the Secretary to temporarily restrict travel by noncitizen non-LPRs into the United States at land POEs along the United States-Canada border by requiring proof of COVID–19 vaccination upon request at arrival.¹² This requirement was put in place at 12:00 a.m. EST on January 22, 2022, and will remain in effect until 11:59 p.m. EDT on April 21, 2022, unless amended or rescinded prior to that time.

CDC’s Public Health Assessment and Recommendation To Continue COVID–19 Vaccination Requirement for Entry of Noncitizen Non-LPR Travelers

In considering whether to extend the travel restrictions, DHS solicited, and CDC provided to DHS, an updated public health assessment and recommendations regarding the DHS requirement for noncitizen non-LPRs to be fully vaccinated and to provide proof of COVID–19 vaccination for entry at land POEs. CDC sent a memorandum to the Commissioner of U.S. Customs and Border Protection on March 21, 2022, with its recommendations.¹³ CDC reiterated that vaccination protects the public from severe illness, including deaths

¹¹ Memorandum from CDC to CBP re Public Health Recommendation for Proof of COVID–19 Vaccination at U.S. Land Borders—Addendum (Jan. 18, 2022).

¹² See 87 FR 3429 (Jan. 24, 2022); 87 FR 3425 (Jan. 24, 2022) (parallel Mexico notification).

¹³ See Memorandum from CDC to CBP, Update: Public Health Recommendation for Proof of COVID–19 Vaccination at U.S. Land Borders under Title 19 (March 21, 2022).

and hospitalizations.¹⁴ Of note, a recent CDC study found that, for those people hospitalized with COVID–19, severe outcomes, as measured by length of hospital stay and number of intensive care unit stays, appeared lower at the time when the Omicron variant was initially surging than during previous periods of high transmission associated with previous variants—something that CDC attributed in part to wider vaccination coverage and up-to-date boosters.¹⁵ This is consistent with CDC’s assessment that vaccines remain the most effective public health measure to protect people from severe illness or death from COVID–19, slow transmission of COVID–19, and reduce the likelihood of new COVID–19 variants emerging.¹⁶

CDC also noted that the U.S. Government’s actions and guidance in response to COVID–19 have evolved over the course of the pandemic as more scientific information has become available. During earlier phases of the pandemic, pharmaceutical interventions were unavailable, and the United States had to instead rely on largely nonpharmaceutical interventions, including limits on gatherings and school closures, masking, and testing. Expanded epidemiologic data, advances in scientific knowledge, and the availability of pharmaceutical interventions (both vaccines and effective treatments), however, have permitted many of those early actions to be dialed back in favor of a more nuanced and narrowly tailored set of tools that provide a less burdensome means of preventing and controlling COVID–19. In CDC’s judgment, maintaining high vaccination coverage is essential to sustaining the use of less burdensome measures. To ensure sustained vaccine coverage, CDC recommends continuing both domestic efforts to increase vaccine uptake (primary series and booster doses) among U.S. residents and measures to ensure high rates of vaccination coverage among persons entering the United States.¹⁷

Echoing prior assessments, CDC’s March 21, 2022, recommendation “encourages continued implementation of comprehensive requirements for proof of vaccination for *all* [noncitizen non-LPRs] seeking entry into the United States,” whether by land or by air.¹⁸ CDC also once again recommended a “comprehensive” proof-of-vaccination requirement and recommended against “further

¹⁴ See Memorandum from CDC to CBP (March 21, 2022).

¹⁵ *COVID Data Tracker Weekly Review: Interpretive Summary for February 11, 2022*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/past-reports/02112022.html> (Feb. 11, 2022); see Memorandum from CDC to CBP (March 21, 2022).

¹⁶ *COVID–19 Vaccines Work*, December 23, 2021. <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/work.html> (accessed March. 22, 2022).

¹⁷ See Memorandum from CDC to CBP (March 21, 2022).

¹⁸ *Id.*

exceptions for specific worker categories at this time,” as global vaccination rates continue to rise.¹⁹

Of particular importance to this analysis, COVID-19 vaccines—which according to CDC are “the single most important measure” for responding to COVID-19²⁰—are widely available and have been increasingly available for months. As of April 8, 2022, in Canada, 81.39 percent of the entire population was fully vaccinated against COVID-19, while 85.59 percent of individuals five years and older are fully vaccinated against COVID-19.²¹ According to the U.S. Department of State, as of March 28, 2022, Mexico administered at least one vaccine dose to 85.5 million people (90 percent of the adult target population) and fully vaccinated 79.6 million (87.8 percent of the adult target population). Approximately 61.8 percent of Mexico’s total population is fully vaccinated.

On April 14, 2022, DHS asked CDC whether CDC’s March 21, 2022, recommendations had changed over the preceding three weeks. CDC responded that its recommendations had not changed. CDC had reviewed the available data and concluded that its recommendations remain the same. CDC wrote that it “encourages continued implementation of comprehensive requirements for proof of vaccination for all [noncitizen non-LPRs] seeking entry into the United States for travel or commerce, whether by land or by air. Doing so will help maintain high vaccination coverage across the United States, which is essential to sustaining the advances we have made thus far and have allowed some early actions to be revised. CDC does not recommend further exceptions for specific worker categories at this time.”²²

Analysis of Temporary Travel Restrictions Under 19 U.S.C. 1318

DHS has consulted with interagency partners, taking into account relevant factors, including the above-mentioned CDC public health assessment, economic considerations, and operational impacts,²³ and

¹⁹ *See id.*

²⁰ *See* Memorandum from CDC to CBP (Dec. 14, 2021).

²¹ Canadian statistics may be found at: <https://health-infobase.canada.ca/covid-19/vaccination-coverage/> (accessed Apr. 17, 2022).

²² *See* Memorandum from CDC to CBP, Update: Public Health Recommendation for Proof of COVID-19 Vaccination at U.S. Land Borders under Title 19 (Apr. 14, 2022).

²³ Consistent with its assessment in January, CBP continues to assess that a testing option is not operationally feasible given the significant number of land border crossers that go back and forth on a daily or near-daily basis, for work or school. A negative COVID-19 test requirement would mean that such individuals would have to get tested just about every day. This is not currently feasible, given the cost and supply constraints, particularly in smaller rural locations. Further, CBP reports additional operational challenges associated with verifying test results, given the wide variation in documentation.

concludes that a broad COVID-19 vaccination requirement at land POEs remains necessary and appropriate. In reaching this conclusion, DHS also reviewed a range of concerns, including those related to potential impacts on employers seeking H-2A temporary agricultural workers and entities that employ or rely on long-haul truck drivers engaged in cross-border transportation of goods. After careful review, DHS has determined not to provide industry-specific exceptions for the following two key reasons: (1) Workers engaged in trucking and agriculture continue to present a public health risk if not vaccinated; and (2) the vaccination requirement that has been in place since January 22, 2022, has not materially disrupted cross-border economic activity, according to data analysis that included input from DHS and other federal agencies.

First, even if particular workers do not engage in extended interaction with others, they still engage in activities that involve contact with others, thereby increasing the risk of being infected and spreading COVID-19. It is for this reason, and because vaccines are widely available, that as a public health matter, CDC once again did not recommend further exceptions for specific worker categories at this time.²⁴ Such workers also may enter the United States after contracting COVID-19 elsewhere, become seriously ill after arrival, and require hospitalization and use of limited healthcare resources as a result. A COVID-19 vaccination requirement at land POEs helps protect the health and safety of personnel at the border, other travelers, and the U.S. communities where these persons may be traveling and spending time among members of the public. Such a requirement also reduces potential burdens on local healthcare resources in U.S. communities.

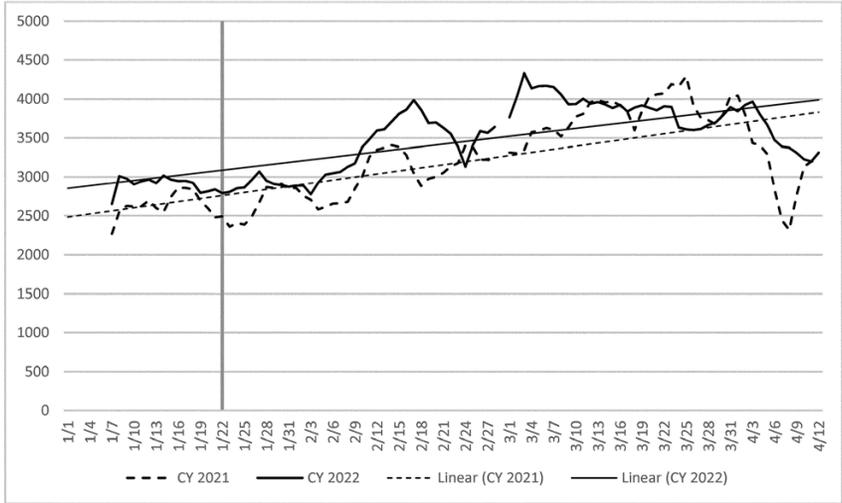
Second, DHS data, as well as that provided by other federal agencies, does not indicate a material disruption to cross-border economic activity and movement resulting from the vaccination requirement imposed in January 2022, including among temporary agriculture workers and commercial truck drivers. In fact, there has been an increase, not decrease, in the number of H-2A nonimmigrant workers admitted to the United States as compared to last year. While it is possible that there are individual-level effects on a subset of workers who are not fully vaccinated or their current or prospective employers, such impacts appear marginal based on the aggregate data.

As shown in *Figure 1* (where the vertical line represents the date the vaccination requirement for noncitizen non-LPRs went into full effect), H-2A admissions this fiscal year generally track seasonal patterns, which have reflected a longer-term increase in H-2A admis-

²⁴ See Memorandum from CDC to CBP (Mar. 21, 2022).

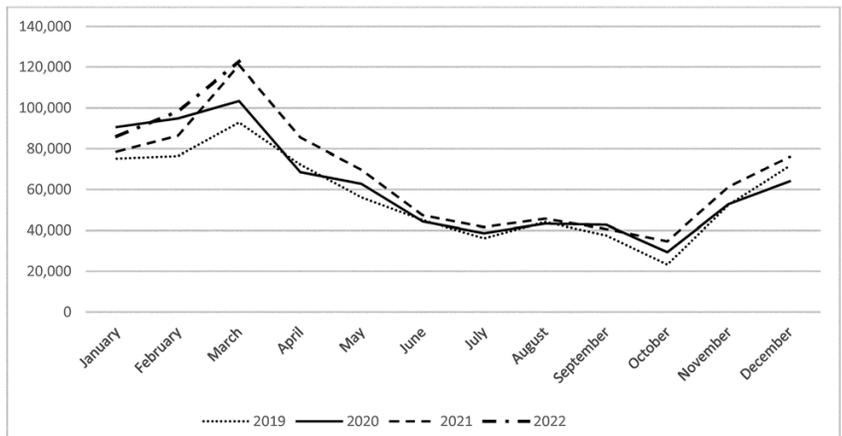
sions since 2019, as shown in *Figure 2*. In fact, as stated above, H-2A admissions were generally higher between January 22, 2022 and March 31, 2022 when the COVID-19 vaccination requirement has been in place, as compared to H-2A admission numbers for the same time in 2021.

Figure 1. Rolling Average of H-2A Admissions (7 days)



Data Source: BorderStat. April 13, 2022.

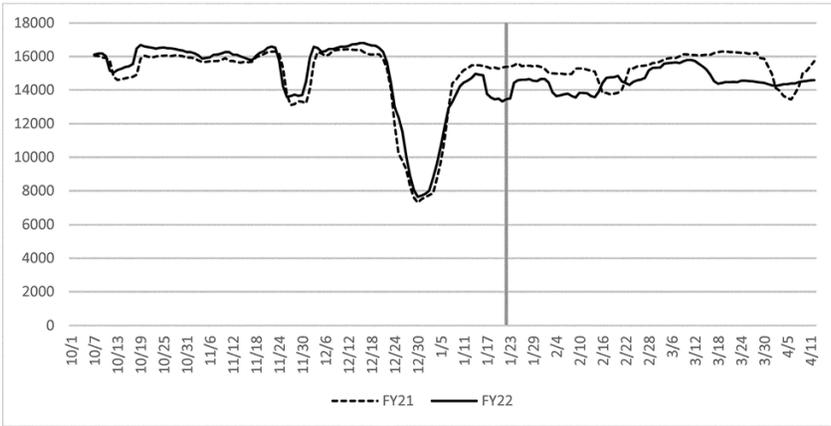
Figure 2. Total Monthly H-2A Admissions



Data Source: BorderStat. April 13, 2022.

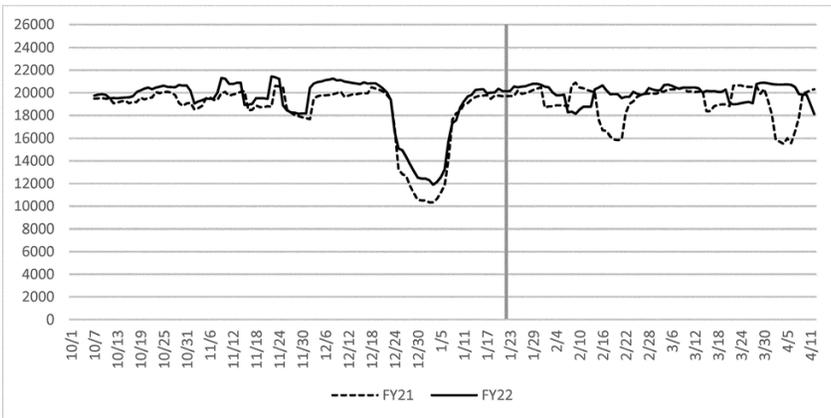
Likewise, there was no significant decrease in border crossings by commercial truck following the vaccination requirement that went into effect on January 22, 2022. *Figures 3 and 4* cover the months before the new vaccination requirement was implemented as well as the months when the new vaccination requirement was implemented. This data shows regular fluctuations generally consistent with what is seen in data for the same time in Fiscal Year 2021 and in the months in 2022 before the new vaccination requirement went into effect. And while the aggregate number of commercial trucks entering the United States from Canada in 2022 is lower than 2021, this initial decrease predates the implementation of the new vaccination requirement on January 22, 2022, and is not mirrored on the Southern border, where commercial truck traffic appears to have slightly increased in 2022.

Figure 3. Rolling Average of Northern Border Truck Crossings (7 days) by Fiscal Year



Data Source: BorderStat. April 13, 2022.

Figure 4. Rolling Average of Southern Border Truck Crossings (7 days) by Fiscal Year



Data Source: BorderStat. April 13, 2022.

DHS, in consultation with interagency partners, also has considered the operational effect of these requirements. In the January 2022 Notification, DHS projected minimal short-term operational impact. The relevant data that DHS and other federal agency partners have analyzed indicate that these projections were accurate. DHS has closely monitored wait times at land POEs, examined cross-border movement, and analyzed available data on border crossings since the vaccination requirement went into effect at land POEs on January 22, 2022, and has observed very minimal operational disruptions. As travelers become more familiar with the vaccination

requirement and vaccination rates continue to increase globally, DHS projects any operational impacts to further diminish.

Based on the foregoing analysis and CDC recommendations, with this Notification, DHS will continue to align COVID–19 travel restrictions applicable to land POEs with those that apply to incoming international air travel,²⁵ ensuring more consistent application of COVID–19 vaccination requirements across travel domains. As a result, with limited exception, all noncitizen non-LPRs will be required, upon request, to show proof of full vaccination against COVID–19 to enter the United States.

Notice of Action

Following consultation with CDC and other interagency partners, and after having considered and weighed the relevant factors, I have determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Canada poses an ongoing “specific threat to human life or national interests.” Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),²⁶ I have determined, in consultation with CDC and other interagency partners, that it is necessary to respond to the ongoing threat at land POEs along the United States–Canada border by allowing the processing of travelers to the United States for only those noncitizen non-LPRs who are “fully vaccinated against COVID–19” and can provide “proof of being fully vaccinated against COVID–19” upon request, as those terms are defined under Presidential Proclamation 10294 and CDC’s implementing Order (“CDC Order”).²⁷ This action does not apply to U.S. citizens, U.S. nationals, lawful permanent residents of the United States, or Ameri-

²⁵ See Presidential Proclamation 10294, *supra*, at n.5.

²⁶ 19 U.S.C. 1318(b)(1)(C) provides that “[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests,” is authorized to “[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.” On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. See 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities “related to Customs revenue functions” were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. See Treas. Dep’t Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that “[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.” Congress has vested in the Secretary of Homeland Security the “functions of all officers, employees, and organizational units of the Department,” including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

²⁷ 86 FR 61224 (Nov. 5, 2021).

can Indians who have a right by statute to pass the borders of, or enter into, the United States. In addition, I hereby authorize exceptions to these restrictions for the following categories of noncitizen non-LPRs:²⁸

- Certain categories of persons on diplomatic or official foreign government travel as specified in the CDC Order;
- persons under 18 years of age;
- certain participants in certain COVID–19 vaccine trials as specified in the CDC Order;
- persons with medical contraindications to receiving a COVID–19 vaccine as specified in the CDC Order;
- persons issued a humanitarian or emergency exception by the Secretary of Homeland Security;
- persons with valid nonimmigrant visas (excluding B–1 [business] or B–2 [tourism] visas) who are citizens of a country with limited COVID–19 vaccine availability, as specified in the CDC Order;
- members of the U.S. Armed Forces or their spouses or children (under 18 years of age) as specified in the CDC Order; and,
- persons whose entry would be in the U.S. national interest, as determined by the Secretary of Homeland Security.

In administering such exceptions, DHS will not require the Covered Individual Attestation currently in use by CDC for noncitizen non-LPRs seeking to enter the United States by air travel, or similar form, but DHS may, in its discretion, require any person invoking an exception to this requirement to provide proof of eligibility consistent with documentation requirements outlined in CDC’s Technical Instructions.²⁹

This Notification does not apply to air or sea travel (except ferries and pleasure craft) between the United States and Canada. This Notification does apply to passenger/freight rail, passenger ferry travel, and pleasure boat travel between the United States and

²⁸ The exceptions to this temporary restriction are generally aligned with those outlined in Presidential Proclamation 10294 and further described in the CDC Order, with modifications to account for the unique nature of land border operations where advance passenger information is largely not available.

²⁹ CDC, Technical Instructions for Implementing Presidential Proclamation Advancing the Safe Resumption of Global Travel During the COVID–19 Pandemic and CDC’s Order, <https://www.cdc.gov/quarantine/order-safe-travel/technical-instructions.html> (last reviewed Mar. 3, 2022).

Canada. These restrictions address temporary conditions and may be amended or rescinded at any time, including to conform these restrictions to any intervening changes in Presidential Proclamation 10294 and implementing CDC orders and consistent with the requirements of 19 U.S.C. 1318.³⁰ In conjunction with interagency partners, DHS will closely monitor the effect of the requirements discussed herein, and the Secretary will, as needed and warranted, exercise relevant authority in support of the U.S. national interest.

I intend for this Notification and the restrictions discussed herein to be given effect to the fullest extent allowed by law. In the event that a court of competent jurisdiction stays, enjoins, or sets aside any aspect of this action, on its face or with respect to any person, entity, or class thereof, any portion of this action not determined by the court to be invalid or unenforceable should otherwise remain in effect for the duration stated above.

This action is not a rule subject to notice and comment under the Administrative Procedure Act. It is exempt from notice and comment requirements because it concerns ongoing discussions with Canada and Mexico on how best to control COVID-19 transmission over our shared borders and therefore directly “involve[s] . . . a . . . foreign affairs function of the United States.” Even if this action were subject to notice and comment, there is good cause to dispense with prior public notice and the opportunity to comment. Given the ongoing public health emergency caused by COVID-19, including the rapidly evolving circumstances associated with fluctuating rates of infection due to the Omicron variant and other potential future variants, it would be impracticable and contrary to the public health, and the public interest, to delay the issuance and effective date of this action.

The CBP Commissioner is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the implementation of the temporary measures set forth in this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian or emergency reasons or for other purposes in the national interest, permit the processing of travelers to the United States who would otherwise be subject to the restrictions announced in this Notification.

³⁰ Although past notifications of this type have sunset on dates certain, DHS has determined, in light of the analysis above, to instead engage in regular reviews of this policy, guided by public health data and other relevant inputs. In determining whether and when to lift the requirements imposed under this notification, DHS anticipates that it will take account of whether Presidential Proclamation 10294 remains in effect, among all relevant factors, consistent with the requirements of 19 U.S.C. 1318. DHS anticipates lifting the requirements imposed under this notification no later than when Presidential Proclamation 10294 is revoked.

ALEJANDRO N. MAYORKAS,
Secretary,
U.S. Department of Homeland Security.

[Published in the Federal Register, April 22, 2022 (85 FR 24048)]

**AUTOMATED COMMERCIAL ENVIRONMENT (ACE)
EXPORT MANIFEST FOR RAIL CARGO TEST:
RENEWAL OF TEST**

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

ACTION: General notice.

SUMMARY: This notice announces that U.S. Customs and Border Protection (CBP) is renewing the Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test, a National Customs Automation Program (NCAP) test concerning ACE export manifest capability.

DATES: The voluntary pilot initially began on September 9, 2015, and it was modified and extended on August 14, 2017. The renewed test will run for an additional two years from the date of publication of this notice in the **Federal Register**.

ADDRESSES: Applications for new participants in the ACE Export Manifest for Rail Cargo Test must be submitted via email to CBP Export Manifest at cbpexportmanifest@cbp.dhs.gov. In the subject line of the email, please write "ACE Export Manifest for Rail Cargo Test Application". Applications will be accepted at any time during the test period. Written comments concerning program, policy, and technical issues may also be submitted via email to CBP Export Manifest at cbpexportmanifest@cbp.dhs.gov. In the subject line of the email, please write "Comment on ACE Export Manifest for Rail Cargo Test". Comments may be submitted at any time during the test period.

FOR FURTHER INFORMATION CONTACT: Brian Semeraro, Branch Chief, or David Garcia, Program Manager, Outbound Enforcement and Policy Branch, Office of Field Operations, CBP, via email at cbpexportmanifest@cbp.dhs.gov, or by telephone, 202-325-3277.

SUPPLEMENTARY INFORMATION:

I. Background

The Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test is a voluntary test in which participants agree to

submit export manifest data to U.S. Customs and Border Protection (CBP) electronically at least two hours prior to loading of the cargo onto the rail car, in preparation for departure from the United States or, for empty rail cars, upon assembly of the train. The ACE Export Manifest for Rail Cargo Test is authorized under § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)), which provides for the testing of National Customs Automation Program (NCAP) programs or procedures.

The ACE Export Manifest for Rail Cargo Test examines the functionality of filing export manifest data for rail cargo electronically in ACE. ACE creates a single automated export processing platform for certain export manifest, commodity, licensing, export control, and export targeting transactions. This will reduce costs for CBP, partner government agencies, and the trade community, as well as improve facilitation of export shipments through the supply chain.

The ACE Export Manifest for Rail Cargo Test also assesses the feasibility of requiring the manifest information to be filed electronically in ACE within a specified time before the cargo is loaded on the train. This capability will enhance CBP's ability to calculate the risk and effectively identify and inspect shipments prior to the loading of cargo in order to facilitate compliance with U.S. export laws.

CBP announced the procedures and criteria related to participation in the ACE Export Manifest for Rail Cargo Test in a notice published in the **Federal Register** on September 9, 2015 (80 FR 54305). This test was originally scheduled to run for approximately two years. On August 14, 2017, CBP extended the test period (82 FR 37893). At that time, CBP also modified the original notice to make certain data elements optional and opened the test to accept additional applications for all parties who met the eligibility requirements. Through this notice, CBP is renewing the test.

The data elements, unless noted otherwise, are mandatory. Data elements which are mandatory must be provided to CBP for every shipment. Data elements which are marked "conditional" must be provided to CBP only if the particular information pertains to the cargo. Data elements which are marked "optional" may be provided to CBP but are not required to be completed. The data elements are set forth below:

- (1) Mode of Transportation (containerized rail cargo or noncontainerized rail cargo) (optional)
- (2) Port of Departure from the United States
- (3) Date of Departure
- (4) Manifest Number
- (5) Train Number

- (6) Rail Car Order
- (7) Car Locator Message
- (8) Hazmat Indicator (Yes/No)
- (9) 6-character Hazmat Code (conditional) (If the hazmat indicator is yes, then UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided.)
- (10) Marks and Numbers (conditional)
- (11) SCAC (Standard Carrier Alpha Code) for exporting carrier
- (12) Shipper name and address (For empty rail cars, the shipper may be the railroad from which the rail carrier received the empty rail car to transport.)
- (13) Consignee name and address (For empty rail cars, the consignee may be the railroad to which the rail carrier is transporting the empty rail car.)
- (14) Place where the rail carrier takes possession of the cargo shipment or empty rail car (optional)
- (15) Port of Unlading
- (16) Country of Ultimate Destination (optional)
- (17) Equipment Type Code (optional)
- (18) Container Number(s) (for containerized shipments) or Rail Car Number(s) (for all other shipments)
- (19) Empty Indicator (Yes/No)

If the empty indicator is no, then the following data elements must also be provided, unless otherwise noted:

- (20) Bill of Lading Numbers (Master and House)
- (21) Bill of Lading Type (Master, House, Simple or Sub)
- (22) Number of house bills of lading (optional)
- (23) Notify Party name and address (conditional)
- (24) AES Internal Transaction Number or AES Exemption Statement (per shipment)
- (25) Cargo Description
- (26) Weight of Cargo (may be expressed in either pounds or kilograms)
- (27) Quantity of Cargo and Unit of Measure
- (28) Seal Number (only required if the container was sealed)
- (29) Split Shipment Indicator (Yes/No) (optional)

- (30) Portion of split shipment (*e.g.* 1 of 10, 4 of 10, 5 of 10, Final, etc.) (optional)
- (31) In-bond Number (conditional)
- (32) Mexican Pedimento Number (only for shipments for export to Mexico) (optional)

For further details on the background and procedures regarding this test, please refer to the September 9, 2015 notice and August 14, 2017 extension and modification.

II. Renewal of the ACE Export Manifest for Rail Cargo Test Period

CBP will renew the test for two years to continue evaluating the ACE Export Manifest for Rail Cargo Test. This will assist CBP in determining whether electronic submission of manifests will allow for improvements in the functionality and capabilities at the departure level. The renewed test will run for two years from the date of publication.

III. Applicability of Initial Test Notice

All provisions in the September 2015 notice and in the August 2017 modification and extension remain applicable, subject to the time period provided in this renewal.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 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 the Office of Management and Budget (OMB). The collections of information in this NCAP test have been approved by OMB in accordance with the requirements of the Paperwork Reduction Act and assigned OMB control number 1651–0001.

PETE FLORES,
*Executive Assistant Commissioner,
Office of Field Operations,
U.S. Customs and Border Protection.*

[Published in the Federal Register, April 27, 2022 (85 FR 25037)]

**AUTOMATED COMMERCIAL ENVIRONMENT (ACE)
EXPORT MANIFEST FOR VESSEL CARGO TEST:
RENEWAL OF TEST**

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

ACTION: General notice.

SUMMARY: This notice announces that U.S. Customs and Border Protection (CBP) is renewing the Automated Commercial Environment (ACE) Export Manifest for Vessel Cargo Test, a National Customs Automation Program (NCAP) test concerning ACE export manifest capability.

DATES: The voluntary pilot initially began on August 20, 2015, as corrected on October 20, 2015, and modified and extended on August 14, 2017. The renewed test will run for an additional two years from the date of publication of this notice in the **Federal Register**.

ADDRESSES: Applications for new participants in the ACE Export Manifest for Vessel Cargo Test must be submitted via email to CBP Export Manifest at *cbpexportmanifest@cbp.dhs.gov*. In the subject line of the email, please write “ACE Export Manifest for Vessel Cargo Test Application”. Applications will be accepted at any time during the test period. Written comments concerning program, policy, and technical issues may also be submitted via email to CBP Export Manifest at *cbpexportmanifest@cbp.dhs.gov*. In the subject line of the email, please write “Comment on ACE Export Manifest for Vessel Cargo Test”. Comments may be submitted at any time during the test period.

FOR FURTHER INFORMATION CONTACT: Brian Semeraro, Branch Chief, or David Garcia, Program Manager, Outbound Enforcement and Policy Branch, Office of Field Operations, CBP, via email at *cbpexportmanifest@cbp.dhs.gov*, or by telephone, 202–344–3277.

SUPPLEMENTARY INFORMATION:

I. Background

Under the current regulatory requirements, the complete manifest is generally not required to be submitted until after the departure of the vessel. *See* sections 4.75, 4.76, and 4.84 of title 19 of the Code of Federal Regulations (19 CFR 4.75, 4.76 and 4.84). The Automated Commercial Environment (ACE) Export Manifest for Vessel Cargo Test is a voluntary test in which participants agree to submit export manifest data to U.S. Customs and Border Protection (CBP) elec-

tronically at least twenty-four hours prior to loading of the cargo onto the vessel in preparation for departure from the United States. The ACE Export Manifest for Vessel Cargo Test is authorized under 19 CFR 101.9(b), which provides for the testing of National Customs Automation Program (NCAP) programs or procedures.

The ACE Export Manifest for Vessel Cargo Test examines the functionality of filing export manifest data for vessel cargo electronically in ACE. ACE creates a single automated export processing platform for certain export manifest, commodity, licensing, export control, and export targeting transactions. This will reduce costs for CBP, partner government agencies, and the trade community, as well as improve facilitation of export shipments through the supply chain.

The ACE Export Manifest for Vessel Cargo Test also assesses the feasibility of requiring the manifest information to be filed electronically in ACE within a specified time before the cargo is loaded on the vessel. This capability will enhance CBP's ability to calculate the risk and effectively identify and inspect shipments prior to the loading of cargo in order to facilitate compliance with U.S. export laws.

CBP announced the procedures and criteria related to participation in the ACE Export Manifest for Vessel Cargo Test in a notice published in the **Federal Register** on August 20, 2015 (80 FR 50644). This test was originally scheduled to run for approximately two years. A correction to the notice, regarding the technical capability requirements, was published on October 20, 2015 (80 FR 63575). On August 14, 2017, CBP extended the test period (82 FR 37890). At that time, CBP also modified the original notice to make certain data elements optional and opened the test to accept additional applications for all parties who met the eligibility requirements. Through this notice, CBP is renewing the test.

The data elements, unless noted otherwise, are mandatory. Data elements which are mandatory must be provided to CBP for every shipment. Data elements which are marked "conditional" must be provided to CBP only if the particular information pertains to the cargo. Data elements which are marked "optional" may be provided to CBP but are not required to be completed. The data elements are set forth below:

- (1) Mode of Transportation (containerized vessel cargo or non-containerized vessel cargo)
- (2) Name of Ship or Vessel
- (3) Nationality of Ship
- (4) Name of Master (optional)
- (5) Port of Loading

- (6) Port of Discharge
- (7) Bill of Lading Number (Master and House)
- (8) Bill of Lading Type (Master, House, Simple or Sub)
- (9) Number of House Bills of Lading (optional)
- (10) Marks and Numbers (conditional)
- (11) Container Numbers (conditional)
- (12) Seal Numbers (conditional)
- (13) Number and Kind of Packages
- (14) Description of Goods
- (15) Gross Weight (lb. or kg.) or Measurements (per HTSUS)
- (16) Shipper name and address
- (17) Consignee name and address
- (18) Notify Party name and address (conditional)
- (19) Country of Ultimate Destination
- (20) In-bond Number (conditional)
- (21) Internal Transaction Number (ITN) or AES Exemption Statement (per shipment)
- (22) Split Shipment Indicator (Yes/No) (optional)
- (23) Portion of Split Shipment (*e.g.*, 1 of 10, 4 of 10, 5 of 10, Final, etc.) (optional)
- (24) Hazmat Indicator (Yes/No)
- (25) UN Number (conditional) (If the hazmat indicator is yes, then UN (for United Nations Number) or NA (North American Number) and the corresponding four-digit identification number assigned to the hazardous material must be provided.)
- (26) Chemical Abstract Service (CAS) Registry Number (conditional)
- (27) Vehicle Identification Number (VIN) or Product Identification Number (conditional) (For shipments of used vehicles, the VIN must be reported, or for used vehicles that do not have a VIN, the Product Identification Number must be reported.)

For further details on the background and procedures regarding this test, please refer to the August 20, 2015 notice, as corrected by the October 20, 2015 notice, and the August 14, 2017 extension and modification.

II. Renewal of the ACE Export Manifest for Vessel Cargo Test Period

CBP will renew the test for another two years to continue evaluating the ACE Export Manifest for Vessel Cargo Test. This will assist CBP in determining whether electronic submission of manifests will allow for improvements in the functionality and capabilities at the departure level. The renewed test will run for two additional years from the date of publication.

III. Applicability of Initial Test Notice

All provisions in the August 20, 2015 notice, as corrected by the October 20, 2015 notice, and in the August 14, 2017 modification and extension remain applicable, subject to the time period provided in this renewal.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 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 the Office of Management and Budget (OMB). The collections of information in this NCAP test have been approved by OMB in accordance with the requirements of the Paperwork Reduction Act and assigned OMB control number 1651–0001.

PETE FLORES,
*Executive Assistant Commissioner,
Office of Field Operations,
U.S. Customs and Border Protection.*

[Published in the Federal Register, April 27, 2022 (85 FR 25036)]



SCREENING REQUIREMENTS FOR CARRIERS

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

ACTION: 30-Day notice and request for comments; revision 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.

DATES: Comments are encouraged and must be submitted (no later than May 27, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

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 proposed information collection was previously published in the **Federal Register** (87 FR 2888) on January 19, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. 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: Screening Requirements for Carriers.

OMB Number: 1651–0122.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date and revise this information collection to allow electronic submission. There is no change to the information collected.

Type of Review: Revision.

Affected Public: Carriers.

Abstract: Section 273(e) of the Immigration and Nationality Act (8 U.S.C. 1323(e)) (the Act) authorizes the Department of Homeland Security (DHS) to establish procedures which carriers must undertake for the proper screening of their non-immigrant passengers prior to embarkation at the port from which they are to depart for the United States, in order to become eligible for a reduction, refund, or waiver of a fine imposed under section 273(a)(1) of the Act. (This authority was transferred from the Attorney General to the Secretary of Homeland Security pursuant to the Homeland Security Act of 2002.) To be eligible to obtain such a reduction, refund, or waiver of a fine, the carrier must provide evidence to U.S. Customs and Border Protection (CBP) that it screened all passengers on the conveyance in accordance with the procedures listed in 8 CFR part 273.

Some examples of the evidence the carrier may provide to CBP include: A description of the carrier's document screening training program; the number of employees trained; information regarding the date and number of improperly documented non-immigrants intercepted by the carrier at the port(s) of embarkation; and any other evidence to demonstrate the carrier's efforts to properly screen passengers destined for the United States.

Proposed Change

Applicants may submit this information via electronic means, *e.g.*, email.

Type of Information Collection: Screening Requirements for Carriers.

Estimated Number of Respondents: 41.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 41.

Estimated Time per Response: 100 hours.

Estimated Total Annual Burden Hours: 4,100.

Dated: April 22, 2022.

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

[Published in the Federal Register, April 27, 2022 (85 FR 25038)]

**RECORD OF VESSEL FOREIGN REPAIR OR EQUIPMENT
PURCHASE (CBP FORM 226)**

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

ACTION: 30-Day notice and request for comments; revision 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.

DATES: Comments are encouraged and must be submitted (no later than May 27, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

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 proposed information collection was previously published in the **Federal Register** (Volume 87 FR Page 4262) on January 27, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. 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: Record of Vessel Foreign Repair or Equipment Purchase.

OMB Number: 1651-0027.

Form Number: CBP Form 226.

Current Actions: Revision of an existing information collection.

Type of Review: Revision.

Affected Public: Businesses.

Abstract: 19 U.S.C. 1466(a) provides for a 50 percent *ad valorem* duty assessed on a vessel master or owner for any repairs, purchases, or expenses incurred in a foreign country by a commercial vessel registered in the United States. CBP Form 226, Record of Vessel Foreign Repair or Equipment Purchase, is used by the master or owner of a vessel to declare and file entry on equipment, repairs, parts, or materials purchased for the vessel in a foreign country. This information enables CBP to assess duties on these foreign repairs, parts, or materials. CBP Form 226 is provided for by 19 CFR 4.7 and 4.14 and is accessible at: <https://www.cbp.gov/document/forms/form-226-record-vessel-foreign-repair-or-equipment-purchase>.

Proposed Change

This form is anticipated to be submitted electronically as part of the maritime forms automation project through the Vessel Entrance and Clearance System (VECS), which will eliminate the need for any paper submission of any vessel entrance or clearance requirements under the above referenced statutes and regulations. VECS will still collect and maintain the same data, but will automate the capture of data to reduce or eliminate redundancy with other data collected by CBP.

Type of Information Collection: Record of Vessel Foreign Repair or Equipment Purchase.

Estimated Number of Respondents: 421.

Estimated Number of Annual Responses per Respondent: 28.

Estimated Number of Total Annual Responses: 11,788.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 23,576.

Dated: April 22, 2022.

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

[Published in the Federal Register, April 27, 2022 (85 FR 25039)]

**PROPOSED REVOCATION OF ONE RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF DOG WHEELCHAIRS**

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

ACTION: Notice of proposed revocation of one ruling letter, and proposed revocation of treatment relating to the tariff classification of dog wheelchairs.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning the tariff classification of dog wheelchairs under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treat-

ment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before June 10, 2022.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Erin Frey, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Due to the COVID-19 pandemic, CBP is also allowing commenters to submit electronic comments to the following email address: 1625Comments@cbp.dhs.gov. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Due to the relevant COVID-19-related restrictions, CBP has limited its on-site public inspection of public comments to 1625 notices. Arrangements to inspect submitted comments should be made in advance by calling Ms. Erin Frey at (202) 325–1757.

FOR FURTHER INFORMATION CONTACT: Emily Rick, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0369.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of dog wheelchairs. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N067952, dated July 24, 2009 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been

specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the identified ruling. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N067952, CBP classified a dog wheelchair in heading 7615, HTSUS, specifically in subheading 7615.19.90, HTSUS, which provided for "Table, kitchen or other household articles and parts thereof, of aluminum; pot scourers and scouring or polishing pads, gloves and the like, of aluminum; sanitary ware and parts thereof, of aluminum: Table, kitchen or other household articles and parts thereof; pot scourers and scouring or polishing pads, gloves and the like: Other: Other." CBP has reviewed NY N067952 and has determined the ruling letter to be in error. It is now CBP's position that dog wheelchairs are properly classified in heading 9021, HTSUS, specifically in subheading 9021.10.00, HTSUS, which provides for "Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof: Orthopedic or fracture appliances, and parts and accessories thereof."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke N067952 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H311415, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated:

GREGORY CONNOR
for
CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N067952

July 24, 2009

CLA-2-76:OT:RR:NC:N1:113

CATEGORY: Classification

TARIFF NO.: 7615.19.9000

Ms. DEBORAH SMITH
MARISOL INTERNATIONAL
871 RIDGEWAY LOOP, SUITE 203
MEMPHIS, TN 38120

RE: The tariff classification of a dog wheel chair from China

DEAR Ms. SMITH:

In your letter dated July 6, 2009, on behalf of General Trading Organization, you requested a tariff classification ruling. Photographs of the unassembled and assembled Dog Wheel Chair were submitted for our review.

The merchandise is identified as a Dog Wheel Chair, a device designed to provide mobility to dogs with injured or amputated hind legs. It is composed of an aluminum rod frame with two wheels on the back end, a textile harness and straps to secure the dog. The Dog Wheel Chair comes with three sizes of wheels and four sizes of harnesses.

In your ruling request, you propose classification of the Dog Wheel Chair in 8716.80.5090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "..., other vehicles, not mechanically propelled". The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and the General Rules of Interpretation (GRIs). The National Import Specialist that handles subheading 8716.80, HTSUS, has indicated that Explanatory Note 87.16 states, "This heading covers a group of **non-mechanically** propelled vehicles...equipped with one or more wheels and constructed for the transportation of **goods or persons** [emphasis added]...." The item in question is not constructed for the transport of goods or persons and would therefore be excluded from classification in this heading.

The applicable subheading for the Dog Wheel Chair will be 7615.19.9000, HTSUS, which provides for table, kitchen or other household articles and parts thereof, of aluminum, other, other. The rate of duty will be 3.1 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Ann Taub at 646-733-3018.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT B

HQ H311415

CLA-2 OT:RR:CTF:EMAIN H311415 EKR

CATEGORY: Classification

TARIFF NO.: 9021.10.00

MS. DEBORAH SMITH
MARISOL INTERNATIONAL
871 RIDGEWAY LOOP, SUITE 203
MEMPHIS, TN 38120

RE: Revocation of NY N067952; Tariff classification of a “dog wheelchair”

DEAR MS. SMITH:

This ruling is in reference to New York Ruling Letter (NY) N067952, dated July 24, 2009, regarding the classification of a dog wheelchair under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N067952, U.S. Customs and Border Protection (CBP) classified the subject article in subheading 7615.19.90, HTSUS, which provided for “Table, kitchen or other household articles and parts thereof, of aluminum; pot scourers and scouring or polishing pads, gloves and the like, of aluminum; sanitary ware and parts thereof, of aluminum: Table, kitchen or other household articles and parts thereof; pot scourers and scouring or polishing pads, gloves and the like: Other: Other.” Upon reconsideration, CBP has determined that NY N067952 is in error. CBP is revoking NY N067952 according to the analysis set forth below.

FACTS:

In NY N067952, the subject merchandise is described as a dog wheelchair, “a device designed to provide mobility to dogs with injured or amputated hind legs. It is composed of an aluminum rod frame with two wheels on the back end, a textile harness and straps to secure the dog. The Dog Wheel Chair comes with three sizes of wheels and four sizes of harnesses.”

ISSUE:

Whether a wheelchair intended for dogs is classified in the heading appropriate to its constituent material (heading 7615, HTSUS as “household articles... of aluminum”) or heading 9021, as an “[o]rthopedic appliance.”

LAW AND ANALYSIS:

Classification under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods will be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 will then be applied in order.

The following provisions of the HTSUS are under consideration:

7615 Table, kitchen or other household articles and parts thereof, of aluminum; pot scourers and scouring or polishing pads, gloves and the like, of aluminum; sanitary ware and parts thereof, of aluminum:

* * *

9021 Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof:

Note 1(h) to Section XV, which includes Chapter 76, states that articles of Section XVIII, which includes Chapter 90, cannot be classified in Section XV. Note 6 to Chapter 90 states:

6.- For the purposes of heading 90.21, the expression “orthopaedic appliances” means appliances for:

- Preventing or correcting bodily deformities; or
- Supporting or holding parts of the body following an illness, operation or injury.

* * *

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

EN 90.21 explains that heading 9021, HTSUS, covers “walking aids known as ‘walker-rollators’, which provide support for the users as they push them. EN 90.21 further states, in relevant part:

This group also covers **orthopaedic appliances for animals**, for example, hernia trusses or straps; leg or foot fixation apparatus; special straps and tubes to prevent animals from crib-biting, etc.; prolapsus bands (to retain an organ, rectum, uterus, etc.); horn supports, etc. But it **excludes** protective devices having the character of articles of ordinary saddlery and harness for animals (e.g., shin pads for horses) (**heading 42.01**).

If the dog wheelchairs are properly classified in heading 9021, HTSUS, they are precluded from classification in heading 7615, by operation of Note 1(h) to Section XV. Therefore, we first consider whether the instant dog wheelchairs rain gauges can be classified as orthopedic appliances of heading 9021, HTSUS.

The purpose of the dog wheelchair at issue here is to provide mobility to dogs with injured or amputated hind legs. To do this, the wheelchair supports the injured part of the dog’s body, so that the dog can move around using its uninjured limbs to roll the wheelchair. As provided in Note 6 to Chapter 90, it is designed to “support[] or hold[] parts of the body following an illness, operation, or injury.” Moreover, the EN for heading 9021, HTSUS, supports classification of orthopedic appliances for animals in this provision. Classification in heading 9021, HTSUS, is consistent with CBP’s classification of similar walker-rollators intended for human use. (*See, e.g.*, Headquarters Ruling Letter (HQ) H280343, dated April 5, 2017; NY N243278, dated July 18, 2013; and NY N235453, dated Dec. 12, 2012). The instant dog wheelchairs

are properly classified in heading 9021, HTSUS, and are therefore precluded from classification in heading 7615, HTSUS, by operation of Note 1(h) to Section XV.

HOLDING:

By application of GRIs 1 (Note 6 to Chapter 90) and 6, the dog wheelchairs at issue in NY N067952 are classified in heading 9021, HTSUS, and specifically provided for under subheading 9021.10.00 HTSUS, which provides for “Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof: Orthopedic or fracture appliances, and parts and accessories thereof.” The general, column one rate of duty for merchandise of subheading 9021.10.00 is free.

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

EFFECT ON OTHER RULINGS:

NY N067952, dated July 24, 2009, is hereby REVOKED in accordance with the above analysis.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division



**REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF PET BOWLS**

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to the tariff classification of pet bowls.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning the tariff classification of certain pet bowls under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the

proposed action was published in the *Customs Bulletin*, Vol. 55, No. 51, on December 29, 2021. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 10, 2022.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Chemicals, Petroleum, Metals & Miscellaneous Branch, Regulations and Rulings, Office of Trade, at Karen.S.Greene@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is revoking one ruling letter pertaining to the tariff classification of certain pet bowls. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N305668, dated August 14, 2019 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 55, No. 51, on December 29 13, 2021, proposing to revoke one ruling letter pertaining to the classification of pet bowls. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N305668 and revoking or modifying any other ruling not specifically identified

to reflect the analysis contained in HQ H306789, set forth as an Attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP proposed to revoke any treatment previously accorded by CBP to substantially identical transactions. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise after the effective date of the final decision on this notice.

In NY N305668, CBP classified pet bowls composed predominantly of bamboo fiber powder in heading 4421, HTSUS, as other articles of wood. CBP has reviewed NY N305668 and has determined the ruling letter is in error.

It is now CBP's position that a pet bowl composed predominantly of bamboo fiber powder is classified in subheading 3924, HTSUS, specifically in subheading 3924.90.56, HTSUS, which provides for "Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N305668 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in HQ H306852, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 25, 2022

for
CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

HQ H306852

April 25, 2022

OT:RR:CTF:CPMM H306852 KSG

CATEGORY: Classification

TARIFF NO.: 3924.90.56

JENNIFER M. SMITH
THE BRISTOL GROUP
1707 L STREET NW
SUITE 570
WASHINGTON, DC 20036

RE: Revocation of NY N305668; tariff classification of pet bowls made of bamboo fiber powder

DEAR Ms. SMITH:

This letter is in reference to New York Ruling Letter (NY) N305668, dated August 14, 2019, regarding the tariff classification of certain pet bowls made of bamboo fiber powder under the Harmonized Tariff Schedule of the United States (HTSUS).

In NY N305668, pet bowls made of 57% bamboo fiber powder and 10% melamine were classified in subheading 4421.91.97, HTSUS.

We have reviewed NY N305668 and determined that the reasoning is in error. Accordingly, for the reasons set forth below, CBP is revoking NY N305668.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N305668 was published on December 29, 2021, in Volume 55, Number 51 of the Customs Bulletin. No comments were received in response to this notice.

FACTS:

The pet bowls are made of a composite material consisting of 57% bamboo fiber powder, 10% melamine, 20% corn starch, 2% dry powder colorant and 11% glue. The production of the pet bowls include: the addition of specific bamboo fiber powder into the mold of the thermal molding machine; the horizontal mold is closed with high pressure and a high temperature; and the polishing of the edges of the product. The product is then inspected, cleaned, and packaged. The name of the thermal molding machine is a “High Temperature Hydraulic Forming Machine.

ISSUE:

Whether the pet bowls described above are properly classified in heading 4421, HTSUS, or as a plastic in heading 3924, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. If the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

GRI 6 provides that for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply unless the context otherwise requires.

The HTSUS headings under consideration are the following:

4421 Other articles of wood

3924 Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics

Chapter Note 1 of Chapter 39, HTSUS, provides that “Throughout the tariff schedule the expression “plastics” means those materials of headings 3901 to 3914 which are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticizer) by molding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence. Throughout the tariff schedule, any reference to “*plastics*” also includes vulcanized fiber.”

The term “plastic” encompasses any organic materials subjected to a polymerization process which creates a malleable product that can be cast, pressed, or extruded into a variety of shapes during manufacture. *See, e.g., <http://www.nobelprize.org/educational/chemistry/plastics/readmore.html>*. Bioplastics are formed by subjecting a fibrous material such as cellulose fibers or wood pulp, mixed with a resin or glue, to heat and pressure. This process polymerizes the fibrous filler material, transforming it into a plastic.

In NY N201536, CBP classified a cutting board made of bamboo fiber powder in heading 3924, HTSUS, as tableware or kitchenware of plastic. In that ruling, CBP stated that “Plastic may consist of unplasticized materials which become plastic in the molding and curing process, or of materials to which plasticisers have been added. These materials may incorporate fillers that are made of wood flour, cellulose, textile fibers, mineral substances, starch, etc.” We believe that the conclusion reached in NY N201536 is correct and is directly relevant to the instant case. The pet bowls are made predominantly of bamboo fiber powder that become plastic in the molding. Therefore, the pet bowls, made as described above, are properly classified in heading 3924, HTSUS, specifically in subheading 3924.90.56, HTSUS. Accordingly, we propose the revocation of NY N305668.

HOLDING:

By application of GRI’s 1 and 6, the pet bowls described above are classified in subheading 3924.90.56, HTSUS as household articles of plastics. The column one, general rate of duty is 3.4 percent ad valorem.

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

EFFECT ON OTHER RULINGS:

NY N305668, dated August 14, 2019, is hereby revoked.

In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

for

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

cc: NIS Charlene Miller, NCSD

U.S. Court of Appeals for the Federal Circuit

M S INTERNATIONAL, INC., FOSHAN YIXIN STONE COMPANY, LTD., ARIZONA TILE LLC, Plaintiffs BRUSKIN INTERNATIONAL, LLC, Plaintiff-Appellant v. UNITED STATES, CAMBRIA COMPANY LLC, Defendants-Appellees

Appeal No. 2021–1679

Appeal from the United States Court of International Trade in No. 1:19-cv-00140-LMG, Senior Judge Leo M. Gordon.

M S INTERNATIONAL, INC., ARIZONA TILE LLC, Plaintiffs BRUSKIN INTERNATIONAL, LLC, Plaintiff-Appellant v. UNITED STATES, CAMBRIA COMPANY LLC, Defendants-Appellees

Appeal No. 2021–1680

Appeal from the United States Court of International Trade in No. 1:19-cv-00141-LMG, Senior Judge Leo M. Gordon.

Decided: April 25, 2022

DAVID J. CRAVEN, Craven Trade Law LLC, Chicago, IL, argued for plaintiff-appellant.

JOSHUA E. KURLAND, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for defendant-appellee United States. Also represented by BRIAN M. BOYNTON, TARA K. HOGAN, PATRICIA M. MCCARTHY, VANIA WANG, Office of the Chief Counsel for Trade Enforcement & Compliance, United States Department of Commerce, Washington, DC.

LUKE A. MEISNER, Schagrin Associates, Washington, DC, argued for defendant-appellee Cambria Company LLC. Also represented by BENJAMIN JACOB BAY, NICHOLAS J. BIRCH, CHRISTOPHER CLOUTIER, ELIZABETH DRAKE, WILLIAM ALFRED FENNELL, KELSEY RULE, ROGER BRIAN SCHAGRIN.

Before HUGHES, MAYER, and STOLL, *Circuit Judges*.

HUGHES, *Circuit Judge*.

In parallel antidumping and countervailing duty investigations of quartz surface products from China, the Department of Commerce amended the scope of its investigations to prevent producers and exporters in China from evading its orders by using glass in place of quartz. Bruskin International LLC challenges Commerce's authority to modify the scope of the investigation and to do so without a hearing. Bruskin also challenges the factual findings that led Commerce to modify the scope of its investigations. Because Commerce

has discretion to set the scope of its investigations, Bruskin’s hearing request was untimely, and substantial evidence supports Commerce’s factual findings, we affirm the Court of International Trade’s decision upholding Commerce’s scope modification.

BACKGROUND

In 2018, Cambria Corporation filed a petition seeking antidumping and countervailing duties on certain quartz surface products from China. The petition requested the following scope:

The merchandise covered by the investigation is certain quartz surface products. Quartz surface products consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (e.g., quartz, quartz powder, cristobalite) as well as a resin binder

Appx103 (Petition Scope).

Commerce asked Cambria how to determine whether a product is “predominately silica.” In response, Cambria clarified that “the scope of the investigation only includes products where the silica content is greater than any other single material, by actual weight.” Appx118. Commerce needed further clarification. The scope expressly covered products made from quartz, a crystalline form of silica. But silica is also the primary ingredient in most glass, although glass differs from quartz in that it is amorphous rather than crystalline. Appx1186–88. Commerce asked Cambria to clarify whether “products where the silica content is greater than any other single material” includes “glass products” and to “revise the proposed scope if necessary.” Appx118. Cambria responded:

The quartz surface products covered by the scope of the investigation may contain a certain quantity of crushed glass. However, the scope is not intended to cover products in which the crushed glass content of the product is greater than any other single material, by actual weight. [Cambria] has revised the scope to exclude any such crushed glass surface products

Appx127.

Commerce adopted Cambria’s exclusion of crushed glass, providing the following statement of scope in its notices of initiation:

The merchandise covered by the investigation is certain quartz surface products. Quartz surface products consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (e.g., quartz, quartz powder, cristobalite) as well as a resin binder However, the scope of the

investigation only includes products where the silica content is greater than any other single material, by actual weight. . . .

. . . .

. . . Specifically excluded from the scope of the investigation are crushed glass surface products. Crushed glass surface products are surface products in which the crushed glass content is greater than any other single material, by actual weight.

Initiation of Less-than-Fair Value Investigation, 83 Fed. Reg. 22,613, 22,618 (May 16, 2018) (citation omitted); Initiation of Countervailing Duty Investigation, 83 Fed. Reg. 22,618, 22,622 (May 16, 2018) (Preliminary Scope). Commerce reiterated this Preliminary Scope in its preliminary scope determination, and in its preliminary determinations in both investigations. Preliminary Affirmative Countervailing Duty Determination, 83 Fed. Reg. 47,881, 47,882 (Sept. 21, 2018); Preliminary Determination of Sales at Less than Fair Value, 83 Fed. Reg. 58,540, 58,542–43 (Nov. 20, 2018). In October 2018, the parties filed briefs addressing the Preliminary Scope.

On February 14, 2019, Cambria submitted a request (Scope Request) asking Commerce to accept new factual information and further “clarify” the scope. Cambria explained that it had intended the crushed glass exclusion to cover crushed glass products that “display visible pieces of crushed glass on their surfaces, giving them a distinct aesthetic compared to other quartz surface products.” Appx562–63. Cambria explained that such products “serve a niche segment of the overall countertop market—i.e., countertops made from recycled materials that prominently display in a visible manner how they are an ‘ecofriendly solution.’” Appx563. But in November 2018 and January 2019, Cambria had received advertisements and product descriptions from Chinese producers for “quartz glass” products that are visually similar to quartz products but contain higher amounts of glass. These producers suggested that they had recently begun offering “quartz glass” in response to high tariffs and emphasized that their quartz glass was not covered by the tariffs due to its higher glass content. Cambria requested that Commerce “clarify” the scope by limiting the crushed glass exclusion to crushed glass products with large pieces of glass visible across the surface. Appx569.

On March 12, 2019, Bruskin and other respondents requested a hearing on crushed glass scope issues. Commerce denied the request for a hearing, ruling it untimely under 19 C.F.R. § 351.310(c) because more than 30 days had passed since the preliminary determinations in both investigations. The parties filed factual information, case

briefs, and rebuttal comments on the issue. Commerce also held an *ex parte* meeting with Chinese producers and U.S. importers regarding scope.

Commerce then issued a decision modifying the crushed glass exclusion to what Cambria had requested:

Specifically excluded from the scope of the investigation(s) are crushed glass surface products. Crushed glass surface products must meet each of the following criteria to qualify for this exclusion: (1) the crushed glass content is greater than any other single material, by actual weight; (2) there are pieces of crushed glass visible across the surface of the product; (3) at least some of the individual pieces of crushed glass that are visible across the surface are larger than one centimeter wide as measured at their widest cross-section (glass pieces); and (4) the distance between any single glass piece and the closest separate glass piece does not exceed three inches.

Appx1179 (Final Scope) (alteration in original). The same exclusion appears in Commerce's final determination and antidumping and countervailing duty orders. Final Affirmative Determination of Sales at Less than Fair Value, 84 Fed. Reg. 23,767, 23,770–71 (May 23, 2019); Final Affirmative Countervailing Duty Determination, 84 Fed. Reg. 23,760, 23,763 (May 23, 2019); Antidumping and Countervailing Duty Orders, 84 Fed. Reg. 33,053, 33,055–56 (July 11, 2019).

Bruskin appealed to the Court of International Trade. Bruskin argued that Commerce's scope modification was procedurally defective because Commerce should have considered Cambria's Scope Request to be a request to amend the petition and denied it as untimely and not properly submitted to the International Trade Commission. Bruskin asserted that it was entitled to a hearing on the crushed glass scope issue. Finally, Bruskin argued that Commerce erred in finding that crushed glass of any kind was ever within the scope of the investigation.

The court sustained Commerce's scope modification. Mem. and Order, *M S Int'l, Inc. v. United States*, 493 F. Supp. 3d 1346 (Ct. Int'l Trade 2021) (No. 19–140), ECF No. 68; Mem. and Order, *M S Int'l, Inc. v. United States*, 493 F. Supp. 3d 1349 (Ct. Int'l Trade 2021) (No. 19–141), ECF No. 65. It entered partial judgment on the scope issue under USCIT Rule 54(b). *M S Int'l*, 493 F. Supp. 3d 1346; *M S Int'l*, 493 F. Supp. 3d 1349.

Bruskin timely appeals the trial court's partial judgment. We have jurisdiction under 28 U.S.C. § 1295(a)(5).

ANALYSIS

“We review a decision of the Court of International Trade evaluating an antidumping determination by Commerce by reapplying the statutory standard of review . . . We will uphold Commerce’s determination unless it is unsupported by substantial evidence on the record or otherwise not in accordance with the law.” *Peer Bearing Co.-Changshan v. United States*, 766 F.3d 1396, 1399 (Fed. Cir. 2014) (citation omitted); 19 U.S.C. § 1516a(b)(1)(B)(i).

I

Bruskin argues that Commerce erred in accepting Cambria’s Scope Request. In Bruskin’s view, Commerce should have treated the Scope Request as a request to amend the petition, and thus denied it for not being submitted to the Commission under 19 U.S.C. § 1673a(b)(2) and 19 C.F.R. § 351.202(e) and for being untimely under Commerce’s usual practices. Commerce responds that it changed the scope not pursuant to Cambria’s Scope Request but under its authority to set the scope of an investigation in response to properly submitted information about potential evasion.

While “[t]he petition initially determines the scope of the investigation, . . . Commerce has inherent power to establish the parameters of the investigation, so that it would not be tied to an initial scope definition that may not make sense in light of the information available to Commerce or subsequently obtained in the investigation.” *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1089 (Fed. Cir. 2002) (cleaned up); see also *King Supply Co., LLC v. United States*, 674 F.3d 1343, 1345 (Fed. Cir. 2012) (“While petitioners and other interested parties in the investigation may propose the scope of merchandise to be investigated, Commerce alone defines the scope of the [antidumping] order.”); *NTN Bearing Corp. of Am. v. United States*, 14 Ct. Int’l Trade 623, 627 (1990).

Commerce was not bound to the Preliminary Scope in this case. Commerce found the Preliminary Scope to be defective because Chinese producers and exporters could evade antidumping and countervailing duty orders by selling “quartz glass,” so Commerce modified the scope to cure the defect. This reasoning is consistent with our case law.

Bruskin also argues that Commerce’s scope modification was unlawful because it was contrary to the intent of the petitioner. Even if this were a limitation on Commerce’s inherent authority to modify scope, we disagree that Commerce departed from the petitioner’s intent here.

The Court of International Trade has held that Commerce owes deference to the petitioner’s intended scope. *Ad Hoc Shrimp Trade*

Action Comm. v. United States, 33 Ct. Int'l Trade 915, 924 (2009) (first citing 19 U.S.C. §§ 1673, 1673a(b); and then citing *NTN Bearing*, 14 Ct. Int'l Trade at 626) (ruling that a scope modification was contrary to law where an importer requested the change and the petitioner argued that the change would “open[] the door to circumvention”). Here, the Final Scope was no broader than the Petition Scope. When “defin[ing] or clarify[ing] the scope of an antidumping investigation” while staying within the bounds of “the intent of the petition,” Commerce “retains broad discretion.” *Minebea Co. v. United States*, 16 Ct. Int'l Trade 20, 22 (1992). And “Commerce . . . may depart from the scope as proposed by a petition if it determines that petition to be ‘overly broad, or insufficiently specific to allow proper investigation, or in any other way defective.’” *Ad Hoc Shrimp*, 33 Ct. Int'l Trade at 924 (quoting *NTN Bearing*, 14 Ct. Int'l Trade at 627). Commerce may set the scope “with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law.” *Mitsubishi Elec. Corp. v. United States*, 12 Ct. Int'l Trade 1025, 1046 (1988); *NTN Bearing*, 14 Ct. Int'l Trade at 628 (discussing Congressional intent to prevent evasion).

Contrary to Bruskin’s argument, Commerce gave appropriate deference to the petitioner’s intent. Cambria’s Petition Scope was ambiguous about crushed glass. While the focus of the Petition Scope was on crystalline forms of silica, such as quartz, it also defined the bounds of the scope by silica content and not crystal structure: the Preliminary Scope covered products made from “a mixture of materials that includes predominately silica.” Because these statements of Cambria’s intent are ambiguous about crushed glass, the Final Scope is not inconsistent with them. And although the crushed glass exclusion in the Preliminary Scope applies to quartz glass, Cambria explained in its Scope Request that it had in mind crushed glass products with large, visible pieces of glass and did not mean to place quartz glass outside the scope. Cambria then provided a new statement of its intended scope. Under these circumstances, Commerce gave appropriate deference to the petitioner’s intent.

Bruskin argues that because Commerce is prohibited from reconsidering industry support after initiating its investigation, it should not be allowed to modify the scope in a way that could change the makeup of the domestic industry. Commerce must find that the petition has the support of a certain fraction of domestic industry producers before initiating a countervailing duty or antidumping investigation. 19 U.S.C. §§ 1671a(c)(4)(A), 1673a(c)(4)(A). It may not revisit that determination after initiation. 19 U.S.C. §§ 1671a(c)(4)(E), 1673a(c)(4)(E). A scope modification or clarification at

any stage could change the makeup of the domestic industry and reduce the fraction of the domestic industry that supports the petition. But that possibility does not nullify Commerce's authority to make scope determinations. See *Kyocera Solar, Inc. v. United States*, 253 F. Supp. 3d 1294, 1315–16 (Ct. Int'l Trade 2017) (holding that inclusion of additional sales was not reason to undermine Commerce's determination to modify scope in its final determination).

Bruskin relies on cases limiting Commerce's discretion to modify the scope after an antidumping or countervailing duty order has issued, whether expressly or through purported "clarifications" of the scope. See *Alstom Atlantique v. United States*, 787 F.2d 565 (Fed. Cir. 1986); *Smith Corona Corp. v. United States*, 915 F.2d 683 (Fed. Cir. 1990); *Ericsson GE Mobile Commc'ns, Inc. v. United States*, 60 F.3d 778 (Fed. Cir. 1995). Those cases do not apply here. Commerce modified the scope before any final determination or order issued, so Commerce enjoyed greater discretion. See *Duferco*, 296 F.3d at 1096–97 ("A purpose of the investigation is to determine what merchandise should be included in the final order," but once a final order has issued, "it can not be changed in a way contrary to its terms.").

Bruskin argues Commerce's treatment of the Second Scope Request differed from its treatment of the request in another investigation, Sodium Hexametaphosphate from the People's Republic of China (SHMP). In that case, Commerce denied petitioners' request to expand the scope of the investigation without filing an amended petition because a revision of scope after the preliminary determination is only appropriate where it constitutes "a clarification of language already in the scope." See SHMP, 73 ITADOC 6,479 at cmt. 1 (Feb. 4, 2008). Commerce's analysis in SHMP is not binding on us and thus does not bear on whether Commerce's scope determination was in accordance with law and supported by substantial evidence. And unlike in SHMP, Cambria's Second Scope Request included new evidence of potential evasion. That evidence justified Commerce's decision to depart from its course in SHMP and modify the scope pursuant to its own authority.

Because Commerce did not have to consider the Second Scope Request to be a request to amend the petition, Commerce did not err in modifying the scope without requiring Cambria to file an amended petition with the International Trade Commission.

II

Bruskin next argues Commerce misapplied 19 C.F.R. § 351.310(c) and violated 19 U.S.C. § 1677c(a)(1) when denying its hearing request as untimely.

Under 19 U.S.C. § 1677c(a)(1), Commerce must “hold a hearing in the course of an investigation upon the request of any party to the investigation before making a final determination.” The procedure for a party to request a hearing is found in 19 C.F.R. § 351.310(c):

Any interested party may request that the Secretary hold a public hearing on arguments to be raised in case or rebuttal briefs within 30 days after the date of publication of the preliminary determination or preliminary results of review, unless the Secretary alters this time limit, or in a proceeding where the Secretary will not issue a preliminary determination, not later than a date specified by the Secretary.

Bruskin’s March 12, 2019 request for a hearing came three months after Commerce issued its preliminary antidumping determination and more than four months after Commerce issued its preliminary countervailing duty determination.

Bruskin argues that because Commerce’s preliminary determinations did not address the crushed glass scope issue, it was an issue “where the Secretary will not issue a preliminary determination” under 19 C.F.R. § 351.310(c), so the 30-day deadline to request a hearing did not apply. But the regulation refers to “proceedings,” not issues, on which Commerce does not issue a preliminary decision. Commerce issued a preliminary decision in these antidumping and countervailing duty proceedings, so the 30-day deadline applied.

Bruskin notes that the statute contains no 30-day deadline, suggesting that imposing one by regulation contradicts the statute. But Commerce may set such deadlines where the statute is silent, *Dofasco Inc. v. United States*, 390 F.3d 1370, 1372 (Fed. Cir. 2004), and must be permitted to enforce them in order to administer the trade remedy laws, *Dongtai Peak Honey Indus. Co. v. United States*, 777 F.3d 1343, 1351 (Fed. Cir. 2015); see also *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 543 (1978) (“Absent constitutional constraints or extremely compelling circumstances, the administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.” (cleaned up)).

Commerce’s regulations provide for exceptions to deadlines, see 19 C.F.R. §§ 351.302, 351.310(c), but rather than requesting an exception, Bruskin has only argued that its hearing request was timely. The request was untimely under the clear language of 19 C.F.R. § 351.310(c), and so Commerce’s denial was in accordance with the law.

Finally, Bruskin alludes to constitutional due process issues but provides no analysis. In view of the ample opportunity Commerce

gave respondents to submit briefing and factual information on this scope issue, Bruskin has not persuaded us that Commerce committed any due process violation.

III

Finally, Bruskin argues that substantial evidence does not support certain fact findings by Commerce. Commerce explained, when modifying the scope, that “evidence on the record demonstrates that glass is made predominantly of silica, just as quartz is made of silica.” Appx1188. Thus, Commerce determined it was necessary to include language that excluded certain crushed glass. Bruskin argues that a “product made of crushed glass is not ‘predominately of silica’ and is thus outside the scope of any order.” Appellant’s Br. 47. Bruskin argues that silica is merely an ingredient in glass that “undergoes a transformation” that makes the silica no longer “separable.” Appellant’s Br. 45–46.

Substantial evidence supports Commerce’s finding. Commerce cited respondent Foshan Yixin’s own test results showing that a sample of “crushed glass” purchased in China was 71.48% silica. Appx1188 (citing Appx986–89). And Foshan Yixin’s other factual submissions include articles explaining that “[w]hat the term ‘glass’ means to most people . . . is a product made from silica (SiO_2),” Appx872–75, and “typical, modern soda-lime-silica glass (used to make bottles and windows)” is made from 73.6% silica, Appx869.

Bruskin is correct that glass can have significant non-silica components, meaning “[t]here is no single chemical composition that characterizes all glass.” Appx869. But “[m]ost natural and artificial glasses are predominantly composed of silica with variable amounts of impurities,” Appx880, thus, Commerce’s understanding that glass could be within the scope is justified.

The cited evidence does not support Bruskin’s assertions that silica loses its identity as silica when made into glass. Bruskin cites test results that it alleges show “that crushed glass product had a higher percentage of non-silica substances and the silica was no longer readily identifiable.” Appellant’s Br. 46 (citing Appx987–89). But one test result shows a crushed glass material found to be 71.48% SiO_2 , contradicting Bruskin’s assertions. The other result is an x-ray crystallography analysis that determined the glass sample was 100% amorphous, which says nothing about what molecules are present in the amorphous sample.

Bruskin also argues there is no substantial evidence of actual evasion and no substantial evidence that quartz glass products ex-

isted before Commerce initiated its investigation. Bruskin forfeited these arguments by failing to raise them before the Court of International Trade. *See* Mem. in Support of the Mot. for J. on the Agency R. at 14–16, *MS Int'l*, 493 F. Supp. 3d 1346 (No. 19–140), ECF No. 51 attach. 1. Further, Bruskin challenges facts that Commerce did not find or rely on. Commerce found only a *potential* for evasion—the scope modification was justified regardless of any actual evasion. Appx1173–74. The advertisements and product descriptions in Cambria’s Scope Request provide substantial evidence for a finding of potential or likely evasion. And Commerce explained that the quartz glass products “*whether newly available or not*, may allow exporters and importers to avoid the payment of duties and undermine the effectiveness of any potential order.” Appx1173–74 (emphasis added).

For these reasons, the judgment of the Court of International Trade is

AFFIRMED

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