

U.S. Customs and Border Protection



8 CFR Part 217

CHANGES TO THE VISA WAIVER PROGRAM TO IMPLEMENT THE ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION (ESTA) PROGRAM AND THE FEE FOR USE OF THE SYSTEM

AGENCY: U.S. Customs and Border Protection; DHS.

ACTION: Final rule.

SUMMARY: This rule adopts as final, with one substantive change, interim amendments to DHS regulations published in the **Federal Register** on June 9, 2008 and August 9, 2010 regarding the Electronic System for Travel Authorization (ESTA). ESTA is the online system through which nonimmigrant aliens intending to enter the United States under the Visa Waiver Program (VWP) must obtain a travel authorization in advance of travel to the United States. The June 9, 2008 interim final rule established ESTA and set the requirements for use for travel through air and sea ports of entry. The August 9, 2010 interim final rule established the fee for ESTA. This document addresses comments received in response to both rules and some operational modifications affecting VWP applicants and travelers since the publication of the interim rules.

DATES: This rule is effective on July 8, 2015.

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Executive Summary

Prior to implementing the Electronic System for Travel Authorization (ESTA), international travelers from Visa Waiver Program (VWP) countries¹ were not evaluated, in advance of travel, for eligibility to travel to the United States under the VWP. In the wake of the tragedy of September 11, 2001, Congress enacted the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53. To address this identified vulnerability of the VWP, section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (section 711 of the 9/11 Act), was enacted, requiring the Secretary of Homeland Security to implement a system that would provide for the advance screening of international travelers by allowing DHS to identify subjects of potential interest before they board a conveyance destined for the United States.

On June 9, 2008, the Department of Homeland Security (DHS) published an interim final rule in the **Federal Register** (73 FR 32440) announcing the creation of the ESTA program for nonimmigrant aliens traveling to the United States by air or sea under the VWP. On November 13, 2008, DHS published a notice in the **Federal Register** (73 FR 67354) announcing that ESTA would be mandatory for all VWP participants traveling to the United States at air or sea ports of entry beginning January 12, 2009.

On March 4, 2010, the United States Capitol Police Administrative Technical Corrections Act of 2009, Public Law 111–145, was enacted. Section 9 of this law, the Travel Promotion Act of 2009 (TPA), mandated the Secretary of Homeland Security to establish a fee for the use of ESTA and begin assessing and collecting the fee.

On August 9, 2010, DHS published an interim final rule in the **Federal Register** (75 FR 47701) announcing that, beginning September 8, 2010, a \$4 ESTA fee would be charged to each ESTA applicant to ensure recovery of the full costs of providing and admin-

¹ With respect to all references to “country” or “countries” in this document, it should be noted that the Taiwan Relations Act of 1979, Public Law 96–8, Section 4(b)(1), provides that “[w]henver the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.” 22 U.S.C. 3303(b)(1). Accordingly, all references to “country” or “countries” in the Visa Waiver Program authorizing legislation, Section 217 of the Immigration and Nationality Act, 8 U.S.C. 1187, are read to include Taiwan. This is consistent with the United States’ one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

istering the system and an additional \$10 TPA fee would be charged to each applicant receiving travel authorization through September 30, 2015.²

DHS received a total of 39 submissions in response to the June 9, 2008 and August 9, 2010 interim final rules. Most of these submissions contained comments providing support, voicing concerns, highlighting issues, or offering suggestions for modifications to the ESTA program.

After review of the comments, this rule finalizes the June 9, 2008 interim final rule regarding the ESTA program and the August 9, 2010 interim final rule regarding the ESTA fee for nonimmigrant aliens traveling to the United States by air or sea under the VWP with one substantive regulatory change allowing the Secretary of Homeland Security to adjust ESTA travel authorization validity periods on a per country basis to the three year maximum or to a lesser period of time. This final rule also contains one minor technical change that removes the specific reference to the Pay.gov payment system. In addition, based on the experience gained from operating the ESTA program since its inception and the comments received, DHS has made a few operational changes to ESTA as it was described in the two interim final rules. For example, VWP travelers no longer need to complete the Form I-94W Nonimmigrant Visa Waiver Arrival/Departure paper form upon arrival in the United States at air and sea ports of entry. Also, VWP travelers who provide an email address to DHS when they submit their application will receive an automated email notification indicating that their ESTA travel authorization will be expiring soon. DHS has also updated the information on the ESTA Web site to address some of the comments. Additionally, DHS has made some changes to the required ESTA application and paper Form I-94W.

On November 26, 2013, DHS published a 60-day notice and request for comments in the **Federal Register** (78 FR 70570) regarding the extension and revision of information collection 1651-0111. On February 14, 2014, DHS published a 30-day notice and request for comments in the **Federal Register** (79 FR 8984) regarding the extension and revision of that information collection. Both notices describe various proposed changes to the ESTA application and paper Form I-94W questions to make them more understandable to VWP travelers, including revisions to the questions about communicable dis-

² The TPA authorized collection of the \$10 TPA fee through September 30, 2014. However, on July 2, 2010, the Homebuyer Assistance and Improvement Act of 2010, in part, amended the TPA by extending the sunset provision of the TPA fee and authorizing the Secretary to collect this fee through September through September 30, 2015. See Public Law 111-198 at § 5. The sunset provision was further extended by the Travel Promotion, Enhancement, and Modernization Act of 2014 through September 30, 2020.

eases, crimes involving moral turpitude, engagement in terrorist activities, fraud, employment in the U.S., visa denials, and visa overstays. DHS also proposed to remove a question about the custody of children. On December 9, 2014, DHS published another 60-day notice and request for comments in the **Federal Register** (79 FR 73096) regarding the extension and revision of information collection 1651–0111. This notice concerns additional changes to the ESTA application and paper Form I–94W that will allow DHS to collect more detailed information about VWP travelers by making previously optional questions mandatory and by adding questions concerning aliases, employment, and emergency contact information among other data elements. These changes are necessary to improve the screening of travelers before their admittance into the U.S. All of the changes in the referenced notices took effect on November 3, 2014.

This rule is considered an economically significant regulatory action because it will have an annual effect on the U.S. economy of \$100 million or more in any one year. Costs to U.S. entities include the cost to carriers to modify or develop systems to transmit ESTA information to DHS.

ESTA provides benefits to U.S. entities by reducing the number of inadmissible aliens who would arrive in the United States by more than 40,000 per year. This reduces the number of aliens DHS will have to process in the United States who would be found to be inadmissible upon their arrival, reduces the number of inadmissible aliens carriers would need to transport back to their points of origin, and reduces wait times for other international travelers arriving at U.S. ports of entry. Though not a quantifiable benefit, this rule will enhance security by providing DHS with information on travelers before they board a conveyance destined for the United States. Table ES–1 shows the range of annualized costs and benefits of this rule to each U.S. entity from 2008–2018, using 3 and 7 percent discount rates.

ES–1—ANNUALIZED COSTS AND BENEFITS OF THE RULE TO U.S. ENTITIES, 2008–2018
[\$2013]

	3% Discount rate	7% Discount rate
Costs		
Carriers—Systems	\$22 million	\$24 million.
Benefits		
Carriers—Inadmissibility Savings.....	65 million to 69 million.....	63 million to 66 million.
CBP—Inadmissibility Savings	6 million.....	6 million.
Total Inadmissibility Savings.....	71 million to 75 million.....	69 million to 72 million.

ES-1—ANNUALIZED COSTS AND BENEFITS OF THE RULE TO U.S.
ENTITIES, 2008–2018
[\$2013]

	3% Discount rate	7% Discount rate
Carriers—Forms Maintenance Savings	2 million.....	2 million.
CBP—Forms Maintenance Savings	0.2 million.....	0.2 million.
Total Forms Maintenance Savings	2 million.....	2 million.

In addition to costs and benefits to U.S. entities, this rule will affect foreign entities. Costs to foreign entities include the cost (the \$14 fee and related expenses) and time burden for foreign travelers to obtain a travel authorization, and the cost and time burden for foreign travelers to obtain a B-1/B-2 visa if a travel authorization is denied. Benefits to foreign entities include the savings to foreign travelers in new VWP countries for no longer needing to apply for visas and the savings to foreign travelers in no longer needing to fill out a paper Form I-94W or Form I-94. Table ES-2 shows the range of annualized costs and benefits of this rule to each foreign entity from 2008–2018, using 3 and 7 percent discount rates.

ES-2—ANNUALIZED COSTS AND BENEFITS OF THE RULE TO FOREIGN
ENTITIES, 2008–2018
[\$2013]

	3% Discount rate	7% Discount rate
Costs		
Travelers—Fee for Travel Authorization.....	\$131 million to \$138 million.....	\$127 million to \$133 million.
Travelers—Time Burden for Travel Authorization.....	126 million to 282 million.....	122 million to 271 million.
Travelers—Visa Costs	14 million to 21 million.....	14 million to 21 million.
Benefits		
Travelers—Visa Savings	182 million to 244 million.....	173 million to 231 million.
Travelers—I-94/I-94W Savings.....	67 million to 150 million.....	65 million to 144 million.

I. Background and Purpose

A. *The Visa Waiver Program*

Pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, the Secretary of Homeland Security, in consultation with the Secretary of State, may designate countries for par-

ticipation in the Visa Waiver Program (VWP) if certain requirements are met.³ Eligible citizens and nationals of VWP countries may apply for admission to the United States at a U.S. port of entry as nonimmigrant visitors for a period of ninety (90) days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. Other nonimmigrant visitors must obtain a visa from a U.S. embassy or consulate and generally must undergo an interview by consular officials overseas in advance of travel to the United States.

B. The Electronic System for Travel Authorization (ESTA)

On August 3, 2007, the President signed into law the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), Public Law 110–53. Section 711 of the 9/11 Act required that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement a fully automated electronic travel authorization system to collect biographical and other information as the Secretary determines necessary to evaluate, in advance of travel, the eligibility of the applicant to travel to the United States under the VWP, and whether such travel poses a law enforcement or security risk. *See* 8 U.S.C. 1187(h)(3)(A).

On June 9, 2008, DHS published an interim final rule in the **Federal Register** (73 FR 32440) announcing the creation of the ESTA program for nonimmigrant visitors traveling to the United States by air or sea under the VWP. *See* 8 CFR 217.5. ESTA provided for an automated collection of the information required on the Form I–94W Nonimmigrant Visa Waiver Arrival/Departure paper form (Form I–94W) in advance of travel. ESTA is intended to fulfill the statutory requirements described in Section 711 of the 9/11 Act. For purposes of this document, the June 9, 2008 interim final rule is referred to as the ESTA IFR.

On November 13, 2008, DHS published a notice in the **Federal Register** (73 FR 67354) announcing that use of ESTA would be mandatory for all VWP travelers traveling to the United States seeking admission at air and sea ports of entry beginning January 12, 2009. Since that date, VWP travelers have been required to receive travel authorization through ESTA prior to boarding a conveyance destined for an air or sea port of entry in the United States. Travelers unable to receive authorization through ESTA may still apply for a visa to travel to the United States.

³ The current list of VWP countries is set forth in 8 CFR 217.2(a).

C. The Fee for Use of ESTA and the Travel Promotion Act Fee

On March 4, 2010, the United States Capitol Police Administrative Technical Corrections Act of 2009, Public Law 111–145, was enacted. Section 9 of this law, the Travel Promotion Act of 2009 (TPA), mandated the Secretary of Homeland Security to establish a fee for the use of ESTA and begin assessing and collecting the fee no later than six months after enactment. *See* 8 U.S.C. 1187(h)(3)(B).

The TPA provided that the required fee consist of the sum of \$10 per travel authorization (TPA fee) to fund the newly authorized Corporation for Travel Promotion and an amount that will at least ensure recovery of the full costs of providing and administering the System (ESTA fee), as determined by the Secretary. *See* 8 U.S.C. 1187(h)(3)(B). The TPA fee has a sunset provision and the Secretary is authorized to collect this fee only through September 30, 2020.⁴ The ESTA fee, in contrast, does not include a sunset provision, but will be reassessed on a regular basis to ensure it is set at a level to fully recover ESTA operating costs.

On August 9, 2010, DHS published an interim final rule in the **Federal Register** (75 FR 47701) announcing that, beginning September 8, 2010, a \$4 ESTA fee would be charged to each ESTA applicant to ensure recovery of the full costs of providing and administering the system and an additional \$10 TPA fee would be charged to each applicant receiving a travel authorization through September 30, 2020. *See* 8 CFR 217.5(h). For purposes of this document, the August 9, 2010 interim final rule is referred to as the ESTA Fee IFR.

For more details regarding ESTA, please *see* the ESTA IFR (73 FR 32440). For more details regarding the fees associated with ESTA, please *see* the ESTA Fee IFR (75 FR 47701). Additional information may also be found on the ESTA Web site at <https://esta.cbp.dhs.gov>.

II. Discussion of Comments Submitted in Response to the Interim Final Rule Announcing ESTA and Interim Final Rule Announcing the ESTA Fee

A. Overview

DHS issued the ESTA IFR on June 8, 2008 and the ESTA Fee IFR on August 9, 2010. Although DHS promulgated both IFRs without first soliciting public notice and comment procedures, DHS provided a sixty day post-promulgation comment period for each rule. Each IFR solicited public comments that DHS would consider before adopting the interim regulations as final. The ESTA IFR went into effect on

⁴ *See* Footnote 3 above regarding the extension of the sunset provision of the Travel Promotion Act fee through September 30, 2020.

January 12, 2009 and the ESTA Fee IFR became effective on September 8, 2010. DHS received twenty-two submissions in response to the ESTA IFR and seventeen submissions in response to the ESTA Fee IFR. Many of the submissions contained multiple comments. This final rule addresses all the comments submitted within the comment periods that are within the scope of the two interim final rules.

Of the twenty-two submissions for the ESTA IFR, most included comments seeking clarification on specific issues, highlighting concerns or issues with ESTA, or offering solutions to issues or alternatives to ESTA. Many of the operational issues raised by commenters have already been addressed by DHS during implementation of ESTA, which our responses reflect. Of the seventeen submissions to the ESTA Fee IFR, some commenters objected to the fees generally and others sought clarification regarding the fees, such as why there were two components and when the fees would be incurred.

Due to the evolution of ESTA and the occasional overlap of comments received in response to both interim final rules, all of the following comments are grouped by category. Except where necessary, comments to the ESTA IFR and comments to the ESTA Fee IFR are not distinguished.

B. Discussion of Comments

1. Impact on Travel

Comment: Some commenters expressed support for ESTA because it will allow VWP travelers the opportunity to learn of travel eligibility problems in advance of arrival.

Response: DHS agrees that one benefit of ESTA is that it informs travelers of their eligibility to travel to the United States under the VWP before departing for the United States. Applicants who are not eligible to travel to the United States through the VWP can attempt to make alternative arrangements in advance, such as obtaining a visa from a U.S. embassy or consulate. For more information about visa application procedures, please visit <http://www.travel.state.gov>.

Comment: A few commenters expressed concern that the ESTA fee and the TPA fee could negatively impact how the world views the United States and could be perceived as an obstacle to legitimate travel. The commenters claimed this could result in some travelers avoiding the United States, which would hurt tourism, business interests, and the travel industry.

Response: There are a lot of variables that can influence the numbers of VWP travelers who come to the United States. DHS is confident that ESTA is not a significant deterrent. Despite the assertion that ESTA and the ESTA fee would negatively affect tourism to the

United States, DHS has seen no decrease in VWP travel coming to the United States since ESTA was announced, even after accounting for countries that have joined the VWP since ESTA was implemented. Through the end of 2012, there have been over 50 million travel authorizations granted through ESTA.

Comment: Some commenters noted that significant burdens could be placed on airlines due to passengers attempting to board without having first obtained ESTA travel authorization.

Response: Prior to implementation, DHS conducted significant outreach to the travel industry and the traveling public to ensure that they were aware of the ESTA requirements, including the need to have a valid ESTA travel authorization prior to boarding a conveyance destined for an air or sea port in the United States. In addition to outreach, DHS took various steps, including delaying implementation and establishing an informed-compliance period, to enable the travel industry and the traveling public to adjust to the new requirements. This is explained in more detail in Section II. B. 3 (Implementation of ESTA). As a result of these steps and the outreach, the concerns raised in this comment never materialized.

2. Impact on Short Notice Travelers

Comment: A number of comments were received regarding the timeline for ESTA approval and the impact on last minute travelers applying at the airport on the day of scheduled travel. One commenter asked DHS to monitor the system for problems to determine if there are negative impacts on last minute business travelers and to provide guidance on what a last minute traveler should do in the case where he or she has not received an ESTA determination, but needs to depart for the United States. Some commenters said that DHS' recommended timeline for applying for an ESTA travel authorization (no later than 72 hours prior to departure) is not sufficient to accommodate last minute business travelers.

Response: An ESTA travel authorization is generally valid for two years so concerns about last minute travel will only be for those who have not already received travel authorization through the ESTA Web site. Also, potential VWP travelers may apply for an ESTA travel authorization even if they do not have immediate plans to travel to the United States. This enables VWP travelers to know whether they are eligible to travel to the United States under the VWP even before purchasing tickets. Furthermore, ESTA was designed to accommodate last minute or emergency travel. ESTA allows travelers to apply

for a travel authorization on the day of departure and provides almost an immediate response to the applicant for the vast majority of applications.

Applicants should be aware, however, that they risk not having the required authorization to travel to the United States if their application requires additional processing beyond the time between when they submit their application and when their voyage to the United States begins. VWP travelers without a valid ESTA travel authorization cannot board conveyances destined for the United States.

In cases in which a determination is not granted immediately, it may take anywhere from a few minutes to a few days for a decision to be made. In most cases, the applicant will receive an ESTA decision within 72 hours. However, additional time may be necessary if manual vetting is required or there is a system overload. An applicant may contact the ESTA Telephone Help Desk at 202-344-3710 between the hours of 8:00 a.m. to 4:00 p.m. (ET) Monday through Friday for assistance in processing their pending application. However, there is no guarantee that a determination will be made in time to allow the traveler to board a conveyance destined for the United States. This is why DHS recommends that travelers apply for an ESTA travel authorization early in the planning process.

3. Implementation of ESTA

Comment: One commenter stated that if DHS were to maintain ESTA's original timetable, then cumbersome, manual solutions would have to be developed and promulgated for those carriers who cannot manage automated solutions. Another commenter stated that DHS should offer a discretionary period during which airlines allow VWP travelers without ESTA travel authorization to travel to the United States under the condition that they complete the I-94W paperwork upon arrival and educate these passengers on how to use ESTA for future VWP travel.

Response: In promulgating the ESTA IFR, DHS built in a delayed effective date for the rule to allow air carriers and VWP travelers to adjust to the new ESTA process. Specifically, the ESTA IFR provided that ESTA would become mandatory sixty days after the Secretary published notice in the **Federal Register**. See 72 FR 32440. On November 13, 2008, DHS published a notice in the **Federal Register**, which announced that ESTA would be mandatory for all VWP travelers beginning January 12, 2009. See 73 FR 67354. The January 12, 2009 date provided five months advance notice before DHS would implement the rule. It also was the beginning of what DHS termed the Informed Compliance period. This meant that while all travelers and carriers were expected to be ESTA-compliant, DHS established a

transition period to enable travelers and carriers to adjust to the new requirements. During the Informed Compliance period, travelers arriving without prior ESTA authorization were not refused admission on this basis. Instead, they were permitted to complete the paper form I-94W upon arrival in the United States. Also, during this period, DHS did not levy fines on carriers for boarding travelers without prior ESTA authorization. This enabled the carriers to make the necessary system-adjustments for ESTA. As a result of the advance notice and the informed compliance period, there was no need for the manual solutions referenced in the above comment.

Further, DHS set up an internet-accessible system where certain carriers could check the ESTA status for VWP travelers without having to make the extensive system modifications required for carriers regularly transporting VWP travelers. For the most part, the internet-accessible system could be used by smaller or private carriers that transport VWP travelers on an irregular basis, or for emergency situations that may arise from time to time. For more information on this internet-accessible system, please contact the ESTA Help Desk at 202-344-3710.

Comment: Some commenters stated that ESTA was announced too quickly and prevented the travel industry from assessing the required changes and evaluating the ramifications and costs. Other commenters asked DHS to provide a transition period during which DHS would not levy penalties on carriers.

Response: As explained above, DHS provided a significant amount of notice before implementing ESTA as a mandatory requirement on January 12, 2009. This was followed by approximately one year of an Informed Compliance period during which travelers and carriers were expected to be ESTA-compliant but were not penalized for non-compliance. The Informed Compliance period ended on January 20, 2010. As of that date, individuals without an ESTA travel authorization would be refused admission and, as allowed for under § 217(e) of the INA (Carrier Agreements), fines would be issued against non-compliant carriers. DHS also provided an additional 60-day grace period after January 20, 2010 for carriers having difficulty with the systems modifications.

From the date the ESTA IFR published, the travel industry had more than two years (and more than one year from the date it became mandatory) to evaluate and adjust to the ESTA requirements and to assess the costs related to ESTA and implement appropriate systems modifications. During the time between when ESTA was announced and when it became mandatory, DHS sought input and worked with the travel industry to address operational issues. DHS believes that

this program has been highly successful in large part due to the cooperation between DHS and the travel industry.

Comment: Many commenters had suggestions for the implementation of ESTA, such as beginning ESTA as a pilot program to adequately measure its impact, phasing it in over time rather than all at once, or waiting until a certain percentage of VWP travelers are compliant before making ESTA mandatory.

Response: As explained above, DHS implemented ESTA by using an Informed Compliance period to facilitate the transition to the new requirements. The ESTA IFR provided travelers and the travel industry with the needed information about the new requirements and provided ample notice and time to prepare for ESTA. DHS believed that the most effective way to implement ESTA was to inform all VWP travelers and the travel industry about the new requirements and to implement them for all VWP countries and carriers at the same time. To facilitate a smooth transition, DHS also conducted significant public outreach and worked closely with the carriers involved with the VWP.

Implementing ESTA as a pilot program, based on country of embarkation, port of arrival, language, or by any other piecemeal approach would have meant multiple processes for carriers and DHS staff at ports of entry. Moreover, DHS believes that such an approach would not have aided the transition to the new requirements but rather would have been confusing to the traveling public and travel industry. Additionally, waiting until after a certain percentage of VWP travelers were compliant would have been ineffective in strengthening the VWP in a timely manner. DHS believes that ESTA was implemented in a way that allowed for substantial analysis of the program and its impact, as well as providing adequate notice to allow affected travelers and the travel industry to adjust to ESTA's requirements comfortably.

Comment: One commenter stated that DHS should process ESTA applications upon arrival for the small minority of passengers who arrive without ESTA authorization.

Response: The 9/11 Act specifically required the Secretary to collect the necessary biographical and other information "to evaluate, in advance of travel," the traveler's eligibility to travel to the United States under the VWP. *See* 8 U.S.C. 1187(h)(3)(A). Therefore, allowing VWP travelers to obtain an ESTA upon arrival in the United States would contradict the language of the 9/11 Act and undercut DHS's ability to evaluate the traveler's eligibility to enter the United States under the VWP, in advance of travel. DHS believes that such

a process also could disincentivize VWP travelers from obtaining an ESTA before departing for the United States.

DHS provided VWP travelers with the necessary information to comply with ESTA requirements, as well as the transitional periods described above prior to requiring compliance. Currently all VWP travelers are responsible for obtaining ESTA authorization prior to boarding an air carrier or sea vessel destined for the United States. As such, a VWP traveler should not attempt to board and a carrier should not allow a VWP traveler to board without ESTA travel authorization.

Comment: One commenter stated that DHS should have considered proposals from the private sector to develop an ESTA-like system, rather than developing ESTA as a government designed online system.

Response: DHS considered many alternatives and possible solutions during the ESTA planning, design, and development process. DHS decided to develop ESTA as a DHS system based on a variety of factors, including the impact that the VWP has on national security, the need to coordinate with other programs, and time constraints.

Comment: Two commenters agreed with the way that DHS implemented ESTA. One commenter liked the fact that DHS moved aggressively to implement new security measures required to expand the VWP and in concluding bilateral agreements with qualified prospective VWP countries. Another commenter stated that DHS is fulfilling a critical role in accommodating and responding to the needs of last minute travelers.

Response: DHS appreciates the comments expressing support for the implementation and expansion of ESTA and the VWP.

Comment: A few commenters asked DHS to provide alternative means for submitting an ESTA application such as integrating ESTA into the travel industry's reservation system, providing a staffed telephone hotline to permit users to report their information to the ESTA system, or allowing carriers to apply on behalf of travelers.

Response: In order to meet the statutory requirement that DHS create a fully automated electronic travel authorization, DHS established the online ESTA Web site for submitting the ESTA application. Other options, such as allowing carriers to apply on behalf of travelers using their reservation system or a telephone number where VWP travelers could call in and report the information, would not have met the requirement to establish a fully automated electronic travel authorization system and would have raised security and privacy concerns.

4. Plain Language and ESTA Web Site Assistance

Comment: A few commenters requested that DHS use plain language on the ESTA Web site, including the eligibility questions, in order to avoid confusion about eligibility requirements or about when a new ESTA application is required.

Response: DHS has used plain language in the ESTA application and on the ESTA Web site wherever possible and, in an effort to accommodate the majority of the VWP traveling public, the ESTA Web site has been translated into 23 languages. On November 3, 2014, DHS revised the eligibility questions on the ESTA Web site in order to make them clearer while still providing DHS with the information needed to make ESTA eligibility determinations. The Web site also features a “Help” section to assist applicants by providing definitions of certain terms and clear answers to questions on a variety of subjects, including situations in which an applicant is required to reapply before the expiration date of their ESTA. As specified on the Web site, a traveler must obtain a new travel authorization under any of the following circumstances:

1. The individual is issued a new passport;
2. The individual’s name changes;
3. The individual changes gender;
4. The individual changes their country of citizenship; or
5. The circumstances underlying the traveler’s previous responses to any of the ESTA application questions requiring a “yes” or “no” response have changed.

Comment: One commenter notes that the Frequently Asked Questions (FAQs) posted on the ESTA Web site are very useful and asked DHS to post more of them.

Response: FAQs are posted on the ESTA Web site under the HELP section at https://esta.cbp.dhs.gov/esta/WebHelp/ESTA_Screen-Level_Online_Help_1.htm. Questions and answers are posted on an ad hoc basis to address issues as they arise. DHS will continue to monitor feedback and post appropriate general information when it is determined to be helpful to the traveling public.

5. Internet Concerns and Third Party Applications

Comment: Several commenters raised concerns about whether the ESTA online system will be able to handle the Web traffic as more travelers fill out their ESTA applications online.

Response: ESTA is designed to accommodate a significant amount of Web traffic. DHS takes necessary measures to ensure that the ESTA Web site is readily available throughout the day and to minimize any

technical disruptions. To date, ESTA has experienced no significant delays stemming from an increase in Web traffic.

Comment: Some commenters expressed concerns about fraudulent ESTA emails designed to solicit personal information and fraudulent Web sites attempting to gather information for criminal purposes by imitating ESTA and asked how DHS plans to address these types of issues.

Response: All ESTA applicants should apply for an ESTA travel authorization at the following ESTA Web site: <https://esta.cbp.dhs.gov>. DHS takes necessary measures to ensure the safety and reliability of personal identification information furnished to DHS through this Web site. The ESTA Web site is a secure Web site under DHS protocol. Each approved application is assigned a unique identifier that corresponds to the designated traveler. These unique identifiers directly correspond to an approved traveler and verification is only done electronically between the carriers and DHS. Therefore, the confirmation cannot be copied or manipulated.

DHS monitors Web sites that purport to offer ESTA authorization and will continue to provide outreach to the VWP traveling public to ensure they know how to submit the ESTA application. If an ESTA applicant receives emails claiming to be ESTA related that ask for personal information, the applicant should report this to the ESTA Help Desk at 202-344-3710.

Comment: Many commenters stated that the ESTA fee could create opportunities for other Web sites to charge users to complete the ESTA applications.

Response: DHS has no control over third parties providing assistance in applying for travel authorization. However, DHS has designed the system to be user friendly so as to minimize the need to seek assistance. For instance, the ESTA Web site is available in 23 languages and has information on the ESTA home page about traveler eligibility and passport requirements as well as a HELP feature that includes answers to frequently asked questions.

Comment: Some commenters asked about alternatives for ESTA applicants without internet access. One commenter asked if an individual within the United States could apply for an ESTA on behalf of the traveler. One commenter asked if applicants who use a third party to complete an ESTA application should provide the traveler's email address or that of the third party who applies on the traveler's behalf.

Response: In order to accommodate people who may not have familiarity with or access to computers or the internet, DHS designed ESTA to allow a third party, such as a relative, friend, or travel agent,

to submit an application on behalf of the traveler. The location of the third party filling out the ESTA application is immaterial. The traveler or third party can apply within or outside the United States. In all cases, the traveler is responsible for the answers submitted on his or her behalf by a third party and the third party must check the box on the ESTA application indicating that he or she completed the application on the traveler's behalf. The email address provided should be the traveler's email address. If the traveler does not have an email address, he or she may provide an alternative third-party email address belonging to a point of contact (e.g. a family member, friend, or business associate).

Comment: One commenter stated that DHS should ascertain the percentage of travelers entering the United States who will use the internet and other means (such as a travel agent) to make travel arrangements to demonstrate how many travelers do not book travel through the internet and would thus have difficulty obtaining authorization through the ESTA Web site.

Response: DHS has seen no evidence that VWP travelers are having difficulty obtaining ESTA authorization through the ESTA Web site. Additionally, in the economic analysis posted on the docket with the ESTA IFR (Regulatory Assessment for the Interim Final Rule: Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization), DHS provided extensive information on historic booking patterns, internet penetration, and computer prevalence. This information has been updated in the economic analysis prepared for this final rule (Regulatory Assessment for the Final Rule: Changes to the Visa Waiver Program to Implement the Electronic System for Travel Authorization and the Fee for Use of the System), posted on the docket with this final rule. To see detailed information relevant to this comment, please refer to Chapter 2 (Regulatory Baseline: Historic & Projected Traveler Levels) of this document. In summary, internet penetration and computer access is high in VWP countries and has grown since the ESTA IFR published in 2008. Twenty-four of the 37 countries in the VWP have internet penetration rates above 75 percent and only one country (Greece) has an internet penetration rate of less than 50 percent. As discussed above, VWP travelers who do not have direct access to the internet may submit the application through a third party. DHS continues to believe that these third parties, such as relatives, friends, and travel agents, will be key players in the continued success of ESTA.

6. The Role of ESTA for VWP Travelers

Comment: One commenter stated that requiring VWP travelers to obtain ESTA travel authorization is the functional equivalent of a visa because passengers do not need any documentation other than a valid passport before traveling to the United States. Another commenter stated that ESTA requires certain foreign citizens to obtain an exit permit from the U.S. government before they may leave their own country.

Response: These comments do not accurately portray ESTA. Under the VWP, eligible citizens, nationals and passport holders from designated VWP countries may apply for admission to the United States as nonimmigrant visitors for a period of ninety days or less for business or pleasure without first obtaining a nonimmigrant visa. ESTA, however, is not the functional equivalent of a visa because eligible travelers from participating countries are exempt from the visa requirement. Application for a nonimmigrant visa to travel to the United States involves the payment of a higher fee and generally requires travel to a U.S. embassy or consulate for an in person interview.

Rather, ESTA is the functional equivalent of the Form I-94W that VWP travelers were previously required to complete upon arrival in the United States. As a result of the ESTA IFR, only eligible travelers from VWP countries arriving by air and sea now present the information collected on the Form I-94W through ESTA in advance of their travel to the United States. VWP travelers arriving in the United States by land are still required to complete a paper Form I-94W. VWP travelers who receive ESTA travel authorization are not required to report to a State Department consular office and obtain a visa before traveling to the United States.

ESTA is not equivalent to an exit permit from the foreign country and does not require anyone to obtain an exit permit from a foreign country. Rather, ESTA fulfills a requirement for VWP travelers intending to enter the United States by air and sea.

7. In-Transit Travel

Comment: One commenter remarked that ESTA should provide clear instructions to passengers who transit through the United States onward to other destinations as to whether they are required to comply with ESTA requirements.

Response: DHS does not currently operate a transit without visa program. Travelers who transit through the United States en route to another country must either obtain travel authorization via ESTA to travel under the VWP or they must have a visa. This is true even if

the individual is leaving the United States on the same day or even on the same plane. Travelers who will transit through the United States en route to another country can simply enter the words “In Transit” in the address lines under the heading “Address While In The United States” on the ESTA application.

8. ESTA Enforcement

Comment: One commenter stated that ESTA is impracticable and unenforceable because it does not specify any enforcement mechanisms.

Response: DHS disagrees. There are enforcement mechanisms that apply to individuals and carriers involved in the VWP. All VWP travelers are responsible for obtaining ESTA authorization prior to boarding an air or sea vessel destined for the United States and may be prevented from boarding and/or denied admission to the United States upon arrival if they do not have ESTA travel authorization. Carriers that transport VWP travelers are required to enter into agreements with the United States, pursuant to §§ 103 and 217 of the INA, to become VWP signatory carriers. These agreements impose certain obligations upon carriers and provide for the imposition of fines if certain obligations are not met. For example, VWP signatory carriers incur fines if they transport travelers who require a valid ESTA travel authorization but do not have one.

Comment: One commenter stated that the phrase “prior to embarking on a carrier for travel to the United States” is too vague and that it should define the relevant terms. Another commenter stated that the regulation should specify the manner of providing data to obtain an ESTA travel authorization.

Response: Based on the plain language meaning of the phrase “prior to embarking on a carrier for travel to the United States,” travelers must have ESTA travel authorization prior to boarding an air carrier or sea vessel destined for the United States. The term “United States” is defined at 8 U.S.C. 1101(a)(38). With regard to the manner of submitting the ESTA application, DHS has made substantial efforts to educate the public on how to obtain an ESTA travel authorization, and has also provided such information in the ESTA IFR and this document. Over 50 million ESTA travelers arrived in the United States between 2009 and 2011, an indication that applicants are aware of how to submit an ESTA application.

Comment: Some commenters stated that ESTA will cause logistical problems because carriers will have to determine the visa class of travelers.

Response: This is not accurate. Only travelers coming to the United States under the VWP are required to obtain an ESTA travel authorization and these travelers are exempt from visa requirements. Carriers will not have to determine the visa class for these VWP travelers.

Comment: One commenter claimed that airlines will incur significant penalties and liabilities if they deny boarding to passengers who arrive without an ESTA travel authorization or when a passenger arrives at the port of entry and must be returned to his point of departure at the carrier's expense.

Response: For the purposes of ESTA, a carrier's responsibility is limited to the verification of the traveler's ESTA application status. Carriers that wish to transport travelers under the VWP are required to become VWP signatory carriers. VWP signatory carriers will incur fines if they transport travelers who require a valid ESTA travel authorization but do not have one. It should be noted that ESTA is not a determination of admissibility; it merely authorizes the traveler to board a conveyance destined for the United States. Passengers determined to be inadmissible to the United States are required to return to their country of origin and carriers are responsible to provide these passengers transportation back to their point of departure. The fact that travel authorization was granted does not absolve the carrier from this responsibility. Carriers agree to the following in the VWP carrier agreement:

The carrier will remove from the United States (on the first available means of transportation to the alien's point of departure to the United States) any alien transported by the carrier to the United States for admission under the Visa Waiver Program in the event that the alien is determined by a U.S. Customs and Border Protection officer at the Port of Entry to be not admissible to the United States or is determined by a U.S. Customs and Border Protection officer to have remained unlawfully in the United States beyond the 90-day period of admission under the Visa Waiver Program. The carrier will carry out the responsibilities under this paragraph in a manner that does not impose on the United States expenses related to the transportation of such alien from the point of arrival in the U.S.

Comment: One commenter indicated that there is no provision in the 9/11 Act about the carrier's role in implementing and enforcing ESTA. As such, DHS is not authorized to compel carriers to assume a function which Congress mandated on individuals.

Response: DHS agrees that the 9/11 Act requires certain individuals to obtain a travel authorization prior to traveling to the United States. However, VWP signatory carriers are responsible for verifying

that the traveler has a valid ESTA travel authorization prior to allowing a VWP traveler to board a conveyance destined for the United States. This responsibility is set forth in the VWP carrier agreements described above.

9. State Department Coordination

Comment: One commenter stated that DHS and the State Department must work together to ensure travelers are well-informed regarding their responsibilities under the ESTA program.

Response: DHS coordinated closely with the State Department during the development and implementation of ESTA and this coordination was essential to the efficient implementation of ESTA. DHS's ongoing coordination with the State Department remains essential to the ongoing administration of the ESTA. DHS partnered with the State Department to develop a strategic communications and outreach plan aimed at notifying VWP travelers of the new ESTA requirements. DHS personnel traveled extensively to VWP countries, attended major international travel conferences, distributed printed materials, and spoke with the travel industry and the public regarding ESTA. DHS continues to conduct extensive public outreach at U.S. ports of entry and overseas with the assistance of the State Department, to ensure that the traveling public and the travel industry as a whole are sufficiently informed regarding ESTA.

Comment: Some commenters noted that a significant number of ESTA denials could result in increased visa demand, thereby causing significant delays, and asked that DHS coordinate with the State Department as needed.

Response: Since January 12, 2009, when ESTA became mandatory for all VWP travelers traveling to the United States at air or sea ports of entry, DHS has processed over 50 million VWP traveler applications and denied approximately one-third of one percent (0.23%) of all applications. As such, there have not been a significant number of denials. Moreover, as stated elsewhere in this document, DHS continues to work with the State Department to ensure the efficient administration of ESTA.

Comment: One commenter stated that DHS and the State Department should offer clear direction and access to entry alternatives to those that do not have a travel authorization via ESTA.

Response: ESTA is required for VWP travelers arriving in the United States at air and sea ports of entry. As explained on the ESTA Web site, persons who do not have an ESTA travel authorization may apply for a visa issued by the State Department. Individuals traveling to the United States with a passport and valid visa are not

traveling under the VWP and these individuals would not need to obtain an ESTA travel authorization.

10. ESTA Expansion to Land Arrivals

Comment: One commenter stated that to be effective, ESTA should apply to all modes of transportation and asked how ESTA will function at the land borders.

Response: Currently, ESTA is required only for VWP travelers arriving in the United States by air or sea. VWP travelers who arrive in the United States at a land border port of entry are not required to obtain ESTA authorization. These travelers must submit a completed paper Form I-94W at the land border port of entry. However, DHS is considering expanding ESTA to VWP travelers arriving at a land border by way of a separate rulemaking.

11. Impact on Existing Laws and Agreements

Comment: One commenter stated that the ESTA rule exceeds the statutory authority of Section 217 of the INA by imposing additional requirements beyond what is imposed by the statute. The commenter claims the statute only obliges travelers to “electronically provide information,” whereas the ESTA IFR requires that the traveler providing information also receive a travel authorization.

Response: DHS disagrees. Section 217(a)(11) of the INA (8 U.S.C. 1187(a)(11)), as amended, specifically requires the Secretary of Homeland Security to determine whether the person submitting the electronic travel authorization is eligible to travel to the United States under the VWP. It provides that each alien traveling under the program shall, before applying for admission to the United States, electronically provide biographical information and such other information as the Secretary of Homeland Security determines necessary to determine the eligibility of, and whether there exists a law enforcement or security risk in permitting, the alien to travel to the United States and that upon review of such information, the Secretary of Homeland Security shall determine whether the alien is eligible to travel to the United States under the program. Moreover, section 217(h)(3)(C)(i) of the INA (8 U.S.C. 1187 (h)(3)(C)(i)) provides for regulations “that provide for a period, not to exceed three years, during which a determination of eligibility to travel under the program will be valid.” As such, the statutory provisions anticipate a determination of eligibility to travel. Therefore requiring a VWP traveler to receive ESTA travel authorization does not exceed the statutory authority.

Comment: Some commenters claimed that ESTA limits the freedom of movement of individuals and that this violates international agreements, including Article 13 of the Universal Declaration of Human Rights (UDHR)⁵ and Articles 10, 12, and 21 of the International Covenant on Civil and Political Rights (ICCPR).⁶

Response: DHS disagrees that ESTA limits the freedom of movement of individuals and that this violates international agreements. The referenced provisions do not pertain to ESTA and they are outside the scope of the ESTA rulemakings. Article 13 of the UDHR refers to freedom of movement and residence within the borders of each state as well as the right to leave a country or return to one's own country. Article 10 of the ICCPR applies to persons deprived of their liberty in relation to the penitentiary system. Article 12 of the ICCPR concerns the right to liberty of movement when lawfully in the territory of a state, the freedom to leave a country including one's own, and the right to reenter one's own country. Article 21 of the ICCPR concerns the right to peaceful assembly. ESTA does not limit an individual's rights to leave a country, limit an individual's right to reenter one's own country, relate to individuals in the penitentiary system, or have any impact on an individual's right to peaceful assembly.

Comment: Some commenters expressed concerns that the ESTA Web site may contravene disability laws and raise discrimination issues because it discriminates against those who are unable to access the internet due to a disability.

Response: DHS endeavors to take the necessary steps to ensure that persons with disabilities can comply with the regulatory requirements. Persons that are unable to access the internet due to a disability may apply for an ESTA travel authorization through a third party.

12. I-94W Paper Form

Comment: One commenter stated that ESTA duplicates the information required by the paper Form I-94W that has to be completed upon arrival in the United States. Some commenters stated that ESTA will have a negative impact on travel to the United States because obtaining an ESTA travel authorization is an additional

⁵ The UDHR, a United Nations General Assembly declaration, consists of 30 articles relating to the respect for and observance of human rights and fundamental freedoms. For more information, please see <http://www.un.org/en/documents/udhr/index.shtml>.

⁶ The ICCPR, a United Nations General Assembly covenant, commits its parties to respect the civil and political rights of individuals. The United States ratified the ICCPR with reservations not applicable to the articles referenced in this comment (Articles 10, 12, and 21). For more information, please see <http://treaties.un.org/doc/db/survey/CovenantCivPo.pdf>.

hurdle for VWP travelers who must also answer the same questions on the paper Form I-94W upon arrival. Other commenters stated that DHS should eliminate the paper Form I-94W to facilitate improved processing of travelers. One commenter said that the elimination of the paper Form I-94W should not be completed until all carriers are capable of validating a traveler's ESTA authorization status. Another commenter said that DHS should eliminate the paper Form I-94W on a carrier-by-carrier basis to provide an early incentive to carriers to comply at an early stage.

Response: ESTA was designed to automate the paper Form I-94W with the ultimate goal of replacing it, not duplicating it. The ESTA IFR stated: "The development and implementation of the ESTA program will eventually allow DHS to eliminate the requirement that VWP travelers complete an I-94W prior to being admitted to the United States. As DHS moves towards elimination of the I-94W requirement, a VWP traveler with valid ESTA authorization will not be required to complete the paper form I-94W when arriving on a carrier that is capable of receiving and validating messages pertaining to the traveler's ESTA application status as part of the traveler's boarding status." See 73 FR 32440 at 32443.

The requirement to complete the paper Form I-94W was eliminated for VWP travelers arriving in the United States at air or sea ports of entry on or after June 29, 2010. Eliminating the paper Form I-94W for these VWP travelers ensured that there was no further duplication.⁷ Prior to eliminating the paper Form I-94W for air and sea VWP travelers, DHS provided adequate time to allow carriers to make the necessary adjustments in their systems to enable them to verify VWP traveler's ESTA authorization status. As explained more fully in the ESTA Application Status Notifications for Travelers and Carriers section below, DHS worked closely with the affected carriers to ensure that their systems were able to send and receive ESTA application status messages. DHS decided not to eliminate the paper Form I-94W on a carrier-by-carrier basis because this would have created confusion at the ports for carriers, travelers, and DHS personnel and could have increased wait or processing times and resulted in missed connections for travelers.

Comment: One commenter stated that the Form I-94W should be eliminated for non-VWP countries.

Response: The Form I-94W is only required for nationals from VWP countries.

⁷ The elimination of the paper Form I-94W for VWP travelers arriving at air and sea ports of entry was announced as a goal in the ESTA IFR and communicated with the public and carriers through outreach. Secretary Napolitano also released a statement announcing the elimination as well: http://www.dhs.gov/ynews/releases/pr_1274366942074.shtm.

13. Preclearance Ports

Comment: One commenter stated that ESTA should not be required for passengers traveling from preclearance ports in Canada to the United States, given that they have already been vetted.

Response: The 9/11 Act required the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a fully automated electronic travel authorization system to collect certain information in advance of travel to the United States. ESTA fulfills this statutory requirement. Therefore, ESTA is required for all VWP travelers arriving in the United States at air or sea ports of entry, regardless of their last foreign location prior to arriving at the United States. Preclearance locations are locations outside the United States where travelers are inspected and examined by DHS personnel to ensure compliance with U.S. customs, immigration, and agriculture laws, as well as other laws enforced at the U.S. border. Such inspections and examinations prior to arrival in the United States generally enable passengers to exit the domestic terminal or connect directly to a U.S. domestic flight without undergoing further processing. However, travelers who are inspected and examined at these preclearance locations are still required to have a visa, or if eligible, to comply with the requirements of the VWP.

14. ESTA Applications at Airports

Comment: Some commenters stated that DHS should provide Internet-accessible kiosks for day of departure applications because some foreign airports lack Internet access. One commenter asked DHS to install ESTA kiosks in preclearance locations.

Response: DHS does not have the authority or the resources to establish Internet-access kiosks in foreign airports, including preclearance locations. Nonetheless, travelers may be able to apply for an ESTA travel authorization on the day of departure if other Internet access is available. In fact, some global airports have kiosks or dedicated links at Internet cafes in international terminals available for use by travelers. However, simply having Internet access, and thus the ability to apply for an ESTA travel authorization does not guarantee an ESTA travel authorization will be granted or granted in time. ESTA applicants who apply early and are denied a travel authorization may still have time to obtain a visa.

Comment: One commenter disagrees with DHS's estimate (15 minutes) of the time required for a VWP traveler to apply for an ESTA travel authorization. The commenter believes that oftentimes passenger check-in times are longer and access to public Internet facilities is either unavailable or limited.

Response: The 15 minute estimate of the time required for the VWP traveler to apply for an ESTA authorization is based on the traveler's interaction with the ESTA Web site. This time estimate did not consider factors such as a lack of computer or limited or unavailable Internet connectivity at passenger check-in. DHS encourages VWP travelers to apply for an ESTA authorization well before arriving at the airport.

15. ESTA Validity Period

Comment: Multiple comments were received regarding ESTA's two year validity period. Some commenters noted that it is unnecessarily restrictive or will result in more travelers applying for a visa. One commenter asked DHS to describe circumstances where the validity period would be extended to three years, which is the upper limit allowed under the 9/11 Act. One commenter stated that the two year validity period and accompanying fee creates a burden for European citizens wishing to travel to the United States because European citizens make up a significant portion of total travelers to the United States.

Response: Section 711 of the 9/11 Act directs the Secretary of Homeland Security, in consultation with the Secretary of State, to prescribe regulations that provide for a period of validity for a travel eligibility determination, not to exceed three years. See 8 U.S.C. 1187(h)(3)(C)(i); 8 CFR 217.5(d). DHS believes that, generally, a two year validity period provides DHS with a reasonable timeframe to reevaluate a VWP applicant's eligibility to travel without overburdening VWP travelers. After considering the comments and in light of the statutorily authorized maximum validity of three years, DHS believes that it would be beneficial for the Secretary of Homeland Security to retain discretion to adjust validity periods on a per country basis to the three year maximum or to a lesser period of time. Therefore, this final rule now provides that the ESTA validity period is two years unless the Secretary Homeland Security, in consultation with the Secretary of State, decides to increase or decrease the validity period for a designated VWP country on a case-by-case basis. Under this final rule, notice of any change to ESTA travel authorization periods will be published in the **Federal Register** and updated on the ESTA Web site. DHS believes that this change enhances the Secretary's flexibility to recognize countries' bilateral information sharing and further promotes compliance standards for member countries' participation in the VWP. To effect this change, the regulations will be amended by adding a new 8 CFR 217.5(d)(3).

Regarding the claims that the two year validity period and accompanying fee are burdensome and may lead some travelers to decide to

obtain a visa, DHS believes that obtaining an ESTA travel authorization is less burdensome than obtaining a visa. In fact, DHS believes that the ease with which an ESTA travel authorization can be obtained leads most VWP-eligible travelers to obtain an ESTA travel authorization rather than a visa before traveling to the United States. VWP travelers who obtain an ESTA travel authorization do not have to apply for a visa nor do they have to pay the costs associated with obtaining a visa to travel to the United States.

16. Passport Issues

Comment: One commenter stated that the passport expiration date's impact on the ESTA validity period is complicated.

Response: Generally, an ESTA travel authorization is valid for a period of either two years from the date of authorization or the date the traveler's passport expires—whichever is sooner. See 8 CFR 217.5(d)(1). However, there is an exception at 8 CFR 217.5(d)(2) for travelers from certain countries who have not entered into agreements with the United States regarding the expiration date of passports; specifically, agreements providing that passports are recognized as valid for the return of the bearer to the country of the foreign-issuing authority for a period of six months beyond the expiration date specified in the passport. For travelers from these countries, an ESTA travel authorization is not valid beyond six months prior to the expiration date of the passport. In addition, travelers from these countries whose passports will expire in six months or less will not receive ESTA travel authorization. Moreover, as specified elsewhere in this document and on the ESTA Web site, a traveler must obtain a new travel authorization under any of the following circumstances:

1. The individual is issued a new passport;
2. The individual's name changes;
3. The individual changes gender;
4. The individual changes their country of citizenship; or
5. The circumstances underlying the traveler's previous responses to any of the ESTA application questions requiring a "yes" or "no" response have changed.

In order to make things clear, DHS provides the exact ESTA expiration date on the ESTA Web site screen granting approval for travel authorization. In addition, as explained more fully in the ESTA Application Status Notification for Travelers and Carriers section, DHS has updated the ESTA system to provide email notification to individuals approximately 30 days before the expiration of their ESTA travel authorization, informing them that their ESTA travel autho-

rization will expire in approximately 30 days. However, this feature is only available if the VWP traveler provided an email address through the ESTA Web site.

Comment: One commenter stated that passport validity should have no bearing on the validity of a travel authorization via ESTA.

Response: A valid passport is essential for travel to the United States. Under the INA, any immigrant or nonimmigrant alien seeking admission to the United States must have proper documentation, including a valid and unexpired passport. *See* 8 U.S.C. 1182(a)(7). An ESTA travel authorization is not valid unless the traveler has a valid and unexpired passport. For those wishing to travel to the United States under the VWP, an expired passport necessitates obtaining both a new passport and applying for a new ESTA travel authorization.

Comment: Some commenters highlighted system limitations related to the passport section of the ESTA Web site. For example, United Kingdom passports are valid for more than the maximum 10-year period allowed by ESTA and the German passport contains 10 characters and ESTA only accepts 9 characters.

Response: Based on commenter input, DHS has made the necessary modifications to the ESTA Web site to ensure that passport information can be properly entered in the ESTA application. With regard to the examples provided, DHS has modified the ESTA Web site to allow passports that are valid for more than 10 years to be entered and to allow more than 9 characters for passport identification numbers.

17. Denied Travel Authorization

Comment: One commenter stated that approximately 85,000 travelers a year could be denied travel authorizations based on errors when submitting information and that reapplying would be costly and time consuming.

Response: As stated above, on average, a total of 0.23% of ESTA travel authorization applications are denied each year. This amounts to an average of 52,000 denials per year. While it is unknown what percentage of these denials are based on user error when submitting information, DHS has taken steps to minimize the number of applications denied based on keystroke errors. For example, the ESTA Web site prompts each applicant to review the data submitted for the overall application prior to submission. If the applicant finds an error, a correction may be made. In addition, the ESTA Web site requires the applicant to reaffirm the passport number and family name prior to submission of the application. DHS believes that the opportunity to review data prior to submission should minimize the incidences of

keystroke errors. If an applicant makes a mistake when filling out the passport information, identifying biographic information, or eligibility questions, and he or she realizes the mistake after the applicant submits the ESTA application and the application for travel authorization is denied, he or she will need to submit a new ESTA application and pay the applicable fee. However, there is no guarantee that the subsequent application will result in travel authorization. Any other mistakes, including email address, telephone number, carrier name, flight number, city where the applicant is boarding, and address while in the United States, may be corrected or updated by using the ESTA update function, which can be done free of charge.

Comment: One commenter stated that the costs to the air carrier industry and travelers are high when compared to the small percentage of VWP travelers who are denied travel authorization. Another commenter stated that the cost to airlines of returning passengers found inadmissible is significant. According to the commenter, that cost is over \$10 million per year (7,200 passengers at a cost of \$1,500 each in fines).

Response: The 9/11 Act directed DHS to create an electronic system to collect certain biographical and other information to evaluate, in advance of travel, the eligibility of the applicant to travel to the United States under the VWP, and whether such travel poses a law enforcement or security risk. The security benefits of ESTA cannot only be quantified based solely on the number of ESTA applicants refused travel authorization. The VWP was created in recognition of the high percentage of travelers from the specified countries that will be deemed eligible to travel to the United States without a visa. ESTA also provides other benefits to travelers and carriers. It saves VWP-eligible travelers time and effort upon arrival in the United States and informs those who are not eligible before they board the carrier to the United States.

Though the commenter's calculations of the cost incurred by airlines to return inadmissible travelers is correct based on the commenter's assumptions, DHS believes that ESTA presents additional cost saving opportunities to the carriers that are responsible for returning inadmissible travelers to their points of origin. Carriers transporting VWP travelers always have been required to transport inadmissible travelers who arrive in the United States back to their point of origin. Therefore, ESTA does not impose additional costs in this regard. Moreover, because ESTA is designed to prevent inadmissible travelers from arriving at U.S. ports of entry, carriers will have fewer inadmissible travelers to transport from the United States, which should decrease their transportation costs. As stated in the

Executive Order 12866 section below, no longer needing to transport and inspect inadmissible travelers will save carriers and DHS between \$78 and \$84 million annually.

Comment: Some commenters would like DHS to advise applicants why travel authorization was denied so that the issue could be addressed to enable travel under the VWP.

Response: DHS does not share information related to the denial of an ESTA travel authorization due to the complexities of the travel eligibility decision-making process, which is based on a combination of factors, including those related to security. However, an applicant who feels that the denial was improper may contact the ESTA Help Desk at 202-344-3710 or file a redress request through the DHS Travel Redress Inquiry Program (TRIP) Web site, <http://www.dhs.gov/dhs-trip>. If the denial was based on a genuine misunderstanding, for instance, where the applicant misunderstood a question and provided an answer resulting in the denial, then the application may be approved. However, DHS cannot guarantee that contacting the ESTA Help Desk or using the DHS TRIP Web site will result in an application being approved. As always, a traveler may apply for a nonimmigrant visa at a U.S. embassy or consulate.

18. Expedited Review

Comment: Some commenters would like to be able to request an expedited review through ESTA.

Response: As stated above, most applications receive an immediate response. However, if necessary, an individual may request an expedited review by calling the ESTA Help Desk at 202-344-3710.

19. ESTA Application Status Notifications for Travelers and Carriers

Comment: Some commenters asked how travelers will be notified of their approval for travel.

Response: ESTA applicants are notified of their travel eligibility on the screen at the ESTA Web site. In most cases, ESTA applicants are notified of their status within seconds of submitting their application, with travel authorization either being granted or denied. In other cases, the ESTA applicant may be in a “pending” status, where a final determination of travel eligibility has not been reached. For an applicant who provides an email address during the application process, DHS sends an email indicating that there has been an update to the travel authorization status and that the decision can be viewed at the ESTA Web site. Applicants who did not provide an email address will

need to refer back to the ESTA Web site at a later time to check for changes in status. As of November 3, 2014, email addresses are a mandatory data element.

Comment: Some commenters would like DHS to send a notification about when an ESTA authorization will expire.

Response: Based on feedback, DHS updated the system to provide email notification to individuals approximately 30 days before the expiration of their ESTA travel authorization, informing them that their ESTA travel authorization will expire in approximately 30 days. The email notification advises recipients to go to the official ESTA Web site to reapply as follows:

ESTA Expiration Warning: ATTENTION! Your travel authorization submitted on (date of application) (application number) via ESTA will expire within the next 30 days. It is not possible to extend or renew a current ESTA travel authorization. You will need to reapply at <https://esta.cbp.dhs.gov> if travel to the United States is intended in the near future.

Comment: A few commenters stated that applicants receiving a pending message, rather than an authorized or denied message, should be authorized to travel to the United States because the traveler would still submit their information on the Form I-94W and will be inspected upon arrival.

Response: Generally, a decision on an individual's ESTA application is issued within seconds of submission. However, travelers with a "pending" status will have to wait until the pending status is resolved to "Authorization Approved" prior to a carrier allowing a VWP traveler to board an aircraft or vessel destined for the United States. DHS cannot allow ESTA applicants without an approved authorization to travel to the United States, as to do so would prevent DHS from being able to fully screen the applicant, and thus contradict the Congressional mandates under the 9/11 Act. Because an exact timeline for travel authorization decisions cannot be provided in all cases, DHS encourages travelers to apply early for an ESTA travel authorization, such as before they purchase their tickets to the United States.

Comment: One commenter stated that the "travel not authorized" message is vague and should be changed to inform applicants that they were unsuccessful and to inform them that they may still apply for a visa.

Response: DHS has amended the "travel not authorized" message to inform the applicant about the next steps in the process of seeking travel to the United States. The response now reads as follows:

You are not authorized to travel to the United States under the Visa Waiver Program. You may be able to obtain a visa from the Department of State for your travel. Please visit the Department of State Web site at www.travel.state.gov for additional information about applying for a visa.

Comment: One commenter stated that instead of using the system-generated 16-digit reference number, passengers should be able to use a passport or other travel document number to access their ESTA application.

Response: The 16-digit reference number is a unique number generated by ESTA that may be used to check the status of an applicant's status and to update optional information, such as flight itinerary and address in the United States. This number is linked to each ESTA application and approval. A travel document number cannot be used as a reference number for several reasons. First, it may lack sufficient security to uniquely identify a person. Second, since passports are generally issued for 10 years and an ESTA travel authorization is generally valid for two years, DHS would be unable to distinguish between applications from the same individual. Also, it would be confusing where a person possesses more than one passport, such as those who have dual citizenship.

Comment: Some commenters wanted to know the specific content of the ESTA application status messages carriers will be shown on pre-departure and if there will be a distinction between flights departing the United States and arriving flights.

Response: DHS sends a clear message to carriers to inform them whether the VWP traveler has the required travel authorization prior to boarding. Carriers will receive one of the following messages for travelers: A—ESTA on file OK to board; B—No ESTA on file; C—ESTA denied; Z—ESTA not applicable OK to board. Carriers may board travelers associated with messages A and Z. Carriers may not board travelers associated with messages B and C. ESTA authorization is not required for flights departing the United States so there is no need for ESTA messaging for departing flights.

20. Proof of Travel Authorization

Comment: Some commenters asked DHS to provide a receipt to serve as proof of ESTA travel authorization and asked what to do in airports that lack printers. Other commenters described situations where travelers were not allowed to board despite having ESTA travel authorization and were asked to present a paper printout of their travel authorization.

Response: ESTA travel authorization only may be validated electronically. The air or sea carrier must receive an electronic message directly from DHS stating that the traveler has a valid ESTA travel authorization prior to allowing the individual to board the conveyance destined for the United States. A printout showing that ESTA travel authorization was granted is not proper proof and DHS does not require VWP travelers to present a paper printout as evidence of having obtained ESTA travel authorization. If travelers are interested in having something tangible for their own records, such as a receipt, they may print the screen on the ESTA Web site showing that travel authorization has been granted, but this will not serve as proof for travel purposes.

Comment: Some commenters had concerns about the possibility of a forged ESTA approval.

Response: As explained in the previous response, ESTA travel authorization can only be verified electronically with an electronic status message from DHS and as such, cannot be forged.

21. Mandatory and Optional Data Elements

Comment: Many comments were received requesting clarification about which data elements are mandatory and which are optional.

Response: On December 9, 2014, DHS published a notice regarding changes to the ESTA application and paper Form I-94W in the **Federal Register** (79 FR 73096). These changes collect more detailed information about a traveler by making previously optional data elements mandatory and by adding additional data elements concerning other names or aliases, current or previous employment, and emergency contact information among other questions.

The mandatory data elements are clearly indicated by a red asterisk on the ESTA Web site. They are: Applicant's Name (Family Name and First (Given) Name); Known other names or aliases (Yes or No); Birth Date (Day, Month, and Year); City of Birth; Country of Birth; Gender (Male or Female); Parents' Names (Family Name, First (Given) Name); Passport Number; Passport Issuing Country (Country of Citizenship); Passport Issuance Date (Day, Month, and Year); Passport Expiration Date (Day, Month, and Year); Country of Citizenship; Citizen of any other country (Yes or No); Contact Email Address; Contact Telephone Number (Type, Country Code, and Number); Contact Home Address (Address Line 1, Apartment Number, Address Line 2, City, State/Province/Region, and Country); Emergency Contact (Family Name and First (Given) Name); Emergency Contact Telephone Number (Type, Country Code, and Number); Emergency Contact Email Address; Travel to U.S. occurring in transit to another country (Yes or No); and Current or previous employer

(Yes or No). Applicants must also answer eight eligibility questions regarding, for example: Questions about physical and mental disorders, drug abuse and addiction, and communicable diseases, arrests and convictions for certain crimes, and past history of visa revocation or deportation, and they must complete the Certification field (or third-parties field, if applicable). The above mandatory information is the information the Secretary deems necessary to evaluate whether an alien is admissible to the United States under VWP and whether such travel poses a law enforcement or security risk. Optional data elements, which should be provided if known, are as follows: Address while in the United States (Address Lines 1 and 2, City, and State); employer's telephone number (country code and number); and job title. Upon submission, ESTA will automatically collect the Internet Protocol address (IP address) associated with the application for vetting purposes, as explained in the Privacy Impact Assessment Update for the Electronic System for Travel Authorization—Internet Protocol Address and System of Records Notice Update, dated July 18, 2012, available at <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

22. ESTA Interaction With Other Systems

Comment: Some commenters asked DHS to link ESTA with other government systems or programs, such as the State Department's visa issuance system or the Global Entry trusted traveler program.

Response: DHS is committed to achieving high levels of efficiency through the integration of its programs and policies. To this end, DHS coordinated ESTA with other government systems and programs to the extent possible. However, some systems or programs, are not suitable for linking with ESTA. For example, ESTA should not be linked with the State Department's visa issuance system because an ESTA travel authorization enables VWP travelers to travel to the United States without a visa. Further, ESTA should not be linked with Global Entry because the two programs have different purposes. ESTA travel authorization is a determination of suitability to travel to the United States, whereas Global Entry is intended to expedite low risk travelers upon arrival in the United States.

Comment: One commenter believes that ESTA is unnecessary because it duplicates APIS/AQQ and is costly to the airline industry.

Response: ESTA does not duplicate APIS/AQQ. While both programs promote the security of the United States and some data elements may overlap, the programs are distinct. Advance Passenger Information System (APIS) data consists of certain biographical information and conveyance details collected via the passenger reser-

vation and check-in processes. This information is transmitted to DHS in advance of arrival through the Quick Query system. This is known to carriers as APIS/AQQ. APIS/ AQQ does not include an eligibility screening process and applies to all flights beginning or ending in the United States. In contrast, ESTA is specific to the VWP and includes basic biographical questions as well as questions to determine a person's eligibility to travel under the VWP. Although DHS is mindful of the costs to the travel industry to implement ESTA, DHS has tried to implement ESTA in a way that minimizes costs while at the same time adhering to the Congressional mandate to develop ESTA within certain timeframes.

Comment: Some commenters stated that ESTA complicates carriers' efforts to meet the pre-departure APIS requirements as they adapt their systems. Other commenters asked whether a carrier that has received APIS/AQQ accreditation is required to go through a future accreditation process once ESTA messages have been incorporated. Some commenters noted that the Consolidated User Guide, UN/EDIFACT, arrived in late July 2008 and that this provided insufficient time for carriers to be compliant with the initial January 2009 deadline for ESTA.

Response: This comment was submitted in response to the ESTA IFR. At the time, DHS recognized the challenges facing the carriers to ensure that their systems were compatible with ESTA and APIS in order to receive and validate ESTA messages. To this end, DHS established an ESTA testing process for all VWP signatory carriers to demonstrate the carrier's ability to successfully transmit and receive ESTA messages through APIS/AQQ. All VWP signatory carriers successfully completed the testing process. DHS worked closely with each carrier to enable them to make modifications to attain compliance with ESTA requirements in a timely manner. DHS made a concerted effort to accommodate carriers as time became an issue and allowed carriers to demonstrate a plan and schedule to achieve compliance if they were not on schedule to be compliant by the stated date. As the results showed, the joint effort between DHS and the carriers was highly successful despite concerns at the time that the necessary user guide information was late when provided in July 2008.

Comment: One commenter stated that there may be passenger processing delays caused by travelers who confuse APIS data requirements with ESTA requirements. They may believe that the submission of the APIS data elements to the travel agent or carrier in advance of travel fulfills the ESTA requirement or vice versa and thus arrive at the airport on the day of departure without an ESTA travel

authorization. Additionally, the commenter stated that DHS should make it clear in public outreach that ESTA's requirements are distinct from the APIS requirements, and that providing information for one program does not cover the other.

Response: VWP travelers are not responsible for providing DHS with APIS data. The carriers provide this information to DHS. It is the responsibility of the VWP traveler to apply for and obtain ESTA travel authorization prior to boarding an air or sea carrier destined for the United States. DHS has conducted outreach to ensure VWP travelers are aware of their responsibilities regarding the need to have a valid ESTA travel authorization prior to boarding a conveyance destined for the United States and is confident that there will be no passenger processing delays arising due to confusion regarding APIS requirements and ESTA requirements.

Comment: One commenter asked if APIS data would suffice as an alternative to having a valid ESTA travel authorization and another asked if APIS submissions would suffice for updates to information on the ESTA Web site.

Response: There is no alternative to having ESTA travel authorization for VWP travel. Each VWP traveler must receive travel authorization through the ESTA Web site prior to boarding a conveyance destined for an air or sea port of entry in the United States. Additionally, APIS data is not an acceptable means for updating changes to any of the mandatory data elements. As noted above in the Mandatory and Optional Data Elements section, changes to any of the mandatory data elements require a new travel authorization.

Comment: One commenter stated that the address and passport information collected through ESTA should be defaulted to read, "Refer to APIS Entry" to avoid the need for the carrier to adapt their APIS system to accommodate ESTA. Several commenters stated that ESTA should be harmonized with APIS/ AQQ.

Response: Though the two systems are distinct, ESTA does work in conjunction with APIS/AQQ. For carriers that transport VWP travelers, the APIS/AQQ system was configured to selectively activate inclusion of ESTA application status in the message response to the carrier, thereby allowing carriers to know if the traveler has ESTA travel authorization and is eligible to board without a visa. As such, a "Refer to APIS Entry" message is unnecessary.

Comment: Some commenters had concerns regarding travel eligibility or carrier penalties if a VWP traveler failed to update his or her information, such as flight itinerary, or if this information differed from the APIS transmission made by carriers.

Response: As communicated through public outreach, carriers will not be penalized in situations where an ESTA application does not reflect the current address or flight details for the traveler's trip to the United States. Should the travelers wish to update their address and flight itinerary details, they are able to do so by accessing their application on the ESTA Web site and updating the information, free of charge.

23. Method of Payment

Comment: One commenter stated that DHS should permit different forms of payment in addition to credit cards for paying the ESTA fees. Some commenters pointed out that credit card use is not as widespread in the European Union as it is in the United States and that some prospective travelers may not have credit cards.

Response: DHS currently uses the system Pay.gov to process payment information. This system collects and processes payments from credit cards and credit/debit cards from the following institutions: MasterCard, VISA, American Express, Discover, Japan Credit Bureau, and Diners Club. However, based on the feedback received, DHS is currently investigating the option of allowing payments to be made from additional sources. If DHS decides to expand the allowable methods of payment, DHS will announce this to the public through outreach programs, travel Web sites, and postings on the ESTA Web site. An applicant who does not have a credit card may arrange for a third party, such as a relative or travel agent, to submit the payment.

Additionally, DHS has made changes to the payment functionality on the ESTA Web site to allow for groups of up to 50 applications to be paid with a single transaction. This functionality was added to accommodate those applications filed in group situations, such as a travel agent working on behalf of a group of travelers or a family applying together. A group is formed when a user adds an application to an existing application at which time a group of two applications is formed. At that time, the system will request information on the Group Point of Contact (POC) who will be paying for the applications. The Group POC can add to that initial group of two by creating new applications or retrieving existing ones. The system will monitor the number of applications in a group and will not allow the group to exceed 50 applications. After the creation of the group is complete, the system will ask the Group POC to submit payment. The ESTA fee will be charged for each application submitted and the TPA fee will be charged for each travel authorization granted.

24. ESTA Fee and the TPA Fee

Comment: A few commenters oppose the ESTA fee stating that there are too many fees already. One commenter acknowledged the need to offset the cost of maintaining a program such as ESTA with a fee, but thought that the \$4 charge would more than be made up by what these travelers spend in the United States.

Response: The TPA directed DHS to establish a fee for ESTA that consists of the sum of \$10 per travel authorization (TPA fee) and an amount that will at least ensure recovery of the full costs of providing and administering the System, as determined by the Secretary (ESTA fee). DHS has determined that the \$4 ESTA fee is necessary to ensure the full costs of providing and administering the System. The statute does not permit DHS to consider benefits to the travel industry that result from VWP travelers coming to the United States in determining the ESTA fee.

Comment: One commenter stated that a \$.050 administrative fee would be more appropriate than a \$4 administrative charge for collecting the \$10 TPA fee.

Response: The \$4 ESTA fee is unrelated to the \$10 TPA fee. The \$4 ESTA fee goes to DHS to pay the costs associated with operating ESTA. The \$10 TPA fee goes to a fund in the Department of the Treasury established by the Travel Promotion Act of 2009 to fund the activities of the Corporation for Travel Promotion.

Comment: One commenter supports the \$10 TPA fee in order to provide a well-funded mechanism to reach out to actual and prospective travelers to explain the rationale and details of ESTA.

Response: The TPA established the Corporation for Travel Promotion as a nonprofit corporation for the purpose of promoting foreign leisure, business, and scholarly travel to the U.S. and maximizing the economic and social benefits of that travel for communities across the country. The purpose of the \$10 TPA fee is to provide funds for the Corporation for Travel Promotion to attract visitors to the United States. The \$10 TPA Fee does not fund any outreach regarding ESTA.

Comment: Some commenters oppose the \$10 TPA fee because they believe that VWP travelers would receive no benefit from such fee. They indicate that the \$10 TPA fee should not be paid by visitors already coming to the United States. Some commenters believe that the \$10 TPA fee is a hidden subsidy for the commercial tourism sector and that the travel industry should advertise on its own to entice potential visitors.

Response: Eligible travelers from VWP countries who receive an ESTA travel authorization may benefit from the \$10 TPA fee, as these fees fund the Corporation for Travel Promotion that is mandated to

help communicate travel requirements to travelers to the United States. In addition, they do not have to pay to obtain a visa and do not need to report for an interview at a U.S. embassy or consulate. In addition, the \$10 TPA fee is only required with the initial application or renewal of the ESTA, and will cover as many trips as the traveler takes to the United States during the ESTA travel authorization's validity period.

The \$10 TPA fee amount was set by the TPA to fund the Corporation for Travel Promotion, which was established by the TPA as a partnership between the travel industry and the federal government to create a marketing and promotion program to compete for international visitors and to create jobs and economic growth.

Comment: Some commenters were concerned that other countries could reciprocate with a travel promotion fee of their own which would harm U.S. travelers.

Response: DHS has no control over foreign governments charging travel promotion fees of their own. Some countries, including Visa Waiver Program countries, have established their own version of a travel promotion fee.

Comment: A few commenters asked whether the \$4 ESTA fee and the \$10 TPA fee would be charged for updating information.

Response: The \$4 ESTA fee is charged each time a new ESTA application is submitted. The \$10 TPA fee will be charged whenever a new ESTA travel authorization is granted. For example, if an applicant applies for an ESTA travel authorization but the ESTA application is denied, the applicant will be charged the \$4 ESTA fee but not the \$10 TPA fee. Updates to non-mandatory fields of information, such as flight number or address in the United States, will not require a new travel authorization and as such, will not require a new ESTA application. However, changes to one of the required data fields will necessitate a new ESTA application. In order to obtain travel authorization, the applicant will have to pay the \$4 ESTA fee and the \$10 TPA fee if travel authorization is granted.

Comment: Some commenters stated that they understand the need to charge the \$4 ESTA fee for a new ESTA travel authorization due to changes such as name, gender, or country of citizenship within the two year validity period, but feel that charging the additional \$10 TPA fee is not consistent with the issuance of an ESTA travel authorization that is valid for two years.

Response: The Travel Promotion Act of 2009 explicitly stated that the fee would be "\$10 per travel authorization." Therefore, until September 30, 2020 when the TPA fee provision expires, the \$10 TPA fee must be collected whenever a new travel authorization is granted.

25. APA Procedures

Comment: A few commenters state that DHS should have implemented ESTA through prior notice and comment procedures instead of as an interim final rule.

Response: DHS is committed to ensuring that the public has an opportunity to comment on rulemakings and publishes proposed rules for public notice and comment whenever possible. In order to mitigate the security vulnerabilities of the VWP and fulfill the mandates of the 9/11 Act, consistent with the Administrative Procedure Act, DHS implemented ESTA as an interim final rule under the “procedural,” “good cause,” and “foreign affairs” exceptions to the APA’s rulemaking requirements. *See* 5 U.S.C. 553. Discussion by DHS on how the ESTA IFR met these exceptions is set forth at 73 FR 32440 at 32444. In addition, DHS sought feedback from interested persons and provided 60 days for the public to submit comments on both the ESTA IFR and the ESTA Fee IFR. DHS has reviewed these comments thoroughly and as discussed in this document, has implemented many of the commenters’ suggestions.

Comment: One commenter stated that the ESTA IFR’s good cause exception does not apply because the national security justification is not fully explained and that the ESTA IFR’s Regulatory Analysis found no new security benefits.

Response: The ESTA IFR was properly implemented under the APA’s good cause exception as provided in 5 U.S.C. 553(b)(B). DHS determined that prior notice and comment rulemaking was impracticable and contrary to the public interest because it would hinder DHS’s ability to address security vulnerabilities of the VWP that Congress asked DHS to address in the 9/11 Act. As stated in the ESTA IFR, implementation of this rule prior to notice and comment was necessary to protect the national security of the United States and to prevent potential terrorists from exploiting VWP. *See* 73 FR 32440 at 32444.

Comment: One commenter stated that the economic analysis in the Executive Order 12866 section of the ESTA IFR contradicted DHS’s national security justification because an effective date was established six months after publication of the ESTA IFR.

Response: The ESTA IFR became effective on August 8, 2008, 30 days after the date of publication. *See* 73 FR 32440. However, in the ESTA IFR, DHS stated that it would provide a 60 day prior notice to the public via publication in the **Federal Register** before mandatory implementation. Consistent with this, DHS published a notice in the **Federal Register** on November 13, 2008, and announced that mandatory compliance would be required for VWP travelers on January

12, 2009. *See* 73 FR 67354. The time period between the ESTA IFR's effective date and the date it became mandatory allowed DHS to address the numerous operational issues inherent in designing and building an electronic system. It also enabled DHS to request and receive public comments. Even though ESTA did not become mandatory right away, the system was established at the time of implementation and could be used by VWP travelers to submit advance information. Therefore, it did provide some immediate security benefits.

Comment: Some commenters stated that DHS's use of the APA's procedural exception in the ESTA IFR was improper because the procedures established by the ESTA IFR are substantively different from what they were previously and because it imposes expensive burdens on carriers and travelers.

Response: DHS believes the procedural exception in 5 U.S.C. 553(b)(A) was appropriately used in the ESTA IFR. As explained in the ESTA IFR, ESTA merely automated an existing reporting requirement for nonimmigrant aliens, as captured in the Nonimmigrant Alien Arrival/Departure (I-94W) paper form. *See* 73 FR 32440 at 32444. Although ESTA altered the method and time for VWP travelers to provide DHS with required information, it did not substantively affect nonimmigrant aliens' rights to apply for admission under the VWP; nor did it alter the criteria aliens must meet to be admitted to the United States under the VWP.

Additionally, there were no substantive changes affecting carriers. The INA already required carriers to ensure that passengers have appropriate documentation to travel to the United States. In addition, carriers were already required to electronically verify and transmit passenger information to DHS through APIS/AQQ.

DHS is mindful of the fact that ESTA imposed some external costs on the travel industry and some inconveniences to the traveler. However, as described elsewhere in this document, ESTA also facilitates travel and provides cost savings. In any case, the fact that an agency's rule imposes a burden, even a substantial burden, does not automatically mean that prior notice and comment rulemaking is required.

Comment: One commenter stated that the foreign affairs exception to the APA requirements was not justified because the IFR failed to cite to undesirable international consequences.

Response: DHS believes the foreign affairs exception in 5 U.S.C. 553(a)(1) was justified. The foreign affairs function applies because ESTA "advances the President's foreign policy goals, involves bilateral agreements that the United States has entered into with participating VWP countries, and directly involves relationships between the United States and its alien visitors." *See* 73 FR 32440 at 32444.

26. Effective Date

Comment: Several commenters had questions regarding the six month implementation requirement of the TPA and asked DHS to explain how the September 8, 2010 effective date for the ESTA Fee IFR was reached.

Response: The TPA was signed March 4, 2010. The ESTA Fee IFR published in the **Federal Register** on August 9, 2010. DHS decided to provide a full 30 days of notice post-publication in order to give the public sufficient time to adjust to the changes. This resulted in the September 8, 2010 effective date.

27. Privacy

Comment: Some commenters claimed that requiring carriers to submit ESTA applications on behalf of travelers would violate European Union data privacy regulations or lead to other difficult situations, such as applications submitted on the day of departure in crowded airports.

Response: DHS does not require carriers or any other third party to submit ESTA applications on behalf of travelers. ESTA allows VWP travelers the option of seeking assistance from a third party in submitting an ESTA application. Travelers who do not wish to use ESTA may apply to the U.S. State Department for a visa.

DHS addresses privacy concerns associated with ESTA in the ESTA Privacy Impact Assessment (PIA) and subsequent ESTA PIA updates which may be found at: <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

Comment: Some commenters were concerned that the credit card information submitted by the ESTA applicant could be used improperly. They would like DHS to clarify which credit card details, if any, are retained or used for purposes other than those for which they were collected and to provide information about how DHS safeguards this information.

Response: The ESTA Web site is operated by the United States Government and employs technology to prevent unauthorized access to information. Personal information submitted through the ESTA Web site is protected in accordance with U.S. law and DHS Privacy Policy. The ESTA Web site employs software programs to identify unauthorized attempts to upload or change information, or otherwise cause damage.

The credit card information that is entered in the ESTA Web site is not retained in the ESTA database. Currently, the data entered on the ESTA Web site is forwarded to Pay.gov for payment processing and Pay.gov forwards the traveler's name and an ESTA tracking number

to DHS's Credit/Debit Card Data System (CDCDS) for payment reconciliation. Pay.gov sends a nightly activity file, including the last four digits of the credit card, authorization number, billing name, address, ESTA tracking number, and Pay.gov tracking numbers, to CDCDS. Pay.gov also sends a daily batch file with the necessary payment information to a commercial bank for settlement processing. After processing, the commercial bank sends a settlement file, including the full credit card number, authorization number, card type, transaction date, amount, and ESTA tracking number to CDCDS. CDCDS retains the data from these transactions on different tables.

CDCDS matches the data transmitted from ESTA, Pay.gov, and the commercial bank by the ESTA tracking number and posts payments to DHS's account. DHS uses the data in CDCDS to manually research and reconcile unmatched transactions to the proper account, and to research and respond to charge-backs by the applicant, if necessary.

ESTA fee procedures, including collection, use, and retention of credit card information, are detailed in the PIA Update for the ESTA Fee, which can be found at <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

Comment: One commenter asked DHS to clarify data retention periods that were referenced in the ESTA IFR.

Response: ESTA data retention periods are detailed in the ESTA PIA and subsequent updates found at <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>. ESTA application data remains active for the period of time that the ESTA travel authorization is valid, which, as explained above, is generally two years or until the traveler's passport expires, unless one of the situations listed at 8 CFR 217.5(e) occurs requiring a new travel authorization. DHS will then maintain this information for an additional year, after which it will be archived for twelve years to allow retrieval of the information for law enforcement, national security, or investigatory purposes. Once the information is archived, the number of officials with access to it will be further limited. These retention periods are consistent both with border search authority and with the border security mission mandated by Congress. Data linked to active law enforcement lookout records, enforcement activities, and/or investigations or cases, including ESTA applications that are denied, will remain accessible for the life of the law enforcement activities to which they are related.

In those instances when a VWP traveler's ESTA application data is used for purposes of processing their application for admission to the United States, the ESTA application data will be used to create a corresponding admission record in DHS's Non-Immigrant Informa-

tion System (NIIS). This corresponding admission record will be retained in accordance with the NIIS retention schedule, which is 75 years.

Payment information is not stored in ESTA, but is forwarded to Pay.gov and stored in DHS's financial processing system, CDCDS. Records are retained there for nine months in an active state to reconcile accounts and six years and three months in an archived state in conformance with National Archives and Records Administration (NARA) General Schedule 6 Item 1 Financial Records management requirements, which may be found online at: <http://www.archives.gov/records-mgmt/grs/grs06.html>. The nine month active status is necessary to handle reconciliation issues (including chargeback requests and retrievals).

Comment: One commenter stated that the agreement between the United States and the European Union on Passenger Name Records (PNR) data does not adequately cover the security questions posed in ESTA.

Response: This comment was received in response to the ESTA IFR and as such, is likely referring to the 2007 agreement between the United States of America and the European Union on the Use and Transfer of Passenger Name Records to the United States Department of Homeland Security” (PNR Agreement). An updated version of this agreement was signed on December 14, 2011, and went into effect on July 1, 2012.⁸ Although there are no material differences between the 2007 version and the updated PNR Agreement, this response applies to the version that went into effect on July 1, 2012.

PNR data is submitted by airlines to DHS and contains a variety of traveler information including the passenger's name, contact details, travel itinerary, and other reservation details, as described in the DHS Automated Targeting System (ATS) Privacy Impact Assessment. The PNR Agreement addresses the privacy and security of PNR data transferred from the EU and does not pertain to ESTA. A Privacy Impact Assessment of ESTA, which includes a discussion of related security issues, can be found at <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

28. Economic analysis; Regulatory Flexibility Act;
Paperwork Reduction Act

Comment: One commenter stated that a Regulatory Flexibility Act analysis was required for the ESTA IFR.

⁸ For more information on the 2011 PNR agreement, please see http://www.dhs.gov/sites/default/files/publications/privacy/Reports/dhsprivacy_PNR%20Agreement_12_14_2011.pdf.

Response: The commenter is incorrect. The Regulatory Flexibility Act (RFA) (5 U.S.C. 603(b)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required “to publish a general notice of proposed rulemaking for any proposed rule.” Because this rule was issued as an interim final rule under the procedural, good cause, and foreign affairs function exceptions of the Administrative Procedure Act, a regulatory flexibility analysis was not required. *See* 5 U.S.C. 553; 73 FR 32440 at 32444.

Comment: One commenter stated that a review under the Paperwork Reduction Act (PRA) is warranted because there was no OMB Information Collection Request review and chance for public comment.

Response: This data collection was reviewed by OMB under Control Number 1651–0111, in accordance with the Paperwork Reduction Act of 1995 (PRA), Public Law 104–113. *See* 73 FR 32440 at 32452. Additionally, the public had multiple opportunities to comment on the information collection requirements concerning ESTA. The ESTA IFR requested comments on all aspects of this rule, including PRA-related comments. *See* 72 FR 32440. Additionally, DHS published a 60-Day Notice and request for comments; Extension of an existing information collection: 1651–0111 in the **Federal Register** on December 12, 2008, specifically requesting comments on the information collection requirement concerning ESTA. *See* 73 FR 75730. DHS published a subsequent 30-Day notice requesting comments concerning the information collection requirements of ESTA on February 13, 2009. *See* 74 FR 7243. On July 25, 2011, DHS published a 30-Day notice and request for comments regarding the addition of “Country of Birth” as a required data element. *See* 76 FR 44349. Also, on November 26, 2013, DHS published a 60-day notice and request for comments concerning changes to the ESTA application and paper Form I–94W in the **Federal Register**. *See* 78 FR 70570. On February 14, 2014, DHS published a 30-day notice and request for comments concerning changes to the ESTA application and paper Form I–94W in the **Federal Register**. *See* 79 FR 8984. These notices concerned revised questions to make the ESTA application more easily understandable to the traveling public. DHS continues to provide the public with the opportunity to comment on information collections concerning ESTA and has done so as recently as December 9, 2014, when DHS published a 60-day notice regarding additional changes to the ESTA

application and paper Form I-94W in the **Federal Register**. See 79 FR 73096.

Comment: A few comments were received regarding the information contained in the economic analysis. Some commenters stated that the economic analysis did not consider things such as the economic impact of missed flights, lost tourism, lost commercial opportunities, and the impact of foreign governments imposing ESTA-like requirements on U.S. citizens traveling to VWP countries.

Response: The commenters are correct that the economic analysis did not quantify the impacts of missed flights and lost tourism as a result of ESTA implementation; however, DHS discussed this potential qualitatively in the chapter of the analysis devoted to the cost impacts of ESTA. As stated in the economic analysis, some travelers may not be able to travel to the United States even when they apply for a visa at a U.S. embassy or consulate. DHS does not know how many travelers this represents, but the percentage is likely very small. The State Department may make accommodations for certain last-minute travelers who are scheduled to travel in the next 72 hours, have applied for an authorization, and have been denied. Nevertheless, some travelers may not receive their travel authorization or visa in time to make their scheduled trip. Through the end of 2012, over 99% of ESTA applicants have been approved; therefore, the impact of potential denied travel authorizations is limited.

Additionally, the economic analysis did not quantify the impacts of potential “reciprocity” from other governments requiring information from U.S. citizens in advance of travel; however, DHS acknowledged this potential in the chapter of the analysis devoted to the cost impacts of ESTA. As stated, other VWP countries may choose to collect advance admissibility data from U.S. citizens prior to entering their country as a consequence of this rule (and Australia currently does as part of their ETA program). The European Union, for example, reportedly is considering a system similar to ESTA. DHS does not know which countries, if any, could establish similar requirements to ESTA, but any such requirements would affect U.S. citizens and U.S. carriers. However, the purpose of the economic analysis is to estimate the costs and benefits of the U.S. regulation under consideration, not other travel requirements that may or may not be implemented in the future in other countries.

The cost to obtain an ESTA travel authorization places a minimal burden on the traveler. DHS does not know if ESTA created a monetary disincentive to travel to the United States, but notes that travel to the United States has grown under the VWP after the establishment of ESTA. Although DHS does not explicitly estimate a decrease

in travel as a result of the rule, such effects were presumably captured in the sensitivity analysis available in the appendix to the regulatory assessment, which is available in the docket of this rule.

Comment: One commenter stated that the cost of ESTA would be \$10,000 per business traveler (minimum mean per person impact of the rule) if lost clients and lost business from a denied travel authorization are factored into the analysis. The commenter estimates that for leisure travelers, the costs would be less but still substantial (average cost of \$500).

Response: Although the commenter may believe that \$10,000 and \$500 are reasonable estimates of the average per-traveler impacts of ESTA, the commenter provides only limited explanation on how those figures were estimated. This estimate seems to include costs such as the time and expense to get a visa (which is estimated in the economic analysis below), but it is mostly the cost of lost business for travelers who are unable to travel to the United States if their ESTA is denied and they are unable to obtain a visa. DHS notes that only 0.23 percent of ESTA applications are denied and, absent the rule, these people would likely be denied entry to the United States upon arrival anyway. Since travelers normally apply for an ESTA when they purchase their ticket, there is ample time for most denied applicants to apply for a visa. The State Department may make accommodations for last minute travelers who are scheduled to travel in the next 72 hours and have been denied an ESTA. DHS does not have data on the number of travelers who are denied an ESTA and are subsequently denied a visa. However, DHS notes that these travelers are likely to have been deemed inadmissible upon arrival in the United States absent this rule. DHS, therefore, believes that the losses to business and leisure travelers who, absent this rule, would have been admitted to the United States are small. We discuss these costs qualitatively in the economic analysis.

Comment: One commenter stated that the economic analysis did not analyze the number of passengers who will arrive at foreign airports without a travel authorization in place.

Response: This commenter is correct. This is because DHS does not track how many travelers arrive without first having obtained travel authorization. However, DHS does estimate the cost to carriers to implement ESTA. Since the publication of the interim rule, DHS has done outreach to carriers to determine the true magnitude of their costs in implementing ESTA, including their costs in assisting passengers who arrive at foreign airports without a travel authorization in place. We estimate that carriers spent \$108 million to implement

ESTA in the first year and \$12 million in subsequent years. These costs are discussed in the economic analysis below.

Comment: One commenter stated that using 62 as the number of air carriers potentially affected by the systems and processes modifications required for ESTA was an underestimation in the economic analysis. This commenter claimed that virtually every carrier in the world would incur costs to develop ESTA capabilities.

Response: Based on this comment, DHS has conducted further research and agrees that the number of air carriers potentially affected by the IFR was underestimated. DHS has modified its cost estimates to include additional carriers.

For the ESTA IFR, DHS consulted the International Air Transport Association (IATA) Web site for member details. DHS then accessed individual carrier Web sites to determine if the carriers flew to or from the United States and if the carrier country was an original VWP country, a new VWP country,⁹ or the United States. DHS determined that 8 U.S.-based carriers and 35 foreign-based carriers would likely have to develop ESTA capabilities. Based on further research of U.S. airports and airlines servicing these airports, it was determined that there are an additional 10 foreign carriers that should be included in the analysis that are based in original VWP or new VWP countries but are not members of IATA.

Furthermore, there are foreign carriers that are not based in original or new VWP countries that offer direct flights from VWP countries to the United States. It is likely that these airlines will be carrying a significant number of VWP-eligible passengers and will thus wish to develop ESTA capabilities in order to best serve their customers. Based on further research of U.S. airports and airlines servicing these airports, it was determined that there are an additional eight foreign carriers that should be included in the analysis. These airlines are from the Middle East and Asia and offer direct flights to the United States from Japan, Singapore, and the United Kingdom. As a result of this further research, the analysis now includes cost estimates for 8 U.S.-based air carriers and 53 foreign-based air carriers. This analysis is summarized below in the section for Executive Order 12866 and 13563.

DHS disagrees that every airline around the world would be “affected significantly” by ESTA. Air carriers are not required to develop ESTA capabilities; the 9/11 Act has put the burden squarely on traveling individuals to obtain authorizations in advance of travel. Car-

⁹ For the purpose of this document, we will use the term “original VWP countries” to refer to the 27 countries that were part of the VWP prior to the establishment of ESTA, and the term “new VWP countries” to refer to the 10 countries that were added to the VWP after that date, including Taiwan.

riers who do not fly to the United States or who carry few VWP-eligible travelers are not likely to develop ESTA capabilities to assist those customers who arrive at the airport without a travel authorization. DHS has conducted a sensitivity analysis that includes all foreign-based airlines with flights to the United States but that most likely only carry a few VWP passengers. This analysis is included in the full Regulatory Assessment that can be found in the public docket for this rule.

29. Comments That Are Beyond the Scope of the IFRs

Comment: One commenter stated that the DHS does not address the lack of system database integration of ESTA with the legacy INS IDENT and the FBI/ IAFIS databases.

Response: Questions regarding other systems unrelated to ESTA (e.g. IDENT and IAFIS) are beyond the scope of this rulemaking. ESTA is a system that collects biographic information and IDENT and IAFIS are biometric systems capturing fingerprints for identification purposes. Please refer to the ESTA Privacy Impact Assessments for more information on system integration, which may be found online at: <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

Comment: One commenter remarked that VWP countries should monitor and limit the fees that third party vendors may charge a passenger for filling out ESTA applications on the passenger's behalf.

Response: It would be inappropriate for DHS to comment on how foreign governments regulate businesses or to dictate what fees a third party vendor charges for passengers to have an ESTA application filled out. DHS is aware that there have been several sites that were charging inordinate fees for information on the program and to apply for an ESTA travel authorization. DHS issued an Advisory about these Web sites in November 2008 to inform the traveling public that these sites are not affiliated with the United States government and travelers who accidentally go to those sites should exit and go to the official ESTA Web site at <https://esta.cbp.dhs.gov>. DHS also has claimed rights for ESTA via an application submitted to the U.S. Patent and Trade Office to protect against unauthorized use of the ESTA symbol and name. DHS continues to work on outreach and communications to the public to provide the most up to date information to assist travelers in complying with the requirement. As such, this comment is beyond the scope of these rulemakings.

Comment: One commenter stated that ESTA should be implemented at a later date because there are too many current visa

holders who are overstaying in the United States, thus burdening American taxpayers with the costs of deporting overstaying visa holders.

Response: Although DHS recognizes that there may be cases where visa holders are overstaying their allowed time period for visiting the United States, the purpose of ESTA is to allow DHS to determine travel eligibility and enhance the security of the United States and the VWP, and not to identify possible enforcement actions against visa holders or VWP travelers who have overstayed their authorized period of admission. As such, this comment is beyond the scope of these rulemakings.

Comment: Some commenters claimed that the ESTA rule violated the Airline Deregulation Act because it is an “attempt to restrict the obligation of airlines to transport all passengers complying with their published tariffs” and that DHS failed to consider “the public right of freedom of transit of the navigable airspace” as required by the Airline Deregulation Act.

Response: The main purpose of the Airline Deregulation Act (Public Law 95-504), signed into law on October 24, 1978, was to remove government control over fares, routes, and market entry (of new airlines) from commercial aviation. ESTA does not impose any restrictions on fares, routes, or market entry from commercial aviation and as such, this comment is beyond the scope of these rulemakings.

III. Conclusion

A. Regulatory Amendments

The amendments to title 8 of the Code of Federal Regulations, as set forth in the ESTA IFR, published June 8, 2008, and the ESTA Fee IFR, published August 9, 2010, are adopted as final with the following changes:

The ESTA regulations are being modified by adding a new § 217.5(d)(3) to allow for flexibility to adjust the validity period for a designated VWP country and to state that notice of any such change will be published in the **Federal Register** and reflected on the ESTA Web site. In addition to addressing comments regarding the extension of the validity period discussed above, DHS’s decision to include this new section providing the Secretary with the flexibility to extend or shorten the ESTA travel authorization validity period for a designated VWP country is being done under the authority of the foreign affairs function of the United States to administer the VWP and is exempt from notice and comment rulemaking and delayed effective date requirements generally required under 5 U.S.C. 553. *See* 5 U.S.C. 553(a)(1). Additionally, section 217.5(h)(2) of the ESTA regu-

lations contains a reference to the Treasury Department's Pay.gov financial system (Pay.gov). In light of the possibility that DHS may want to offer alternative methods of submitting payment in the future, DHS is removing the sentence that refers to Pay.gov.

B. Operational Modifications

As discussed in this document, DHS has made various minor changes to ESTA in response to comments received, such as the creation of the email notification regarding a traveler's impending ESTA travel authorization expiration and various changes made to the language used on the ESTA Web site to ensure clarity. Despite making only one substantive and one technical changes to the regulations in this final rule, DHS would like to highlight five operational modifications affecting ESTA applicants and VWP travelers since the publication of the interim final rules:

1. Elimination of the Paper Form I-94W

The requirement to complete the Nonimmigrant Alien Arrival/Departure (I-94W) paper form was eliminated for VWP travelers arriving in the United States at air or sea ports of entry on or after June 29, 2010. For these travelers, ESTA satisfies the requirement to complete and submit a paper Form I-94W upon arrival in the United States. DHS worked extensively with carriers to bring about an orderly transition to remove the paper Form I-94W from circulation and to ensure that all affected parties were aware of the updated requirements. Currently, only VWP travelers arriving at the United States at land ports of entry are required to complete the paper Form I-94W.

2. Addition of Country of Birth to the Form I-94W

On May 16, 2011 and July 25, 2011, DHS published notices in the **Federal Register** proposing to revise the Form I-94W collection of information by adding a data field for "Country of Birth" to ESTA and to the paper Form I-94W. These notices also solicited comments regarding the proposed revision. No comments were received. As of December 11, 2011, country of birth is a required data element on all ESTA applications. Individuals who obtained travel authorizations prior to this date do not need to provide "Country of Birth" to maintain travel authorization; however, such individuals must provide "Country of Birth" information if and when applying for a new travel authorization after their current ESTA travel authorization expires.

3. Collection of Internet Protocol Address

On July 30, 2012, DHS published an updated System of Records Notice in the **Federal Register** (77 FR 44642) notifying the public that DHS would begin collecting the Internet Protocol address (IP address) associated with a submitted ESTA application. The IP address will be used along with other application data for vetting purposes.

4. Multiple Application Payment Function

As discussed above, DHS modified the payment functionality to allow for a single credit card transaction to pay for up to 50 ESTA applications. A group point of contact must submit payment after inputting or retrieving the relevant applications. This modification will allow groups such as businesses or a family to submit ESTA applications without having to submit payment information for each individual application.

5. Modification of the Eligibility Questions on the Form I-94W and ESTA Application

On November 26, 2013 and February 14, 2014, DHS published notices in the **Federal Register** proposing to revise the Form I-94W collection of information by amending the eligibility questions to the ESTA application and to the paper Form I-94W to make the questions clearer and easier to understand while still providing DHS with the information needed to make eligibility determinations. *See* 78 FR 70570 and 79 FR 8984. These notices also solicited comments regarding the proposed revisions. No comments were received. On December 9, 2014, DHS published a 60-day notice regarding additional changes to the ESTA application and paper Form I-94W in the **Federal Register**. *See* 79 FR 73096. These changes collect more detailed information about a traveler by making previously optional questions mandatory and by adding additional questions concerning other names or aliases, current or previous employment, and emergency contact information among other questions. These changes are necessary to improve the screening of travelers before their admittance into the U.S. On November 3, 2014, DHS amended the questions accordingly.

IV. Statutory and Regulatory Requirements

A. *Executive Order 13563 and Executive Order 12866*

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net

benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is an economically significant regulatory action under section 3(f) of Executive Order 12866 as it has an annual effect on the economy of \$100 million or more in any one year. As a result, this rule has been reviewed by the Office of Management and Budget. The following summary presents the costs and benefits to applicant carriers and DHS.¹⁰

The purpose of ESTA is to allow DHS to establish, in advance of travel, the eligibility of certain foreign travelers to enter the United States and whether the alien's proposed travel to the U.S. poses a law enforcement or security risk. Upon review of such information, DHS will determine whether the alien is eligible to travel to the United States. There are currently 37 countries in the VWP.¹¹ Furthermore, as additional countries are brought into the VWP, their citizens are also required to comply with ESTA. Additionally, because the information provided by the traveler through ESTA is the same information that was previously collected on the I-94W form (Arrival and Departure Record), travelers who receive a travel authorization through ESTA do not have to complete this form while en route to the United States.

The primary parameters for this analysis are as follows—

- The period of analysis is 2008 to 2018.
- For the purpose of this analysis, DHS assumes that travelers from all VWP countries began complying with the ESTA requirements on January 1, 2009, except for Greece and Taiwan, which DHS assumes began complying with the ESTA requirements on January 1, 2010 and January 1, 2013, respectively.¹²

¹⁰ The complete Regulatory Assessment can be found in the docket for this rulemaking: <http://www.regulations.gov>.

¹¹ The current VWP countries are Andorra, Australia, Austria, Belgium, Brunei, the Czech Republic, Estonia, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lichtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, and the U.K. Since the June 9, 2008, publication of the interim final rule, the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Slovakia, South Korea, and Taiwan have entered the VWP. With the exception of Taiwan, which was designated for participation in the VWP effective November 1, 2012, these countries were previously designated as "Roadmap" countries.

¹² DHS notes that Taiwan entered the VWP on November 1, 2012. However, DHS uses January 1, 2013 as Taiwan's ESTA start date for the analysis because data on I-94/I-94W arrivals by country are only available on an annual basis.

- Air and sea carriers that transport these VWP travelers are not directly regulated under this rule; therefore, they are not responsible for completing ESTA applications on behalf of their passengers. However, carriers have chosen to either modify their existing systems or potentially develop new systems to submit ESTA applications for their customers. For this analysis, DHS assumes that carriers incurred system development costs in 2008 and incur operation and maintenance costs every year thereafter (2009–2018). DHS notes that it transmits travelers' authorization status through its existing Advance Passenger Information System (APIS), and therefore carriers did not have to make significant changes to their existing systems in response to this rule.

Impacts to Air & Sea Carriers

DHS estimates that 8 U.S.-based air carriers and 13 sea carriers are indirectly affected by the rule. An additional 53 foreign-based air carriers and 6 sea carriers are indirectly affected. As noted previously, DHS transmits a passenger's ESTA application or authorization status to the air carriers using APIS. When a passenger checks in for her flight, the passport is swiped and the APIS process begins. DHS provides the passenger's ESTA application or authorization status to the carrier in the return APIS message. If a passenger has not applied for and received a travel authorization prior to check-in, the carrier will be able to submit the required information and obtain the authorization on behalf of the passenger. It is unknown how many passengers rely on their carrier to apply for an ESTA travel authorization on their behalf.

At the time of the publication of the ESTA Interim Final Rule, it was unknown how much it would cost carriers to modify their existing systems. DHS therefore developed a range of costs for the analysis in the Interim Final Rule. Since the publication of the Interim Final Rule, CBP has done outreach to carriers to determine the true magnitude of their costs in implementing ESTA. Based on communications with carriers, we now estimate that carriers spend an average of \$1,350,000 in the first year and \$150,000 in subsequent years. Each subsequent year estimate is intended to account not only for annual operation and maintenance of the system but also for the burden incurred by the carriers to assist passengers.

Given this range, costs for U.S. based carriers are about \$28.4 million in the first year and \$3.2 million in subsequent years (undiscounted). Costs for foreign-based carriers are about \$79.7 million in the first year and \$8.9 million in subsequent years (undiscounted).

See Exhibit 1.

EXHIBIT 1—FIRST YEAR AND ANNUAL COSTS FOR CARRIERS TO ADDRESS ESTA REQUIREMENTS
[\$Millions, 2008–2018, Undiscounted]

	U.S.		Foreign		Total
	Air	Sea	Air	Sea	
Carriers.....	8	13	53	6	80
2008.....	\$10.8	\$17.6	\$71.6	\$8.1	\$108.0
2009.....	1.2	2.0	8.0	0.9	12.0
2010.....	1.2	2.0	8.0	0.9	12.0
2011.....	1.2	2.0	8.0	0.9	12.0
2012.....	1.2	2.0	8.0	0.9	12.0
2013.....	1.2	2.0	8.0	0.9	12.0
2014.....	1.2	2.0	8.0	0.9	12.0
2015.....	1.2	2.0	8.0	0.9	12.0
2016.....	1.2	2.0	8.0	0.9	12.0
2017.....	1.2	2.0	8.0	0.9	12.0
2018.....	1.2	2.0	8.0	0.9	12.0

Detail may not calculate to total due to independent rounding.

As estimated, ESTA will cost the carriers about \$244 million to \$270 million (2013 dollars) over the 11 year period of analysis depending on the discount rate applied (3 or 7 percent). See Exhibit 2.

EXHIBIT 2—PRESENT VALUE COSTS FOR CARRIERS TO ADDRESS ESTA REQUIREMENTS
[Millions, 2008–2018]

	U.S.		Foreign	
	Air	Sea	Air	Sea
3 percent discount rate				
11-year modal total.....	\$24.4	\$39.6	\$161.6	\$18.3
11-year subtotal.....	\$64.0		\$179.9	
11-year grand total.....	\$243.9			
Annualized modal total.....	\$2.2	\$3.6	\$14.6	\$1.7
Annualized subtotal.....	\$5.8		\$16.3	
Annualized grand total.....	\$22.1			
7 percent discount rate				
11-year modal total.....	\$27.0	\$43.8	\$178.7	\$20.2
11-year subtotal.....	\$70.8		\$198.9	
11-year grand total.....	\$269.7			
Annualized modal total.....	\$2.4	\$3.9	\$15.9	\$1.8
Annualized subtotal.....	\$6.3		\$17.7	
Annualized grand total.....	\$24.0			

Detail may not calculate to total due to independent rounding.

Travel agents and other service providers may incur costs to assist their clients in obtaining travel authorizations. Affected travel agents are mostly foreign businesses located in the VWP countries. DHS has worked to minimize the costs for travel agents, building functionality into the ESTA Web site that allows travel agents to upload ESTA applications for up to 50 individuals at a time. Thanks to this upgrade, travel agents have not needed to obtain software modules to allow them to apply for authorizations for their clients.

Impacts on Travelers

ESTA presents new costs and time burdens to travelers in original VWP countries who were not previously required to submit any information in advance of travel to the United States. Travelers from new VWP countries also incur costs and burdens, though these are much less than obtaining a nonimmigrant visa (category B-1/B-2), which is currently required for short-term business and leisure travel to the United States, absent eligibility for visa-free travel.

For the primary analysis, DHS explores the following categories of costs—

- Cost and time burden to obtain a travel authorization—DHS estimates the cost of applying for the authorization, the time that will be required to obtain an authorization, and the value of that time (opportunity cost) to the traveler.
- Cost and time burden to obtain a nonimmigrant (B-1/B-2) visa if travel authorization is denied—based on the existing process for obtaining a visa, DHS estimates the cost to obtain that document in the event that a travel authorization is denied and the traveler is directed to go to a U.S. embassy or consulate to obtain permission to travel to the United States.

For this analysis, DHS predicts ESTA-affected travelers to the United States over the period of analysis using information available from the Department of Commerce, National Travel and Tourism Office (NTTO), documenting historic travel levels and future projections. We use the travel-projection percentages through 2018 provided by NTTO. In addition to total travelers, DHS estimates the number of applicants based on an analysis of early ESTA applications. An ESTA travel authorization is valid for two years, so the number of applicants for an ESTA travel authorization is lower than the number of arrivals under the VWP. *See Exhibit 3.*

EXHIBIT 3—TOTAL VISITORS TO THE UNITED STATES, 2009–2018
[Millions]

	2009	2010	2011	2012	2013*	2014*	2015*	2016*	2017*	2018*
Total Travelers	17.66	18.74	19.82	20.60	21.54	22.44	23.01	23.52	24.09	24.66
Applicants ..	14.54	15.44	16.31	16.96	17.74	18.47	18.93	19.35	19.83	20.30

Asterisk denotes projected values.

Cost To Obtain a Travel Authorization

The TPA mandates that DHS establish a fee for the use of ESTA. In 2010, DHS published an interim final rule setting this fee at \$4 per application. The Travel Promotion Act also established a temporary \$10 travel promotion fee to be collected through September 30, 2020. For the purposes of this analysis, DHS assumes the ESTA operational fee and the travel promotion fee are in effect from 2011 to 2018, the last year of our period of analysis. In addition, DHS estimates the cost of credit card fees for foreign transactions. In total, the cost per traveler will be \$14.35 from 2011–2018.

Exhibit 4 presents the total and annualized costs to applicants over the period of analysis using 3 and 7 percent discount rates. Total costs to applicants over the period of analysis are estimated at \$1.9 billion to \$2.0 billion. Annualized costs to applicants are estimated at \$171 million to \$183 million.

EXHIBIT 4—TOTAL PRESENT VALUE AND ANNUALIZED COSTS OF THE
ESTA FEE TO APPLICANTS, 2008–2018

Total present value costs (\$billions)		Annualized costs (\$millions)	
3%	7%	3%	7%
2.025	1.920	183	171

Time Burden To Obtain a Travel Authorization

To estimate the value of a non-U.S. citizen's time (opportunity cost), DHS has conducted a brief analysis that takes into account wage rates for each country that will be affected by ESTA requirements. Based on this analysis, DHS found that Japan, Australia, New Zealand, and countries in Western Europe generally have a higher value of time than the less developed countries of Eastern Europe and Asia. DHS also found that air travelers have a higher value of time than the general population. DHS developed a range of cost estimates for the value of an individual's time. For the low cost estimate, the hourly

value of time ranges from \$4.70 to \$49.08 depending on the country. For the high cost estimate, the hourly value of time ranges from \$9.95 to \$103.99.

DHS estimates that it takes 15 minutes of time (0.25 hours) to apply for a travel authorization. Note that this is 7 minutes more than the time estimated to complete the I-94W (8 minutes). DHS estimates additional time burden for an ESTA application because even though the data elements and admissibility questions are identical, travelers must now register with ESTA, familiarize themselves with the system, and gather and enter the data. For those applicants who are computer savvy and have little difficulty navigating an electronic system, this may be a high estimate. For those applicants who are not as comfortable using computers and interfacing with Web sites, this may be a low estimate. DHS believes the time burden estimate of 15 minutes is a reasonable average. Furthermore, if airlines, cruise lines, travel agents, and other service providers are entering the information on behalf of the passenger, it almost certainly does not take 15 minutes of time because these entities have most of the information electronically gathered during the booking process, and travel and ticket agents are certainly comfortable using computer applications. Because DHS does not know how many travelers apply independently through the ESTA Web site versus through a third party, DHS assigns a 15-minute burden to all travelers.

Based on these values and assumptions, DHS estimates that total opportunity costs in 2009 (the first year that travelers comply with the ESTA requirements in this analysis) range from \$118 million (low) to \$250 million (high) depending on the value of time used. By the end of the period of analysis (2018), costs range from \$163 million to \$345 million. These estimates are all undiscounted. *See Exhibit 5.*

EXHIBIT 5—TOTAL OPPORTUNITY COSTS FOR VISITORS TO THE UNITED STATES, 2009 AND 2018 (MILLIONS, UNDISCOUNTED)

2009		2018	
Low estimate	High estimate	Low estimate	High estimate
\$118	\$250	\$163	\$345

As estimated, ESTA could have an opportunity cost to travelers of \$1.4 billion to \$3.0 billion (present value) over the period of analysis depending, the value of opportunity cost and the discount rate applied (3 or 7 percent). Annualized costs are an estimated \$123 million to \$270 million. *See Exhibit 6.*

EXHIBIT 6—TOTAL PRESENT VALUE AND ANNUALIZED OPPORTUNITY COSTS TO TRAVELERS, 2008–2018

Total present value costs (\$billions)				Annualized costs (\$millions)			
Low estimate		High estimate		Low estimate		High estimate	
3%	7%	3%	7%	3%	7%	3%	7%
1.409	1.389	2.985	2.941	128	123	270	261

Cost and Burden To Obtain a Visa If a Travel Authorization Is Denied

Using the values of time noted above, DHS estimates the costs if an authorization is denied and the traveler is referred to the nearest U.S. embassy or consulate to apply for a nonimmigrant visa (B–1/B–2). Absent country-specific information, DHS assumes that it requires 5 hours of time to obtain a visa including time to complete the application, travel time, waiting at the embassy or consulate for the interview, and the interview itself. There are also other incidental costs to consider, such as bank and courier fees, photographs, transportation, and other miscellaneous expenses. DHS estimates that these out-of-pocket costs will be \$216.

The number of travel authorizations that are denied for each country is unknown. Based on the results of ESTA implementation since January 2009, DHS uses the overall ESTA denial rate of 0.23 percent for each original VWP country (the travelers from the new VWP countries are so new to the VWP that obtaining a visa would still be considered the baseline condition). DHS does, however, subtract out ESTA refusals in our benefits calculations because these travelers do not accrue any benefit from ESTA.

DHS multiplies 0.23 percent of the annual travelers for each country by the burden (5 hours), the out-of-pocket expenses, and the value of time, either high or low. Total present value visa costs over the period of analysis could total \$156 million to \$227 billion over the period of analysis. Annualized costs are an estimated \$14 million to \$21 million. See Exhibit 7.

EXHIBIT 7—TOTAL PRESENT VALUE AND ANNUALIZED VISA COSTS TO TRAVELERS, 2008–2018

Total present value costs (\$billions)				Annualized costs (\$millions)			
Low estimate		High estimate		Low estimate		High estimate	
3%	7%	3%	7%	3%	7%	3%	7%
0.158	0.156	0.227	0.224	14	14	21	20

Total Costs to Travelers

Based on the above calculations, DHS estimates that the total quantified costs to travelers will range from \$3.5 billion to \$5.2 billion depending on the number of travelers, the value of time, and the discount rate (3 or 7 percent). Annualized costs are estimated to range from \$308 million to \$474 million. *See Exhibit 8.*

EXHIBIT 8—TOTAL PRESENT VALUE AND ANNUALIZED COSTS TO TRAVELERS, 2008–2018

Total present value costs (\$billions)				Annualized costs (\$millions)			
Low estimate		High estimate		Low estimate		High estimate	
3%	7%	3%	7%	3%	7%	3%	7%
3.592	3.464	5.237	5.085	325	308	474	452

DHS has shown that costs to air and sea carriers to support the requirements of the ESTA program could cost \$244 million to \$270 million over the period of analysis depending on the discount rate applied to annual costs. Costs to foreign travelers could total \$3.3 billion to \$5.2 billion depending on traveler levels, their value of time, and the discount rate applied.

In addition to the costs quantified here, there are other impacts that DHS is unable to quantify with any degree of confidence but should be considered. These include: Costs to travel agents and other third-parties applying for ESTA travel authorizations on their clients' behalf; losses due to denied travel authorizations and visas (some travelers may not be able to travel to the United States even when they apply for a visa at a U.S. embassy or consulate); trips forgone due to cost, attitude, or confusion; reciprocity by foreign governments; and, impacts on queues in airports and seaports.

Benefits

Benefits of ESTA Advance Screening

In addition to fulfilling a statutory mandate, the rule serves the twin goals of promoting border security and legitimate travel to the United States. By modernizing the VWP, ESTA is intended to both increase national security and provide for greater efficiencies in the screening of international travelers by allowing for screening of subjects of potential interest well before boarding, thereby reducing traveler delays based on potentially lengthy processes at U.S. ports of entry.

Before ESTA implementation, a very small percentage of visitors to the United States are inadmissible for a variety of reasons, including

but not limited to certain health problems and certain criminal activity. These aliens may be returned to their country of origin at the commercial carrier's expense, and the carrier may be fined for transporting an alien visitor not in possession of proper documentation.

One of the stated purposes of this rule is to prevent inadmissible travelers and travelers not eligible for VWP travel from arriving in the United States. Prior to ESTA, VWP visitors answered questions concerning admissibility by completing their Form I-94Ws as they were en route to the United States (non-VWP visitors answer the admissibility questions on their visa applications). Based on the answers to these questions, other information available, and personal judgment, the CBP officer would then make the determination to admit the person to the United States or refer the traveler to secondary inspection for further processing.

A travel authorization provided through ESTA permits travel to the United States but does not guarantee admissibility. Thus, even with ESTA, certain travelers are found inadmissible once they arrive in the United States. A crucial element to determining admissibility is the face-to-face interaction between the CBP officer and the potential entrant after arrival at the United States. Thus, carriers are still responsible for returning passengers to their last foreign point of departure at the carriers' expense if travelers cannot overcome the inadmissibility determination of the CBP officer during secondary processing.

ESTA allows for advance screening of VWP travelers against databases for lost and stolen passports, visa revocations, terrorists and by asking admissibility questions. Based on actual ESTA denial data, DHS estimates that 0.23 percent of affected individuals are denied an ESTA authorization to travel to the United States annually as a result of the ESTA requirements and must obtain a visa in order to travel.

When inadmissible travelers are brought to the United States, they are referred to secondary inspection where a CBP or other law enforcement officer questions them and processes them for return to their country of origin. DHS estimates that it costs \$136 per individual for questioning and processing. DHS estimates that returning inadmissible travelers to their country of origin costs carriers \$1,500 per individual, which includes the air fare and any lodging and meal expenses incurred while the individual is awaiting transportation out of the United States.

Based on these estimates, DHS calculates that benefits to DHS will total \$65 million to \$66 million over the period of analysis depending

on the discount rate applied. Benefits to carriers could total \$721 million to \$732 million. Annualized benefits range from \$70 million to \$72 million. See Exhibit 9.

EXHIBIT 9—BENEFITS OF ADMISSIONS DENIED ATTRIBUTABLE TO ESTA,
2008–2018
[in \$millions]

Total admissions denied	3% Discount rate				7% Discount rate			
	Ben-efits to DHS	Ben-efits to carri-ers	Total ben-efits	Ann-u-alized ben-efits	Ben-efits to DHS	Ben-efits to carri-ers	Total ben-efits	Ann-u-alized ben-efits
496,960	66.2	732.1	798.4	72.3	65.2	721.1	786.3	69.9

Detail may not calculate to total due to independent rounding.

Benefits of Not Having To Obtain Visas for Travelers From New VWP Countries

The benefits of not having to obtain a B–1/B–2 visa, but rather obtaining a travel authorization, are also quantifiable. These benefits are realized only by travelers from new VWP countries, *i.e.*, countries that became part of the VWP after publication of the ESTA IFR. DHS must first determine how many travelers are repeat versus first-time travelers in order not to double-count benefits from not having to obtain a visa. Prior to this rule, these visitors would all have needed visas if they were not part of the VWP. Then DHS estimates a percentage of repeat travelers who would also need to have visas because their old visa would expire during the next 10 years. Most VWP visitors are eligible for 10-year B–1/B–2 visas, so on average, one tenth of these visas expire every year. DHS thus assumes that 10 percent of repeat visitors would have to reapply for visas were it not for the rule.¹³ Finally, DHS subtracts out those who are denied a travel authorization and must apply for a visa instead.

Benefits of forgoing visas are expected to range from about \$2.0 billion to \$2.6 billion (present value) from 2008 to 2018 depending on the travel level, the value of time used, and the discount rate applied (3 or 7 percent). Annualized benefits range from \$180 million to \$238 million. See Exhibit 10.

¹³ DHS notes that Taiwan has a 5-year validity period for B–1/B–2 visas. Travelers from Taiwan make up only about 1 percent of the total number of VWP travelers, so assuming a 10-year validity period for Taiwan does not materially affect the analysis.

EXHIBIT 10—TOTAL PRESENT VALUE AND ANNUALIZED BENEFITS OF
FORGOING VISAS, 2008–2018

Total present value benefits (\$billions)				Annualized benefits (\$millions)			
Low estimate		High estimate		Low estimate		High estimate	
3%	7%	3%	7%	3%	7%	3%	7%
2.089	2.022	2.632	2.549	189	180	238	227

*Benefits of Not Having To Complete the Form I-94W and
Form I-94*

DHS can also quantify the benefits of not having to complete the Form I-94W (for travelers from the original VWP countries) and paper Form I-94 (for travelers from new VWP countries). These benefits will accrue to all travelers covered by ESTA. The estimated time to complete either the Form I-94W or Form I-94 is 8 minutes (0.13 hours). DHS subtracts out those travelers who are not able to obtain a travel authorization through ESTA (see previous section on costs) and then apply a low and high value of time to the burden to estimate total savings expected as a result of this rule.

Benefits of not having to complete the paper forms are expected to range from \$739 million to \$1.6 billion from 2008 to 2018 depending on the value of time used and the discount rate applied (3 or 7 percent). Annualized benefits range from \$66 million to \$144 million. See Exhibit 11.

EXHIBIT 11—TOTAL PRESENT VALUE AND ANNUALIZED BENEFITS OF
FORGOING THE I-94/I-94W, 2008–2018

Total present value benefits (\$billions)				Annualized benefits (\$millions)			
Low estimate		High estimate		Low estimate		High estimate	
3%	7%	3%	7%	3%	7%	3%	7%
0.750	0.739	1.588	1.565	68	66	144	139

In addition to these benefits to travelers, DHS and the carriers should also experience the benefit of not having to print and store the Form I-94W. In March, 2013, DHS published an interim final rule entitled, “Definition of Form I-94 to Include Electronic Format.” As part of the regulatory analysis for this rule, DHS estimated the cost savings to DHS and carriers attributed to the automation of the Form I-94 in the air and sea environments, which is very similar to the Form I-94W. In this rule, DHS estimated that automating 16,586,753 Forms I-94 in the air and sea environments would save CBP \$153,306 and carriers \$1,344,450 in 2011. To apply these cost savings

to the ESTA Final Rule, DHS scales these costs proportionally with the number of Forms I-94W being eliminated each year as part of this rule. DHS notes that carriers will still have to administer the Customs Declaration forms for all passengers aboard the aircraft and vessel.

Benefits of not having to administer paper forms are expected to range from \$1.9 million to \$2.0 million for DHS and from \$16.9 million to \$17.2 million for carriers from 2009 to 2018 depending on the value of time used and the discount rate applied (3 or 7 percent). Annualized benefits are \$1.7 million. *See Exhibit 12.*

EXHIBIT 12—FORM MANAGEMENT BENEFITS FOR DHS AND CARRIERS, 2008–2018
[in \$millions]

3% Discount rate				7% Discount rate			
Benefits to DHS	Benefits to carriers	Total benefits	Annualized benefits	Benefits to DHS	Benefits to carriers	Total benefits	Annualized benefits
1.957	17.168	19.125	1.7	1.928	16.908	18.836	1.7

Detail may not calculate to total due to independent rounding.

Total Benefits to Travelers

Total benefits to travelers could total \$2.8 billion to \$4.2 billion over the period of analysis. Annualized benefits could range from \$246 million to \$382 million. *See Exhibit 13.*

EXHIBIT 13—TOTAL PRESENT VALUE AND ANNUALIZED BENEFITS TO TRAVELERS, 2008–2018

Total present value benefits (\$billions)				Annualized benefits (\$millions)			
Low estimate		High estimate		Low estimate		High estimate	
3%	7%	3%	7%	3%	7%	3%	7%
2.846	2.770	4.220	4.114	258	246	382	366

Benefits of Enhanced Security

As set forth in section 711 of the 9/11 Act, it was the intent of Congress to modernize and strengthen the security of the VWP under section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187) by enhancing program security requirements.

This rule and the APIS 30/AQQ rule published on August 23, 2007¹⁴ have similar security objectives: To prevent a traveler who has been

¹⁴ FR 48320. U.S. Customs and Border Protection. *Advance Electronic Transmission of Passenger and Crew Member Manifests for Commercial Aircraft and Vessels; final rule.* August 23, 2007.

matched to an individual on a government watch list from boarding an aircraft or cruise ship bound for the United States. As these benefits have already been accounted for in the regulatory assessment for the APIS rule, we do not repeat them here. ESTA has the additional security benefit of preventing those on a government watch list from purchasing a ticket. This allows CBP to focus its targeting resources on unknown threats rather than known threats (those on a watch list). Since the publication of the Interim Final Rule, DHS has added questions to ESTA to further improve security. The addition of these data elements improves the Department’s ability to screen prospective VWP travelers while more accurately and effectively identifying those who pose a security risk to the United States. We note that since the publication of the Interim Final Rule, ESTA has been successful in denying travel authorizations to known or suspected terrorists. In 2014, 817 known or suspected terrorists were denied ESTA authorizations.¹⁵

This rule allows CBP to comply with the TPA’s mandate that the Secretary establish a fee for the use of the ESTA system and also establish a \$10 travel promotion fee. The U.S. travel and tourism industry may benefit to the extent that travel promotion efforts made possible by the Travel Promotion Fund are successful in increasing travel to the United States. Likewise, the TPA has a mandate to provide information to communicate travel requirements, including ESTA, to travelers. To the extent that this outreach increases the travelers’ understanding of U.S. travel requirements, they will benefit.

The total net benefits of the rule are presented in Exhibit 14. Net benefits range from a net loss of \$158 million to a net loss of \$443 million, depending on the value of time and discount rate used. We note that, though the monetized net benefits of this rule are negative, the non-monetized security benefits are large enough to for this rule’s benefits to exceed the costs.

EXHIBIT 14—TOTAL NET BENEFITS, 2009–2018

	Total present values (\$billions)				Annualized values (\$millions)			
	Low estimate		High estimate		Low estimate		High estimate	
	3% dis- count rate	7% dis- count rate	3% dis- count rate	7% dis- count rate	3% dis- count rate	7% dis- count rate	3% dis- count rate	7% dis- count rate
Costs.....	(3.836)	(3.734)	(5.481)	(5.355)	(347)	(332)	(496)	(476)
Benefits	3.664	3.575	5.037	4.919	332	318	456	437

¹⁵ Source: Internal tracking system maintained by CBP’s Office of Field Operations.

EXHIBIT 14—TOTAL NET BENEFITS, 2009–2018

	Total present values (\$billions)				Annualized values (\$millions)			
	Low estimate		High estimate		Low estimate		High estimate	
	3% dis- count rate	7% dis- count rate	3% dis- count rate	7% dis- count rate	3% dis- count rate	7% dis- count rate	3% dis- count rate	7% dis- count rate
Net Benefit	(0.172)	(0.158)	(0.443)	(0.435)	(16)	(14)	(40)	(39)

Detail may not calculate to total due to independent rounding. Parentheses indicate a negative value. Note that annualized values are not additive.

Annualized costs and benefits to U.S. entities are presented in the following accounting statement, as required by OMB Circular A–4.

ACCOUNTING STATEMENT: CLASSIFICATION OF EXPENDITURES TO U.S. ENTITIES, 2008–2018
[\$2013]

	3% discount rate	7% discount rate
Costs:		
Annualized monetized costs	\$22 million.....	\$24 million.
Annualized quantified, but non-monetized costs.....	None quantified.....	None quantified.
Qualitative (non-quantified) costs.....	Indirect costs to the travel and tourism industry.	Indirect costs to the travel and tourism industry.
Benefits:		
Annualized monetized benefits	\$71 million to \$74 million	\$69 million to \$72 million.
Annualized quantified, but non-monetized benefits.	None quantified.....	None quantified.
Qualitative (non-quantified) benefits.....	Enhanced security and efficiency, indirect benefits to the travel and tourism industry.	Enhanced security and efficiency, indirect benefits to the travel and tourism industry.

DHS estimates that the carrier costs of this rule are approximately \$22 million to \$24 million annualized. Quantified benefits of \$69 million to \$74 million to U.S. entities (carriers and DHS) are for forgone costs associated with processing and transporting inadmissible travelers and forgone form administration costs. There are also quantified costs and benefits for travelers; however, because these are attributable solely to foreign individuals, DHS does not include them in the accounting statement. There are non-quantified costs to the travel and tourism industry if the United States receives fewer visi-

tors as a result of this rule. Conversely, there are non-quantified benefits to the travel and tourism industry if this rule results in more visitors. Additional non-quantified benefits are enhanced security and efficiency.

Regulatory Alternatives

DHS considers three alternatives to this rule—

- Alternative 1: The ESTA requirements in the rule, but with no application fee (more costly for DHS, less burdensome for traveler)
- Alternative 2: The ESTA requirements in the rule, but with only the name of the passenger and the admissibility questions on the Form I-94W (less burdensome for the traveler)
- Alternative 3: The ESTA requirements in the rule, but only for the 10 new VWP countries (no new requirements for travelers from the original VWP countries, reduced burden for new VWP travelers)

For the sake of brevity, DHS presents the high value estimates at the 7 percent discount rate only. Costs are expressed as negative values (denoted by parentheses) in this presentation of impacts. See Exhibit 15.

EXHIBIT 15—COMPARISON OF 11-YEAR IMPACTS OF THE RULE AND REGULATORY ALTERNATIVES, 2008–2018, IN \$BILLIONS, HIGH ESTIMATE, 7 PERCENT DISCOUNT RATE

	Rule	Alternative 1	Alternative 2	Alternative 3
Carrier costs.....	\$(0.270)	\$(0.270)	\$(0.270)	\$(0.270).
ESTA time burden .	(2.941)	(2.941)	(1.961)	(0.127).
Visa costs.....	(0.224)	(0.224)	(0.224)	0.
ESTA fee	(1.920)	0.....	(1.920)	(0.187).
CBP costs.....	0.....	(1.920)	0.....	(1.733).
Inadmissibility savings	0.810.....	0.810.....	0.810.....	0.068.
Benefit of no visa ...	2.549.....	2.549.....	2.549.....	2.549.
Benefit of no I-94/94W	1.565.....	1.565.....	1.565.....	0.068.
Benefit of no form administration.....	0.019.....	0.019.....	0.019.....	0.019.
Net impact	\$(0.412)	\$(0.412)	\$0.568	0.387.
Comment	Does not meet statutory requirements.	All data elements are required for effective screening.	Does not meet statutory requirements.

EXHIBIT 15—COMPARISON OF 11-YEAR IMPACTS OF THE RULE AND REGULATORY ALTERNATIVES, 2008–2018, IN \$BILLIONS, HIGH ESTIMATE, 7 PERCENT DISCOUNT RATE

	Rule	Alternative 1	Alternative 2	Alternative 3
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Detail may not calculate to total due to independent rounding. Parentheses indicate a negative value. Note that annualized values are not additive.

DHS has determined that this rule provides the greatest level of enhanced security and efficiency at an acceptable cost to the traveling public and potentially affected air and sea carriers. Alternative 2 would provide less security as it does not include the additional questions on the ESTA application that CBP uses for targeting purposes. Alternative 3 would provide less security because we would only get advance information from a relatively small subset of the VWP population.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare a regulatory flexibility analysis that describes the effect of a proposed rule on small entities when the agency is required to publish a general notice of proposed rulemaking. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). Since a general notice of proposed rulemaking was not necessary, a regulatory flexibility analysis was not required. Nonetheless, DHS has considered the impact of this rule on small entities. The individuals to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6).

C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Executive Order 13132

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

F. Paperwork Reduction Act

An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. OMB has already approved the collection of the ESTA information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under OMB Control Number 1651–0111.

G. Privacy

DHS published an ESTA Privacy Impact Assessment (PIA) for the Interim Final Rule announcing ESTA on June 9, 2008. Additionally, at that time, DHS prepared a separate System of Records Notice (SORN) which was published in conjunction with the ESTA IFR on June 9, 2008. DHS has updated these documents since that time and the most current ESTA PIA and SORN are available for viewing at <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

List of Subjects in 8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

Amendments to Regulations

Accordingly, the interim rules amending part 217 of the CBP regulations (8 CFR part 217), which were published at 73 FR 32440 on June 9, 2008 and 75 FR 47701 on August 9, 2010, are adopted as final with the following changes:

PART 217—VISA WAIVER PROGRAM

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187, 8 CFR part 2.

■ 2. Section 217.5 is amended by adding paragraph (d)(3) and revising paragraph (h)(2) to read as follows:

§ 217.5 Electronic System for Travel Authorization.

* * * * *

(d) * * *

(3) The Secretary, in consultation with the Secretary of State, may increase or decrease ESTA travel authorization validity period otherwise authorized by subparagraph (1) for a designated VWP country. Notice of any change to ESTA travel authorization validity periods will be published in the **Federal Register**. The ESTA Web site will be updated to reflect the specific ESTA travel authorization validity period for each VWP country.

* * * * *

(h) * * *

(2) Beginning October 1, 2020, the fee for using ESTA is an operational fee of \$4.00 to at least ensure recovery of the full costs of providing and administering the system.

Dated: June 3, 2015.

JEH CHARLES JOHNSON,
Secretary.

[Published in the Federal Register, June 8, 2015 (80 FR 32267)]

◆◆◆◆◆

GENERAL NOTICE 19 CFR PART 177

REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN TWO-PIECE UMBRELLAS

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

ACTION: Notice of revocation of two ruling letters and revocation of treatment concerning the tariff classification of certain two-piece umbrellas.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking two ruling letter pertaining to the tariff classification of certain umbrellas having a two-piece pole, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is

also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on April 8, 2015, in Volume 49, Number 14, of the *Customs Bulletin*. No comments were received in response to the proposed notice

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 24, 2015.

FOR FURTHER INFORMATION CONTACT: Emily Beline, Tariff Classification and Mark Branch, Regulations and Rulings, Office of International Trade, (202) 325-7799.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (Title VI), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 49, Number 14, on April 8, 2015, proposing to revoke New York Ruling Letter (NY) N242418, dated June 11, 2013, and NY N242443, dated June 14, 2013, and proposing to revoke any treatment accorded to substantially identical transactions. No comments were received in response to the proposed action.

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

In N242418, CBP classified a two-piece portable umbrella under subheading 6601.91.00, HTSUS, which provides for "Umbrellas and sun umbrellas ... : Other: Having a telescopic shaft." In N242443, CBP classified a two-piece portable beach umbrella under subheading 6601.91.00, HTSUS, which provides for "Umbrellas and sun umbrellas ... : Other: Having a telescopic shaft." It is now CBP's position that the umbrellas in N242418 and N242443 did not have a telescopic shaft as described, but rather had a two-piece *adjustable* shaft. CBP is now classifying umbrellas described as such in subheading 6601.10.00, HTSUS, which provides for "Umbrellas and sun umbrellas... : Garden or similar umbrellas."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N242418 and NY N242443 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise, pursuant to the analysis set forth in Headquarters Ruling (HQ) H248132 (Attachment A). 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: MAY 27, 2015

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division
GREG CONNOR

Attachment

HQ H248132

MAY 27, 2015

CLA-2 OT:RR: CTF:TCM: HQ H248132 ERB

CATEGORY: Classification

TARIFF NO.: 6601.10.00

Ms. ALICE LIU

ATICO INTERNATIONAL USA, INC.

501 SOUTH ANDREWS AVENUE

FORT LAUDERDALE, FL 33301

Mr. STEVE HAVERSTICK

RIO BRANDS, LLC

10981 DECATUR ROAD

PHILADELPHIA, PA 19154

RE: Revocation of NY N242418 and NY N242443; tariff classification of beach or outdoor umbrellas

DEAR Ms. LIU AND Mr. HAVERSTICK:

On June 11, 2013, U.S. Customs and Border Protection (CBP) issued Atico International USA, Inc. New York Ruling Letter (NY) N242418. On June 14, 2013, CBP issued RIO Brands, Inc. NY N242443. Both rulings pertain to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of an outdoor umbrella, also referred to as a shelter umbrella or a beach umbrella. We have reviewed additional information regarding the central pole of the umbrellas at issue, and have found NY N242418 and NY N242443 to be in error with respect to the tariff classification.

Pursuant to Section 6125(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking the above noted two rulings concerning the classification of certain outdoor umbrellas with a central adjustable pole, under the HTSUS. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on April 8, 2015, in Volume 49, Number 14, of the *Customs Bulletin*. No comments were received in response to the proposed notice.

FACTS:

In NY N242418 CBP found the following:

You submitted photographs of a portable umbrella with a 2-piece telescopic pole. The umbrella, item #A050CA00185, includes a textile carrying bag along with six steel stakes and cords.

In your letter you state that the umbrella measures approximately 6-1/2' wide including two elongated sides with pockets. The umbrella can be used in two ways, as a shelter tied down with the stakes and cords or as an umbrella.

The applicable subheading for the umbrella shelter, item #A040CA00185, will be 66901.91.0000 Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Umbrellas... Other ... : Having a telescopic shaft. The rate of duty will be Free.

Additional information provided for this submission notes that the umbrella has a two-piece *adjustable* pole that does not tilt.

In NY N242443, CBP found the following:

In your letter you describe a portable outdoor umbrella with a 2-piece telescopic pole. The umbrella, item #8211, includes a textile carrying bag. You also state that the upper portion of the telescopic pole is both adjustable for eight and can be tilted for optimal sun coverage.

The applicable subheading for the telescopic beach umbrella, item #8211, will be 6601.91.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Umbrellas... Other. . . : Having a telescopic shaft. The rate of duty will be Free.

Additional information provided states that the umbrella is a two-piece *adjustable* pole, whereby the upper pole and the lower pole fit together with a cantilever lock, and can be adjusted for height or tilt. It is not telescopic.

ISSUE:

Whether the subject outdoor umbrellas are considered “garden umbrellas” of subheading 6601.10, HTSUS or “Other similar umbrellas” under subheading 6601.91, HTSUS.

LAW AND ANALYSIS:

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

6601	Umbrellas and sun umbrellas (including walking-stick umbrellas, garden umbrellas and similar umbrellas):
6601.10.00	Garden or similar umbrellas
6601.91.00	Other

Because the instant classification dispute occurs beyond the four-digit heading level, GRI 6 is implicated. GRI 6 states:

For legal purposes, the classification of goods in the subheading 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, chapter, and subchapter notes also apply, unless the context otherwise requires.

There is no dispute that the goods at issue are umbrellas, and are properly classified in heading 6601, HTSUS. Therefore, CBP’s analysis turns to

whether the subject umbrellas are classified under subheading 6601.10, HTSUS, which provides for “Garden or similar umbrellas ...” or under subheading 6601.91, HTSUS, which provides for all *othertypes* of umbrellas.

The HTSUS does not define the term “garden umbrella” or even the term “umbrella,” but the terms of the HTSUS are construed according to their common commercial meaning. See *Millennium Lumber Distrib. Ltd. v. United States*, 558 F.3d 1326, 1329 (Fed. Cir. 2009). To ascertain the common commercial meaning of a tariff term, CBP, “may rely on its own understanding of the term as well as lexicographic and scientific authorities.” See *Lon-Ron Mft. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003). An umbrella is defined as a “collapsible shade for protection against weather consisting of fabric stretched over hinged ribs radiating from a central pole; *especially*: a small one for carrying in the hand.”¹ It can be “a device ... consisting of a collapsible, usually circular canopy mounted on a central rod;”² and it can be used for rain or sun³.

A garden umbrella is often sold as a component of an outdoor dining set to provide shade for use during moments of acceptable ambient air temperatures and meteorological tranquility. It has a central, non-telescopic pole and usually a very large canopy so as to accommodate multiple persons and in some cases, furniture. It is also used interchangeably with “patio umbrella” and sometimes “shade umbrella” or “dining umbrella.” Hence, “similar umbrellas” would have these same characteristics. They would be large, with a central, non-telescopic pole so that they may remain stationary for long periods of time in the garden or other outdoor setting.

CBP has had occasion to distinguish between similar products and has been consistent with its classification of garden umbrellas and beach umbrellas, and those which are hand-held or for personal use, such as mini umbrellas, golf umbrellas, or stick umbrellas. See NY G89320, dated April 9, 2001, which classified a 36-inch diameter beach umbrella under heading 6601.10, HTSUS, as a “garden or similar umbrella,” but classified a “mini” umbrella described as a “hand-open umbrella, 21-inches in diameter with a telescopic shaft,” under subheading 6601.91, HTSUS, as an “Other: having a telescopic shaft,” and a 27-inch golf umbrella and a 23-inch in diameter stick umbrella, (not described as telescopic) under heading 6601.99, HTSUS. See also NY K84498, dated April 1, 2004, where CBP classified a 60-inch golf umbrella under subheading 6601.99, HTSUS, as an “Other” umbrella and a “beach/tailgater umbrella” under subheading 6601.10, HTSUS, as a “garden or similar umbrella;” NY K87585, dated July 12, 2004, classified a beach umbrella under subheading 6601.10, HTSUS; NY M80104, dated January 27, 2006, classified a beach umbrella comprised of two pieces that fit together under subheading 6601.10, HTSUS.

The instant merchandise have central non-telescoping poles. Thus, they are properly classified under subheading 6601.10, HTSUS, which provides

¹ See <http://www.merriam-webster.com/dictionary/umbrella>

² See also, <http://ahdictionary.com/wordsearch.html?q=umbrella>

³ See http://www.oxforddictionaries.com/us/definition/american_english/umbrella?q=umbrella

for, “Umbrellas and sun umbrellas (including walking-stick umbrellas, garden umbrellas and similar umbrellas): Garden or similar umbrellas.”

HOLDING:

Under the authority of GRI 1, the subject umbrellas are properly classifiable under subheading 6601.10.00, HTSUS, which provides for “Umbrellas and sun umbrellas (including walking-stick umbrellas, garden umbrellas and similar umbrellas): Garden or similar umbrellas.” The duty rate is 6.5% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N242418, dated June 11, 2013, and NY N242443, dated June 14, 2013 are 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,

MYLE B. HARMON,

Director

Commercial and Trade Facilitation Division

GREG CONNOR

**COPYRIGHT, TRADEMARK, AND TRADE NAME
RECORDATIONS**

(No. 5 2015)

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

SUMMARY: The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in May 2015. The last notice was published in the CUSTOMS BULLETIN May 27, 2015.

Corrections or updates may be sent to: Intellectual Property Rights Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 90 K Street, NE., 10th Floor, Washington, D.C. 20229-1177.

FOR FURTHER INFORMATION CONTACT: LaVerne Watkins, Paralegal Specialist, Intellectual Property Rights Branch, Regulations & Rulings, Office of International Trade at (202) 325-0095.

Dated: June 3, 2015

CHARLES R. STEUART
Chief,
Intellectual Property Rights Branch
Regulations & Rulings
Office of International Trade

CBP IPR RECORDATION — MAY 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11-01145	5/14/2015	8/17/2025	THE SIMPSONS	Twentieth Century Fox Film Corporation	No
TMK 12-00564	5/14/2015	8/17/2025	CBS DVD and DESIGN	CBS Broadcasting Inc.	No
TMK 12-00644	5/6/2015	8/31/2025	GARDENIA WHITE	ROCK OF AGES CORPORATION	No
TMK 13-00586	5/21/2015	8/17/2025	BEGGIN'	Societe des Produits Nestle S.A.	No
TMK 13-01292	5/14/2015	4/21/2025	BUSSMANN	COOPER TECHNOLOGIES COMPANY	No
TMK 15-00435	5/5/2015	4/2/2021	DESIGN ONLY (STYLIZED C)	CHONG CHENG FASTENER CORPORATION	No
TMK 15-00436	5/6/2015	6/17/2025	RENEGADE BLADE CARBIDE BRUSH CUTTER BLADES RENEGADE MAIDEN, THE ONE THE ONLY THE FINEST (& Design)	Brower, William A. DBA B & G International, LLC	No
TMK 15-00437	5/6/2015	11/1/2016	KC HILITES	KC IP HOLDINGS, LLC	No
TMK 15-00438	5/6/2015	4/24/2021	ELCAN	RAYTHEON CANADA LIMITED	No
TMK 15-00439	5/6/2015	4/13/2025	HOLD MY PURSE and Design	Jordan, Martha	No
TMK 15-00440	5/18/2015	10/6/2020	BLUE DRIVE	HYUNDAI MOTOR AMERICA	No
TMK 15-00441	5/19/2015	12/6/2021	BLUELINK	HYUNDAI MOTOR AMERICA	No
TMK 15-00442	5/19/2015	12/18/2022	ECOSHIFT	HYUNDAI MOTOR AMERICA	No
TMK 15-00443	5/19/2015	5/12/2018	HYUNDAI HOPE ON WHEELS	HYUNDAI MOTOR AMERICA	No
TMK 15-00444	5/19/2015	12/20/2021	NEW THINKING. NEW POSSIBILITIES.	Hyundai Motor America	No
TMK 15-00445	5/19/2015	3/17/2023	SHIFTRONIC	Hyundai Motor America 8	No
TMK 15-00446	5/19/2015	4/24/2019	HMC	HYUNDAI MOTOR COMPANY	No
TMK 15-00447	5/19/2015	3/2/2019	TAU	HYUNDAI MOTOR AMERICA	No
TMK 15-00448	5/19/2015	4/15/2022	Santa Fe and Design	Hyundai Motor America	No
TMK 15-00449	5/19/2015	8/14/2023	MICHAEL KORS	Michael Kors, L.L.C.	No

CBP IPR RECORDATION — MAY 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 15-00450	5/19/2015	7/14/2025	ONEPURIFY	Onepurify LLC	No
TMK 15-00451	5/19/2015	4/1/2022	FALL PROOF	GILDAN USA INC.	No
TMK 15-00452	5/19/2015	5/21/2021	FLUFFIES	GILDAN USA INC.	No
TMK 15-00453	5/19/2015	8/26/2018	GOLD CLUB	GILDAN USA INC.	No
TMK 15-00454	5/19/2015	8/25/2020	INVICTA BOLT	Invicta Watch Company of America, Inc.	No
TMK 15-00455	5/19/2015	9/15/2020	ELLIPTIGO	PT MOTION WORKS, INC.	No
TMK 15-00456	5/19/2015	11/12/2024	ENGINE 15 BREWING CO.	Engine 15 Brewing Co., LLC	No
TMK 15-00457	5/19/2015	4/11/2021	STANCE	Stance, Inc.	No
TMK 15-00458	5/19/2015	10/16/2023	STANCE and Design (BLOCK AND LOGO)	Stance, Inc.	No
TMK 15-00459	5/19/2015	10/16/2023	DESIGN ONLY	Stance, Inc.	No
TMK 15-00460	5/19/2015	4/21/2024	SOVALDI	GILEAD SCIENCES IRELAND UC DBA GILEAD SCIENCES IRELAND UC	No
TMK 15-00461	5/19/2015	7/14/2025	Design (Dolphin in Stylized Circle)	Miami Dolphins, Ltd South Florida Football Corporation, a Florida Corporation	No
TMK 15-00462	5/19/2015	7/28/2025	USB adapter design	Apple Inc.	No
TMK 15-00463	5/19/2015	7/28/2025	USB adapter design	Apple Inc.	No
TMK 15-00464	5/19/2015	5/14/2024	ELLESE	ELLESE USA, INC.	No
TMK 15-00465	5/19/2015	10/30/2016	BOXFRESH	BOXFRESH INTERNATIONAL LIMITED	No
TMK 15-00466	5/19/2015	10/11/2016	DESIGN ONLY (Teardrop Logo)	BOXFRESH GLOBAL LIMITED	No
TMK 15-00467	5/19/2015	3/4/2018	BERGHAUS	Berghaus Limited	No
TMK 15-00468	5/19/2015	7/2/2022	CCC and Design (Logo)	CANTERBURY LIMITED COMPANY	No
TMK 15-00469	5/19/2015	7/15/2020	MITRE	MITRE SPORTS INTERNATIONAL, LTD.	No
TMK 15-00470	5/19/2015	12/11/2022	Canterbury and Design (CCC Logo)	Canterbury Limited	No

CBP IPR RECORDATION — MAY 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 15-00471	5/19/2015	9/3/2015	SPEEDO	SPEEDO INTERNATIONAL LIMITED	No
TMK 15-00472	5/19/2015	8/20/2015	SPEEDO	SPEEDO INTERNATIONAL LIMITED	No
TMK 15-00473	5/19/2015	10/11/2021	SPEEDO	SPEEDO INTERNATIONAL LIMITED	No
TMK 15-00474	5/19/2015	12/15/2021	SPEEDO	SPEEDO INTERNATIONAL LIMITED	No
TMK 15-00475	5/19/2015	7/6/2024	PENAFIEL	MANANTIALES PENAFIEL, S.A. DE C.V.	No
TMK 15-00476	5/19/2015	2/8/2022	MELIN and Design	MELIN LLC LIMITED LIABILITY	No
TMK 15-00477	5/19/2015	6/8/2021	DUROSTAR	Max Tool, LLC	No
TMK 15-00478	5/19/2015	10/13/2020	FUNTIME	Max Tool, LLC	No
TMK 15-00479	5/19/2015	9/19/2022	Eco Shredder and Design	Max Tool, LLC	No
TMK 15-00480	5/19/2015	10/20/2020	DuroMax NEXT GENERATION POWER SYSTEMS and Design	Max Tool, LLC	No
TMK 15-00481	5/19/2015	4/26/2020	CHEAP TOBACCO & Design	Compton Point, Inc.	No
TMK 15-00482	5/19/2015	10/21/2019	CHEAP TOBACCO & Design	Compton Point, Inc.	No
TMK 15-00483	5/19/2015	1/29/2024	CHEAP TOBACCO & Design	Compton Point, Inc.	No
TMK 15-00484	5/19/2015	8/5/2025	STARGAZER CANDLE CO	Velador, Bianca M DBA Stargazer Candle Company	No
TMK 15-00485	5/21/2015	2/10/2018	SPEEDO DESIGN MARK	SPEEDO INTERNATIONAL	No
TMK 15-00486	5/21/2015	6/30/2025	IMAGINE PRODUCTS	Imagine Products, Inc.	No
TMK 15-00487	5/22/2015	3/15/2020	RAIDERS & Design (Shield)	Oakland Raides A.D. Football, Inc.	No
TMK 15-00488	5/22/2015	6/24/2019	Q1 QUALITY ONE WIRELESS and Design	Q1W INVESTMENTS, INC.	No
TMK 15-00489	5/22/2015	3/24/2024	CANADA GOOSE	Canada Goose Inc.	No
TMK 15-00490	5/26/2015	11/9/2023	Sempialla Device Label	ELLESSE USA, INC.	No
TMK 15-00491	5/26/2015	3/29/2022	SPEEDO & Design	SPEEDO INTERNATIONAL LIMITED	No

CBP IPR RECORDATION — MAY 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 15-00492	5/26/2015	3/14/2023	ROOS	ASCO GROUP LIMITED	No
TMK 15-00493	5/26/2015	3/18/2018	Clutch Assembly Made Primarily of Metal Coverings, Incorporating a Core, a Pulley, and a Housing, Sold to the Manufacturers of Fabricators of Window Coverings	RollEase, Inc.	No
TMK 15-00494	5/26/2015	4/14/2024	NECTAR COLLECTOR	NECTAR COLLECTOR COLORADO, LLC	No
TMK 15-00495	5/26/2015	4/30/2022	NUFACE BY CAROL COLE	Carol Cole Company	No
TMK 15-00496	5/26/2015	1/26/2023	ellesse Stylised Word Mark	ELLESE USA, INC.	No
TMK 95-00572	5/6/2015	8/31/2025	BILLBOARD	BILLBOARD IP HOLDINGS, LLC	No

Total Records: 88

Date as of: 1/12/2010

**REVOCATION OF ONE RULING LETTER TREATMENT
RELATING TO THE CLASSIFICATION OF A MULTI-
CHANNEL MEASUREMENT DEVICE**

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

ACTION: Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to the classification of a multi-channel measurement device.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking one ruling letter concerning the classification of a multi-channel measurement device under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 16, on April 22, 2015. 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 August 24, 2015.

FOR FURTHER INFORMATION CONTACT: Gregory Connor, Tariff Classification and Marking Branch: (202) 325–0025.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws.

In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Vol. 49, No. 16, on April 22, 2015, proposing to revoke New York Ruling Letter (NY) N184613, dated October 13, 2011, in which CBP classified the a certain multi-channel measurement device under subheading 9033.00.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90.”

As stated in the proposed notice, this action will cover any rulings on the subject 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 ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised CBP during the 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 this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N184613 pursuant to the analysis set forth in Headquarters Ruling Letter H244110 (attached to this document), which classifies the instant multi-channel measurement device under subheading 9031.80.80, HTSUS, which provides for “Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof. Other in-

struments, appliances and machines: Other.” Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

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

Dated: May 27, 2015

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division
GREG CONNOR

HQ H244110

May 27, 2015

CLA-2 OT:RR:CTF:TCM H244110 TNA

CATEGORY: Classification

TARIFF No: 9031.80.80

PAUL M. LAURENZA, Esq.
DYKEMA GOSSET PLLC
FRANKLIN SQUARE, THIRD FLOOR WEST
1300 I STREET N.W.
WASHINGTON, DC 20005

RE: Revocation of NY N184613; Classification of the PAK MKII multi-channel measurement system device

DEAR MR. LAURENZA:

This is in reference to your request for reconsideration, dated June 17, 2013, of New York Ruling Letter (“NY”) N184613, dated October 13, 2011, on behalf of Muller-BBM VibroAkustik Systeme, Inc (“Muller”). NY N184613 concerned the classification of a mobile multi-channel measurement system device under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N184613 and found it to be incorrect. For the reasons set forth below, we hereby revoke NY N184613.

Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 16, on April 22, 2015. No comments were received in response to the notice.

FACTS:

The subject merchandise consists of the PAK MKII, a compact mobile multi-channel measurement system device that is used for a wide range of vibration, acoustical, and other analyses. It consists of an aluminum outer casing with insertable electronic cards that record measurement data via a cable connected to the device and the data collection’s source, such as a microphone, accelerometer, pressure transducers, etc.

The PAK MKII records electronic signal data in a variety of measuring and acquisition applications, such as acoustic and vibration measuring. After recording these signals, the subject merchandise translates the signals into readable data and sends them to additional equipment, usually a computer, to interpret the data. The subject merchandise is connected to these computers via Ethernet or wireless means. Depending on what type of measurement sensor to which the subject merchandise is connected, the PAK MKII can process and record data such as acceleration, strain, displacement, rotational speed, force, sound, pressure, and temperature.

The PAK MKII can be used with a single data source or with multiple data sources. It is used primarily (though not exclusively) in automotive and aerospace applications. In the industry, this merchandise is known as a measuring “front end” that work with a variety of sensors as part of an overall measurement system. The PAKMKII can be universally configured for use with almost any common sensors; as a result, it is adaptable to a wide range of measurement-related applications. Pictures of the subject merchandise submitted with this request for reconsideration show the subject PAK MKII as a square device positioned outside an automobile. In these pictures,

PAK MKII is receiving signals from that automobile with data from such devices as accelerometers, microphones, etc. and transmitting them to a computer.

ISSUE:

Whether the PAK MKII is classifiable under subheading 9030.84.00, HTSUS, as "... other instruments and apparatus for measuring or checking electrical quantities... Other instruments and apparatus: Other, with a recording device"; under subheading 9031.80.80, HTSUS, as "Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter... Other instruments, appliances and machines: Other"; or under subheading 9033.00.00, HTSUS, as "Parts and accessories- (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90?"

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

9030	Oscilloscopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof:
9030.84	Other instruments and apparatus:
9030.84.00	Other, with a recording device. * * *
9031	Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof:
9031.80	Other instruments, appliances and machines:
9031.80.80	Other. * * *
9033.00.00	Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90.

Note 2 to Chapter 90, HTSUS, states the following:

Subject to note 1 above, parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

- (a) Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings;

(b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind;

(c) All other parts and accessories are to be classified in heading 9033.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to heading 9030, HTSUS, states, in pertinent part, the following:

(B) OSCILLOSCOPES, SPECTRUM ANALYSERS AND OTHER INSTRUMENTS AND APPARATUS FOR MEASURING OR CHECKING ELECTRICAL QUANTITIES

Instruments and apparatus for measuring or checking electrical quantities may be indicating or recording types...

The main types of electrical measurements are:

(I) Measurement of electric currents. This is carried out, in particular, by means of galvanometers or amperemeters (ammeters).

The EN to heading 9031, HTSUS, states, in pertinent part, the following: In addition to profile projectors, this heading covers measuring or checking instruments, appliances and machines, whether or not optical...

(I) MEASURING OR CHECKING INSTRUMENTS, APPLIANCES AND MACHINES (A)

These include: ...

(18) Apparatus for measuring or detecting vibrations, expansion, shock or jarring, used on machines, bridges, dams, etc...

(29) Special electrical instruments for measuring stress and strain. They are based, for example, on the following principles :

(i) Variations in the resistance of a wire when subjected to stress (strain gauges). However, electrical resistors known as "strain gauges" fall in heading 85.33.

(ii) Variations of capacity between specially constructed electrodes.

(iii) Electric potentials produced by quartz or similar crystals when subjected to pressure.

This group also includes dynamometers, used to measure the compression or tractive force of hydraulic presses, rolling mills, material testing machines, etc., and also for load tests (aircraft). They usually consist of a metal body (cylinder, ring, etc.) to which stress is applied, and of a measuring apparatus, graduated in units of weight, which records any change in the shape of the metal body.

However, dynamometers for testing the properties of materials are excluded (heading 90.24).

The EN to heading 9033, HTSUS, states, in pertinent part, the following:

This heading covers all parts and accessories for machines, appliances, instruments or apparatus of this Chapter, **other than**:

- (1) Those mentioned in Chapter Note 1 ...
- (2) Those covered by Chapter Note 2(a), which constitute in **themselves** machines, appliance, instruments or apparatus of any particular heading of **Chapter 90** or of **Chapter 84, 85 or 91 (other than** the residual headings 84.87, 85.48 or 90.33). It therefore follows that separately presented articles of this type must be classified in their respective headings ...
- (3) Those identifiable as suitable for use solely or principally with a particular kind of machine, appliance, instrument or apparatus, or with a number of machines, appliances instruments or apparatus of the same heading of this Chapter; these are classifiable, by application of Chapter Note 2(b), in the same heading as the relevant machines, appliances, instruments or apparatus.

NY N184613 classified the subject merchandise in heading 9033, HTSUS, as “Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90.” However, Note 2 to Chapter 90, HTSUS, requires that if parts and accessories for the merchandise of this chapter are described by any of the headings of Chapters 84, 85, 90 or 91, HTSUS, then they must be classified in their respective headings. *See* Note 2 to Chapter 90, HTSUS. Therefore, a part or accessory of a machine which by itself is a good of any of these headings must be classified in that heading rather than as a part or accessory of the larger machine. As a result, we first examine classification in these headings.

Heading 9031, HTSUS, provides for “Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof.” The terms “measuring” and “checking” of heading 9031, HTSUS, are not defined in the HTSUS or in the ENs. In *United States v. Corning Glass Works*, 66 CCPA 25, 27 (1978), however, the court defined the term “check” as “to inspect and ascertain the condition of, especially in order to determine that the condition is satisfactory; ... investigate and insure accuracy, authenticity, reliability, safety, or satisfactory performance of ... ; to investigate and make sure about conditions or circumstances ...” *See United States v. Corning Glass Works*, 66 CCPA 25, 27 (1978) (“*Corning Glass Works*”). The court further stated that the provision for “checking instruments” clearly and unambiguously encompasses machines that carry out steps in a process for inspecting. *Id.* at 27.

Adhering to this interpretation, CBP has consistently held that equipment that is principally used in the process of measuring or checking is classifiable under that provision, even if it does not actually perform the measuring or checking operation itself. *See. e.g.*, HQ 089391, dated February 6, 1992; HQ 953382, dated April 15, 1993; and HQ H009364, dated November 23, 2009. Furthermore, CBP has defined the term “measure” as “[t]o ascertain the

quantity, mass, extent, or degree of in terms of a standard unit or fixed amount ... ; measure the dimensions of; take the measurements of ... ; to compute the size of ... from dimensional measurements.” See Webster’s Third New International Dictionary, 1400 (1971). See also HQ H163998, dated May 15, 2012; HQ H009364, dated November 23, 2009; HQ 965639, dated September 12, 2002; HQ 954682, July 14, 1994.

Furthermore, heading 9031, HTSUS, includes apparatus for measuring or detecting vibrations, expansions, shock or jarring; such apparatus are used on machines, bridges, dams, etc. See EN 90.31. The heading also covers special electrical instruments for measuring stress and strain. See EN 90.31. The subject merchandise records electronic signal data on many variables, including vibrations, strain, acoustics, rotational speed, temperature, etc. It then sends these data to a computer for analysis. Thus, although the subject PAK MKII does not measure these variables on its own, it performs steps in the process of measuring. As a result, the subject merchandise meets the cited definition of “measuring,” and it comports with the exemplars of heading 9031, HTSUS. As such, the PAK MKII is classified in heading 9031, HTSUS.

Thus, by application of Note 2 to Chapter 90, HTSUS, the subject merchandise is classified as a measuring instrument of heading 9031, HTSUS, rather than as a part and accessory of heading 9033, HTSUS. This classification is consistent with prior rulings that classify nearly identical merchandise, including independent and freestanding data recorders, in heading 9031, HTSUS. See, e.g., HQ H112722, dated September 30, 2010; HQ H009364, dated November 23, 2009; HQ 954194, dated June 7, 1993; HQ 952235, dated November 4, 1992; HQ 089391, dated February 6, 1992; HQ 961096, dated June 15, 1998.

Lastly, we note that prior CBP rulings have considered heading 9030, HTSUS, which provides for “... other instruments and apparatus for measuring or checking electrical quantities” when classifying similar merchandise. See, e.g., HQ H112722. However, the subject PAK MKII records electronic signals in a variety of measuring applications, such as acoustic and vibration, but it also displays data relating to temperature, pressure, displacement, and other processing factors. Given that the PAK MKII is a measuring instrument for more than just electrical quantities, it is precluded from heading 9030, HTSUS.

HOLDING:

Under the authority of GRI 1, the subject PAK MKII is classified in heading 9031, HTSUS. It is specifically classified in subheading 9031.80.80, HTSUS, which provides for “Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof: Other instruments, appliances and machines: Other.” The column one general rate of duty is 1.7% ad valorem.

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

EFFECT ON OTHER RULINGS:

NY N184613, dated October 13, 2011, is 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,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GREG CONNOR

**PROPOSED REVOCATION OR MODIFICATION OF SEVEN
RULING LETTERS AND PROPOSED REVOCATION OF
TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF ELECTRONIC LEARNING DEVICES**

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

ACTION: Notice of proposed revocation of six ruling letters, proposed modification of one ruling letter, and proposed revocation of treatment relating to tariff classification of electronic learning devices for children.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke New York Ruling Letter (NY) I84192, dated July 22, 2002; NY E84480, dated August 6, 1999; NY F85877, dated May 9, 2000; NY J84806, dated May 23, 2003; NY L85697, dated June 20, 2005; and NY L86633, dated August 3, 2005; and to modify NY E86264, dated September 20, 1999. CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before July 24, 2015.

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

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S. C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to revoke six ruling letters pertaining to the tariff classification of electronic learning devices for children. Although in this notice, CBP is specifically referring to the revocation of NY I84192, dated July 22, 2002 (Attachment A); NY E84480, dated August 6, 1999 (Attachment B); NY F85877, dated May 9, 2000 (Attachment C); NY J84806, dated May 23, 2003 (Attachment D); NY L85697, dated June 20, 2005 (Attachment E); and NY L86633, dated August 3, 2005 (Attachment F), and the modification of NY E86264, dated September 20, 1999 (Attachment G), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY I84192, NY E84480, NY E86264, NY F85877, NY J84806, NY L85697, and NY L86633, CBP determined that various electronic learning devices for children were classified in heading 9503, HTSUS, as toys.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY E84480, NY F85877, NY I84192, NY J84806, NY L85697, and NY L86633; to modify NY E86264; and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the electronic learning devices at issue in heading 8543, HTSUS, as electrical machines and apparatus having individual functions, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H039058, set forth as Attachment H to this document. 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: May 28, 2015

GREG CONNER

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY I84192

July 22, 2002

CLA-2-95:RR:NC:SP:225 I84192

CATEGORY: Classification

TARIFF NO.: 9503.90.0080

Ms. CHERYL SANTOS
CVS PHARMACY
ONE CVS DRIVE
WOONSOCKET, RI 02895

RE: The tariff classification of an Alphabet Apple™ from China.

DEAR Ms. SANTOS:

In your letter dated July 15, 2002, you requested a tariff classification ruling.

The sample submitted, Item #192751, Alphabet Apple,™ is a plastic electronic educational toy in the shape of an apple with a handle designed to entertain and educate children aged 3 years and older regarding the fundamentals of reading. The toy has 26 letter buttons on its surface for learning the alphabet, and other built-in activities such as phonics and vowel sounds. The item provides amusement via music and sounds even if no learning takes place.

The applicable subheading for Item #192751, Alphabet Apple,™ will be 9503.90.0080, Harmonized Tariff Schedule of the United States (HTS), which provides for Other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Wong at 646-733-3026.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT B

NY E84480

August 6, 1999

CLA-2-95:RR:NC:SP:225 E84480

CATEGORY: Classification

TARIFF NO.: 9503.90.0045; 9503.50.0020

Ms. SUSAN E. ALBATAL

HASBRO, INC.

1027 NEWPORT AVENUE

P.O. BOX 1059

RAWTUCKET, RHODE-ISLAND 02862-1059

RE: The tariff classification of battery operated toys from China

DEAR Ms. ALBATAL:

In your letter dated July 7, 1999, received in this office on July 15, 1999, you requested a tariff classification ruling.

Three samples were submitted to this office for review. The "Pooh Learning Pond", item #87-152-00, is an electronic toy for children ages 2 and up. The plastic apparatus provides an amusing field of buttons that encourage a child to develop basic skills. Three different modes of operation may be set which promote phonetic learning, the alphabet, shapes and matching. A small LCD screen displays animated characters that appear to interact with the child.

"Pooh Counting Carrots", item #87-022-00, is an electronic toy that teaches children how to count in an entertaining fashion. The item depicts a three dimensional representation of a bear and rabbit standing next to a cart full of carrots. The complete scene is affixed to a base with on/off buttons, mode switch, and buttons representing the number 1 through 10. In one method of play, a character's voice will ask the child to press on the lighted carrots and count, as the child complies, the character's voice will also count.

Another electronic toy, the "100 Acre Wood", item #87-003-00, is a plastic device that depicts numbered apples in a tree, the alphabet, a clock, animal figures and a piano. There are two settings allowing for instruction or quizzing the child. The animal figures are removable for added play activity. The piano plays three pre-programmed songs or the child can play a tune by pressing any of eight keys. Your samples are being returned as requested.

The applicable subheading for the "Pooh Learning Pond" and "Pooh Counting Carrots" will be 9503.90.0045, Harmonized Tariff Schedule of the United States (HTS), which provides for other toys: other: other toys and models. The rate of duty will be free.

The applicable subheading for the "100 Acre Wood" will be 9503.50.0020, Harmonized Tariff Schedule of the United States (HTS), which provides for toy musical instruments and apparatus. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice J. Wong at 212-637-7028.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT C

NY F85877

May 9, 2000

CLA-2-95:RR:NC:SP:225 F85877

CATEGORY: Classification

TARIFF NO.: 9503.90.0045

Ms. JENNIFER CALHOUN
RITE AID CORPORATION
P.O. Box 3165
HARRISBURG, PA 17105

RE: The tariff classification of an educational toy from China

DEAR Ms. CALHOUN:

In your letter dated March 20, 2000, received in this office on April 12, 2000, you requested a tariff classification ruling.

A sample of the "Phonics Board," Rite Aid item #993280, was submitted with your inquiry. The article is a battery operated electronic apparatus that incorporates numerous buttons for a child to press. The keys are large in size to facilitate use by little hands. The item is designed for children ages 3 and up. It features a ten-note keyboard, pre-recorded nursery tunes, colors, shapes, letters, spelling and word recognition. Up to six modes of operation may be selected by the child, who will be entertained by hitting the buttons and hearing the sounds whether or not knowledge is gained.

This office finds that the "Phonics Board" has a limited functional use as a learning device and is fashioned primarily to provide frivolous amusement to young children. The article is viewed as an educational toy for classification purposes.

The applicable subheading for the "Phonics Board," item #993280, will be 9503.90.0045, Harmonized Tariff Schedule of the United States (HTS), which provides for other toys: other: other toys and models. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice J. Wong at 212-637-7028.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT D

NY J84806

May 23, 2003

CLA-2-95:RR:NC:SP:225 J84806

CATEGORY: Classification

TARIFF NO.: 9503.90.0080

MS. PATTY KITTEL
TARGET CUSTOMS BROKERS, INC.
1000 NICOLLET MALL
MINNEAPOLIS, MN 55403

RE: The tariff classification of Magnaphonics™ from China.

DEAR MS. KITTEL:

In your letter dated May 14, 2003, you requested a tariff classification ruling.

You have submitted a sample of Magnaphonics™ identified as item number 42410, and designed as an electronic educational toy for a child aged four years and older. The item consists of a rectangular plastic housing with a clear plastic surface covering a “board” that has circular lettered depressions. Also inside, are 1” round tiles with a letter of the alphabet on each one. Using an attached stylus with a magnet inside, a child can move the letter tiles by dragging the stylus across the clear plastic surface which, in turn, pulls the intended letter tile into the correct corresponding lettered board depression. The child can also engage in four modes of play: “Sing it” (a child can sing along with songs about each letter and sound); “Find it” (a child plays find the letter games); “Sound it out” (a child phonetically repeats different letter combinations); and “Spell it” (an interactive spelling tutor helps the child learn to spell 600 of the most common words taught from preschool through first grade). An on/off/reset switch on the back of the toy allows a parent to adjust the learning level of the toy as the child progresses. Although the toy is intended to educate a child regarding word sounds, word pronunciations and word spelling, a child will be amused and derive play value simply by moving the letters around even if no actual learning takes place.

Your sample is being returned upon your request.

The applicable subheading for item number 42410, Magnaphonics™ will be 9503.90.0080, Harmonized Tariff Schedule of the United States (HTS), which provides for “Other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other.” The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Wong at 646-733-3026.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT E

NY L85697

June 20, 2005

CLA-2-95:RR:NC:SP:225 L85697

CATEGORY: Classification

TARIFF NO.: 9503.90.0080

Ms. LORIANNE ALDINGER
RITE AID CORPORATION
P.O. BOX 3165
HARRISBURG, PA 17105

RE: The tariff classification of an "Alphabet Machine Try Me" from China.

DEAR Ms. ALDINGER:

In your letter dated June 9, 2005, you requested a tariff classification ruling.

You submitted a sample of an "Alphabet Machine Try Me" identified as item number 941037. The item is a plastic square-shaped electronic educational toy designed to entertain and educate pre-school children regarding the fundamentals of letter pronunciation, word spelling, and word pronunciation via three button modes. The toy features pink, green, blue and purple brightly colored letter buttons on its surface for learning the alphabet, and other built-in activities such as phonics, numbered musical keys for counting, and animal sounds and songs. The item provides amusement via music, songs, and animal sounds even if no learning takes place.

Your sample is being returned as requested.

The applicable subheading for the "Alphabet Machine Try Me" identified as item number 941037 will be 9503.90.0080, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other." The rate of duty will be Free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Wong at 646-733-3026.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT F

NY L86633

August 3, 2005

CLA-2-95:RR:NC:SP:225 L86633

CATEGORY: Classification

TARIFF NO.: 9503.90.0080

MS. JOANNE HARMON
CVS/PHARMACY
ONE CVS DRIVE
WOONSOCKET, RI 02895

RE: The tariff classification of a Talk 'n Learn(assortment from China.

DEAR MS. HARMON:

In your letter dated July 25, 2005, you requested a tariff classification ruling.

You submitted a sample of a Talk 'n Learn(assortment identified as assortment number 318728, which is being returned upon your request.

The Talk 'n Learn(assortment is comprised of Talk 'n Learn(Alphabet and Talk 'n Learn(Numbers, which are plastic square-shaped electronic educational toys designed to amuse while helping pre-school children learn the alphabet and learn how to count numbers. Each electronic toy measures approximately 1-1/2" in height x 7-1/4" in width x 9-1/4" in length, and features play buttons, a "try me" button, an activity selector, talk and music modes, a built-in speaker, and a carrying handle.

The Talk 'n Learn(Alphabet features 26 letter buttons on its surface, along with pictorial representations next to each letter. For example, the letter "A" also has a picture of an airplane. The letter "B" has a picture of a banana. The letter "C" has a picture of a cow, etc. When the letter "A" is pressed, a pre-recorded voice pronounces the letter "A." Pressing the other letter buttons results in similar voiced pronunciations of those letters as well, which encourages the child to repeat along. By moving the selector switch, a child can also listen to an assortment of 27 nursery rhymes accompanied by music. The Talk 'n Learn(Numbers functions the same as the Talk 'n Learn(Alphabet except that numbers are on the surface of the toy instead of letters. The Talk 'n Learn(Alphabet and Talk 'n Learn(Numbers provide amusement via songs and music even if no learning takes place. The items will be packaged individually in cardboard boxes with window displays.

The applicable subheading for the Talk 'n Learn(assortment (Talk 'n Learn(Alphabet and Talk 'n Learn(Numbers) identified as assortment number 318728 will be 9503.90.0080, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other." The rate of duty will be Free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Wong at 646-733-3026.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT G

NY E86264

September 20, 1999

CLA-2-95:RR:NC:SP:225 E86264

CATEGORY: Classification

TARIFF NO.: 9503.70.0000

MR. ANDY HONG
NAVYSTAR (USA), INC.
5026 KENDRICK COURT SE
GRAND RAPIDS, MI 49512-9649

RE: The tariff classification of an educational toy set from Hong Kong

DEAR HONG:

In your letter dated August 6, 1999, received in this office on August 23, 1999, you requested a tariff classification ruling.

A sample of the "ABC Tutor" and "Magnetic Spelling Board" was submitted with your inquiry. According to your letter, both items will be imported and packaged together as a set for retail sale. The "ABC Tutor" is an electronic apparatus encased in a portable plastic housing. The face of the unit is printed with letters of the alphabet and corresponding pictures. The child can select the mode of operation by pressing one of four buttons above the display. One can choose to hear letters of the alphabet repeated, questions asking the child to find the correct letter or object, and musical notes or tunes. The "Magnetic Spelling Board" consists of plastic letters with a magnetic backing and a metallic board on which words or brief sentences may be formed. The articles, when imported retail packed, work together to create an educational toy set classifiable in Chapter 95.

The applicable subheading for the "ABC Tutor and Magnetic Spelling Board Set" will be 9503.70.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other toys, put up in sets or outfits, and parts and accessories thereof. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice J. Wong at 212-637-7028.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT H

HQ H039058

CLA-2 OT:RR:CTF:TCM H039058 CkG

CATEGORY: Classification

TARIFF NO: 8543.70.96

MR. DAVID PRATA

OHL INTERNATIONAL AT CVS HEALTH

1 CVS DRIVE -MAIL CODE 1049

WOONSOCKET, RI 02895

Re: Revocation of NY E84480, NY F85877, NY I84192, NY J84806, NY L85697, NY L86633; Modification of NY E86264

DEAR MR. PRATA:

This is in reference to New York Ruling Letter (NY) I84192, issued to CVS Pharmacy on July 22, 2002. In NY I84192, CBP classified an electronic learning device for children, the “Alphabet Apple”, in heading 9503, HTSUS, as a toy. We have reviewed NY I84192 and find it to be in error. For the reasons set forth below, we hereby revoke NY I84192 and six other rulings classifying similar learning devices in heading 9503, HTSUS: NY E84480, dated August 6, 1999 (“Pooh Learning Pond”, “Pooh Counting Carrots”, and the “100 Acre Wood”); NY F85877, dated May 9, 2000, concerning the classification of a “Phonics Board”; NY J84806, dated May 23, 2003 “Magnaphonics”; NY L85697, dated June 20, 2005 (the “Alphabet Machine Try Me”); and NY L86633, dated August 3, 2005 (“Talk ’n Learn Alphabet” and the “Talk ’n Learn Numbers”). In addition, we hereby modify one ruling, NY E86264, dated September 20, 1999, with respect to the “ABC Tutor”.¹

FACTS:

In NY 184192, CBP classified the V-Tech “Alphabet Apple” in heading 9503, HTSUS. The Alphabet Apple is a plastic electronic device in the shape of an apple with a handle designed for instructing children aged 3 years and older in the fundamentals of reading. The device has 26 letter buttons on its surface for learning the alphabet, and other built-in activities such as phonics and vowel sounds.

ISSUE:

Whether the electric learning devices at issue are classifiable as toys of heading 9503, HTSUS, or electric devices of heading 8543, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the

¹ In NY E86264, CBP classified the “ABC Tutor” and the “Magnetic Spelling Board” in heading 9503, HTSUS. Only the “ABC Tutor” is subject to this revocation.

international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

- 8543: Electrical machines and apparatus, having individual functions, not specified or included elsewhere in the chapter, parts thereof:
- 8543.70: Other machines and apparatus
- Other:
- Other:
- 8543.70.96: Other.....
- * * * * *
- 9503: Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.....
- 9503.00.0080: Other.....
- * * * * *

Section XVI, Note 1(p) provides:

This section does not cover ... Articles of chapter 95.

* * * *

EN 95.03(D), which provides for "other toys," states, in pertinent part:

This group covers toys intended essentially for the amusement of persons (children or adults) This group includes:

(xvi) Toy sewing machines.

(xvii) Educational toys (e.g., toy chemistry, printing, sewing and knitting sets).

Certain toys (e.g., electric irons, sewing machines, musical instruments, etc.) may be capable of a limited use; but they are generally distinguishable by their size and limited capacity from real sewing machines, etc.

* * * * *

Section XVI, Note 1 (p), HTSUS, which includes chapter 85, HTSUS, states that it does not cover articles of Chapter 95, HTSUS. Accordingly, we must first determine whether the subject articles are toys of heading 9503, HTSUS. Heading 9503, HTSUS, provides for toys.

Although the term "toy" is not defined in the HTSUS, EN 95.03 provides that heading 9503, HTSUS, covers toys intended essentially for the amusement of persons. In *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (CIT 2000), the court held that an object is a toy only if it is designed and used for amusement, diversion or play, rather than practicality. In *Ideal Troy Corp. v. United States*, 78 Cust. Ct. 28 C.D. 4688 (1977), the Customs Court similarly held that when amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or whether the utility is incidental to the amusement provided.

The *Minnetonka* court concluded that heading 9503, HTSUS, is a “principal use” provision within the meaning of Additional U.S. Rule of Interpretation 1 (a)², HTSUS. Therefore, classification under the heading is controlled by the principal use of goods of that class or kind to which the imported goods belong in the United States at or immediately prior to the date of the importation. In determining the class or kind of goods, the Court examines factors which may include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. See *United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), cert denied, 429 U.S. 979 (1976); *Lennox Collections v. United States*, 20 CIT 194, 196 (1996).

The physical characteristics of the articles of are not those of a toy of heading 9503, HTSUS. While the instant merchandise is often colorful, it does not otherwise have the physical characteristics of a toy. Instead, it contains a screen and controls like a machine. It is not used as a toy, mainly for amusement, but rather to teach a child the alphabet, arithmetic or other age-appropriate lessons in an engaging way. While there is no evidence regarding the manner in which the merchandise is displayed in retail stores, on-line advertisements emphasize the processing component and “engine”, and ease of use of the keyboard. These qualities are not indicative of toys either. The merchandise is actually used as a learning tool, and therefore would not be economically practical to use it as primarily an article of amusement, nor is it recognized as such in the trade.

CBP has repeatedly rejected classification in heading 9503 for similar electronic learning devices, placing them instead in Chapter 85. See HQ 966721, dated April 14, 2004; HQ 965734, dated September 5, 2002; HQ 962582, March 27, 2000; HQ 960279, dated December 9, 1997; HQ 956518, dated September 22, 1994; HQ 955845 dated August 22, 1994; HQ 951507 dated July 2, 1992; HQ 088494, dated April 19, 1991; HQ 087599, dated March 5, 1991; HQ 088086, dated February 7, 1991; HQ 086649, dated May 4, 1990; and HQ 086577, dated May 4, 1990.

In HQ 966721, Customs considered the LeapPad® Learning System, which taught subjects such as reading, phonics, vocabulary, foreign languages, geography, science and music, and consisted of an electronic pad, book and stylus. The book was to be placed on the pad while the stylus was used to scan words and pictures within the book, resulting in various audible responses from the electronic pad in the form of words or music. CBP noted that the device had amusement and/or entertainment value for children, but concluded that any amusement experienced by the child was secondary to the primary purpose of the system, which is to educate. The same reasoning applies to the instant articles. As CBP declared in HQ 966721, “any amuse-

² Additional U.S. Rule of Interpretation 1(a) states: “In the absence of special language or context which otherwise requires... (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.”

ment experienced by the child is therefore meant to facilitate the learning process and thus make the system a better learning tool, but not to change its nature as a learning device.”

HQ 962582, using a similar analysis, classified another electronic learning device, the Leapfrog Create-a-Word Travel Mat, in heading 8543, HTSUS. This device was an interactive electronic talking system that taught the alphabet, phonics, spelling and reading through games and quizzes. CBP found that the device’s design and marketing suggested that it would be used principally to teach the alphabet and words, and therefore the educational value of the speller predominated over whatever play value the frog-like features provide to the speller.

Furthermore, EN 95.03 refers to toy chemistry, printing, sewing and knitting sets as examples of educational toys. However, the educational value of such devices is—intentionally—more limited. As semi-functional representations of the actual products, the “educational” toys listed in EN 95.03 are capable of a “limited use,” but are generally distinguishable by their size and limited capacity from real sewing machines, etc. They are designed to allow the user to mimic or even undertake the basic activities of actual chemistry, printing, sewing or knitting sets. They take advantage of a child’s natural curiosity and desire to role-play at being an adult. The actual learning of principles of chemistry or development of sewing skills is thus secondary to the entertainment value of role-playing and exploding volcanoes. Therefore, products similar to the devices at issue are still not classifiable as toys if the amusement they might provide is plainly secondary to the products’ primary purpose, unless the product is a limited use representation that provides for role-playing. The subject articles are not limited use devices of a kind with those enumerated in EN 95.03, and are thus not classifiable as educational toys under heading 9503, HTSUS.

HQ 960279 December 9, 1997, further clarified the difference between an “educational toy” of heading 9503, and an educational device:

Not all articles with educational elements are considered “educational toys” for tariff purposes. Articles which act primarily as surrogate instructors are not considered educational toys for tariff purposes. The act of surrogate instruction involves the giving of instructions or asking of questions and the confirmation of the correct answer. Such confirmation may have an element of “positive reinforcement” such as a pleasant sound verses a “sour” note. Unlike a child’s own natural curiosity in an educational toy, it is this positive reinforcement which is offered to keep the child interested in the process.

The subject articles also fall into the category of “surrogate instructor” rather than that of educational toy of the kind listed in EN 95.03. The device is intended to help the child learn the same basic skills taught in school, and as Customs noted in HQ 088494, “Although certain aspects of school can be amusing, we do not agree that school is designed for the amusement of children.”

Thus, the Alphabet Apple is not designed or used primarily for the amusement of children or adults and is therefore not classifiable in Chapter 95. There is no provision in the HTSUS for educational articles per se. Therefore the subject merchandise is classified as an electrical machine or apparatus of heading 8543, HTSUS.

In contrast, we note that educational devices are properly classified as toys when they satisfy the principal use criteria outlines in *United States v. Carborundum Co.*, and when they share the characteristics of educational

toys laid out in EN 95.03 and HQ 966721 and HQ 960279. For example, in NY N174233, dated August 2, 2011, CBP classified the “Musical Bubbles Octopus in heading 9503, HTSUS. The brightly colored waterproof plastic toy shaped like an octopus is a battery operated interactive toddler bath toy. The toddler presses the shape buttons to interact with the sea creatures and learn about the instruments they are playing, along with the shapes, characteristics and sounds of the sea creatures. When the bubble making mechanism is engaged a stream of bubbles cascades into the tub while the toy plays music, says fun phrases and makes sounds.

Similarly, in NY N262498, dated April 3, 2015, CBP classified the “Adventure Bus” and “Aiphapup” as toys of heading 9503, HTSUS. The “Adventure Bus” is a plastic yellow bus, approximately 10”(L) x 4.5”(W) x 7”(H), with working doors and wheels, a fold out picnic table, a STOP sign that folds out, and 3 animal figures that fit into spaces on the bus which all provide for imaginary play. When the bus sign atop the bus is rotated it reveals 3 different locations that also produce songs and phrases relating to each location. Additional songs and phrases are sounded when the driver of the bus is pressed. The “Adventure Bus” can be used to teach a toddler vocabulary and motor skills. The “Aiphapup” is a plastic dog measuring approximately 12”(L) x 4.5”(W) x 7”(H) that contains wheels that turn, a tail that wags, and soft floppy fabric ears. It can be pulled by means of a short leash attached to a plastic handheld bone. On the “body” of the pup there are 28 “keys” (14 on each side), that have the letters of the alphabet on them. When depressed they produce sayings that teach the alphabet through phonics. There are also two extra keys that play songs and sayings that a dog would say.

The “Musical Bubbles Octopus”, “Adventure Bus” and “Aiphapup” are examples of educational toys principally designed for the amusement of children. Unlike the Alphabet Apple, these devices offer instruction ancillary to their ability to amuse, and use the child’s own natural curiosity to stimulate learning rather than quizzing the child. The “Musical Bubbles Octopus”, “Adventure Bus” and “Aiphapup” can also be used for play without any instruction.

HOLDING

By application of GRI 1, the Alphabet Apple is classified in heading 8543, HTSUS, and is specifically provided for in subheading 8543.70.96, HTSUS, which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other.” The 2015, column one, general rate of duty is 2.6%.

EFFECT ON OTHER RULINGS:

NY E84480, dated August 6, 1999, NY F85877, dated May 9, 2000, NY 184192, dated July 22, 2002, NY J84806, dated May 23, 2003, NY L85697, dated June 20, 2005, and NY L86633, dated August 3, 2005, are hereby revoked. NY E86264, dated September 20, 1999, is hereby modified with respect to the “ABC Tutor”.

Sincerely,

MYLES B. HARMON

Director,

Commercial and Trade Facilitation

cc:

Mr. Andy Hong
Navystar (USA), Inc.
5026 Kendrick Court SE
Grand Rapids, MI49512-9649

Ms. Lorianne Aldinger
Rite Aid Corporation
P.O. Box 3165
Harrisburg, PA 17105

Ms. Patty Kittel
Target Customs Brokers, Inc.
1000 Nicollet Mall
Minneapolis, MN 55403

Ms. Joanne Harmon
CVS/Pharmacy
One CVS Drive
Woonsocket, RI 02895

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A LASER LIGHT RING**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of a laser light ring.

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

DATES: Comments must be received on or before July 24, 2015.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of a laser light ring. Although in this notice, CBP is specifically referring to the revocation of NY N008876, dated April 6, 2007 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In the aforementioned ruling, CBP determined that the subject laser light ring was classified in subheading 8513.10.20, which provides, in pertinent part, for "Portable electric lamps designed to function by their own source of energy... : Lamps: Flashlights." It is now CBP's position that the laser light ring is properly classified in subheading 7117.90.60, HTSUS, which provides, in pertinent part,

for “Imitation jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Toy jewelry (except parts) valued not over 8 cents per piece.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY N008876, and to revoke or to modify any other ruling not specifically identified, in order to reflect the proper classification of the flashing jewel sticker according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H241332, set forth as Attachment 8 to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 28, 2015

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division
JACINTO JUAREZ

Attachments

ATTACHMENT A

N008876

CLA-2-85:RR:E:NC:1:110

April 6, 2007

CATEGORY: Classification

TARIFF NO.: 8513.10.2000

MS. LEA MARIE FORD
JOHN S. CONNOR INC.
799 CROMWELL PARK DRIVE
SUITE Q_H
GLEN BURNIE, MD 21061

RE: The tariff classification of a finger tip light from China.

DEAR MS. FORD:

In your letter dated March 26, 2007, you requested a tariff classification ruling on behalf of your client, A & A Global Industries.

The merchandise under consideration is described as a Finger Tip Light. The housing of this light is constructed of clear plastic and is cylindrical in shape with a diameter of 1/2 inch, and measures approximately 1 1/4 inch long. Three nickel cadmium button cell batteries power a single light emitting diode (LED) bulb. A vinyl strap is attached to the housing of the light and may be used for slipping over a single finger.

Customs and Border Protection defined flashlights in HQ 084852 as "small battery-operated portable electric lights normally held in the hand by the housing itself." This definition was reaffirmed in HQ 955356 and 952559. The Finger Tip Light meets this definition by virtue of its design.

The applicable subheading for the Finger Tip Light will be 8513.10.2000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Portable electric lamps designed to function by their own source of energy... : Lamps: Flashlights." The general rate of duty will be 12.5 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 Thomas Campanelli at 646-733-3016.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT B

HQ H241332
CLA-2 RR:CTF:TCM H241332 EGJ
CATEGORY: CLASSIFICATION
TARIFF NO.: 7117.90.60

PRISCILLA R. ROYSTER
JOHN S. CONNOR, INC.
799 CROMWELL PARK DRIVE, SUITES A-G
GLEN BURNIE, MD 21061

Re: Revocation of NY N008876: Classification of a Laser Light Ring

DEAR Ms. ROYSTER:

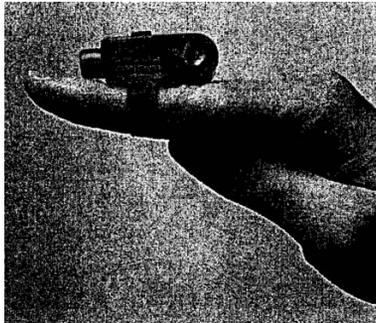
This is in reference to your letter dated January 15, 2013, in which you requested reconsideration of New York Ruling Letter (NY) N008876, dated April 6, 2007, which was issued to your client, A & A Global Industries. NY N008876 concerned the tariff classification of a laser light ring under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N008876, U.S. Customs and Border Protection (CBP) classified the laser light ring under heading 8513, HTSUS, as a flashlight. We have reviewed NY N008876 and find it to be in error. For the reasons set forth below, we hereby revoke NY N008876.

FACTS:

In NY G86870, the subject merchandise is described as follows:

The merchandise under consideration is described as a Finger Tip Light. The housing of this light is constructed of clear plastic and is cylindrical in shape with a diameter of 1/2 inch, and measures approximately 1 1/4 inch long. Three nickel cadmium button cell batteries power a single light emitting diode (LED) bulb. A vinyl strap is attached to the housing of the light and may be used for slipping over a single finger.

In your reconsideration request, you provided additional information pertaining to the laser light ring. You stated that the ring is offered for sale in coin operated vending machines displayed in the front of toy stores, department stores, grocery stores and restaurants. The item is sold with markings "recommended for children over 3 years of age." The small vinyl strap attached to the ring allows a child to wear the laser light on the child's finger. You also provided a sample of the laser light ring, which is pictured below:



ISSUE:

Is the laser light ring classified under heading 7117, HTSUS, as imitation jewelry, under heading 8513, HTSUS, as a portable electric lamp, or under heading 9503, HTSUS, as a toy?

LAW AND ANALYSIS:

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

The HTSUS provisions at issue provide, in pertinent part, as follows:

7113	Articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal. * * *
7117	Imitation jewelry: 7117.90 Other: Valued over 20 cents per dozen pieces or parts:
7117.90.60	Toy jewelry (except parts) valued not over 8 cents per piece. * * *
8513:	Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof:
8513.10:	Lamps:
8513.10.20	Flashlights. * * *
9503.00.00	[D]olls, other toys: * * *

Note 9 to Chapter 71 states as follows:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:

- (a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia); and
- (b) Articles of personal use of a kind normally carried in the pocket, in the handbag or on the person (for example, cigar or cigarette cases, snuff boxes, cachou or pill boxes, powder boxes, chain purses or prayer beads).

These articles may be combined or set, for example, with natural or cultured pearls, precious or semiprecious stones, synthetic or reconstructed precious or semiprecious stones, tortoise shell, mother-of-pearl, ivory, natural or reconstituted amber, jet or coral.

* * *

Note 11 to Chapter 71 states as follows:

11. For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of note 9 above (but not including buttons or other articles of heading 9606, or dress combs, hair slides or the like, or hairpins, of heading 9615), not incorporating natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

* * *

Note 1(p) to Section XVI (Chapters 84–85), states that:

1. This section does not cover:
 - (p) Articles of chapter 95.

* * *

Additional U.S. Rule of Interpretation 1 (a), HTSUS, provides that:

1. In the absence of special language or context which otherwise requires:
 - (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

* * *

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

EN 85.13(7) states:

The lamps of this heading include:

- (7) **Fancy torches** in the shape of pistols, lipsticks, etc. Composite articles composed of a lamp or torch and a pen, screwdriver, key ring, etc., remain classified here only if the principal function of the whole is the provision of light.

* * *

EN 95.03(0) states, in pertinent part:

D) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults)... These include:

...

- (ii) Toy pistols and guns.

* * *

In NY N008876, CBP classified the instant laser light ring under heading 8513, HTSUS, as a portable electric lamp designed to function by its own source of energy. We agree that the laser light ring is portable, and that it is powered by the small button cell batteries encased inside the ring. Further,

EN 85.13(7) states that fancy torches in the shape of pistols, lipsticks, etc., are classifiable as portable electric lamps. For these reasons, the instant laser light ring is described by heading 8513, HTSUS.

Next, we turn to heading 7117, HTSUS, which provides for imitation jewelry. Note 11 to Chapter 71 explains that imitation jewelry means “articles of jewelry,” defined in Note 9(a) to Chapter 71, that do not consist of cultured pearls, precious/semiprecious stones or precious metal. Note 9(a) states that, for the purposes of heading 7113, HTSUS, “articles of jewelry” are small articles of adornment, such as rings, earrings, bracelets, etc. Turning to the instant merchandise, we note that the laser light ring is a “ring,” which is one of the listed examples of articles of jewelry in Note 9(a) to Chapter 71. Further, the laser light ring does not include pearls, precious stones or precious metal. As such, the laser light ring is described as imitation jewelry of heading 7117, HTSUS.

In your reconsideration request, you assert that the laser light ring is properly classified as a toy. Heading 9503 provides, in pertinent part, for “other toys.” In *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (Ct. Int’l Trade 2000) (*Minnetonka*), the U.S. Court of International Trade (CIT) determined that the “class or kind” of articles considered “toys” under heading 9503 are articles whose principal use is “amusement, diversion or play, rather than practicality.” *Id.* at 651. Thus, the CIT concluded that heading 9503, HTSUS, is a “principal use” provision within the meaning of Additional U.S. Rule of Interpretation 1 (a) (AUSR 1 (a)), HTSUS. *Id.*

Applying AUSR 1 (a), the laser light ring must belong to the same class or kind of goods which have amusement as a principal use, i.e. toys. In *United States v. Carborundum Co.*, 536 F.2d 373, 377 (1976), the U.S. Court of Customs and Patent Appeals stated that in order to determine whether an article is included in a particular class or kind of merchandise, the court must consider a variety of factors, including: (1) the general physical characteristics of the merchandise; (2) the channels, class or kind of trade in which the merchandise moves (where the merchandise is sold); (3) the expectation of the ultimate purchasers; (4) the environment of the sale (i.e., accompanying accessories and marketing); (5) usage, if any, in the same manner as merchandise which defines the class; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *Id.* While these factors were developed under the Tariff Schedule of the United States (predecessor to the HTSUS), the courts have also applied them under the HTSUS. *See, e.g. Minnetonka ...* 110 F. Supp. 2d 1020, 1027; *see also Aromont USA, Inc. v. United States*, 671 F.3d 1310 (Fed. Cir. 2012), *Essex Manufacturing, Inc. v. United States*, 30 C.I.T. 1 (2006).

Examining the instant merchandise’s physical characteristics, we note that this is a light-up laser ring. EN 95.03(D)(ii) states that the heading includes toy guns and pistols. The instant laser ring does share some physical characteristics with toy guns and pistols. For example, in NY N020200, dated December 10, 2007, CBP classified a wrist-mounted dart shooter equipped with a laser beam targeting system as a toy of heading 9503, HTSUS. The laser ring also shares the same characteristics as toys with laser lights. For example, in NY N050418, dated February 13, 2009, CBP classified toy plastic gloves with a red LED laser beam (for Toy Story character Buzz Lightyear) in heading 9503, HTSUS.

The laser light ring is sold in coin-operated vending machines which are located in the front of toy stores, grocery stores, restaurants, etc. We note that toys are frequently sold out of coin-operated vending machines. As such, the channel of trade is the same as that for other toys. In addition, the economic practicality of only paying 25 cents, 50 cents or 75 cents for a toy is recognized by the trade, as well as by parents everywhere.

Further, the marketing for the laser ring includes the statement that they are intended for children who are at least three years old. Many toys are marketed with the age range for children who are the target market. As such, we find that the marketing, which is an example of the environment of sale, is the similar to marketing for other toys.

The ultimate purchaser of the laser ring is a child. The child will expect to wear the laser ring, most likely in a dark room or outside after dark. The child may also expect to “shoot” the laser beam at friends or siblings, as with a toy pistol or gun. The laser ring does not give off a concentrated beam of light, like the laser beam attachment to the dart gun in NY N020200. However, there is still amusement value in a laser light, like the one attached to the toy hands in NY N050418. For all of the foregoing reasons, we find that the laser light ring is principally used for amusement, diversion or play. As such, it is described as a toy of heading 9503, HTSUS.

The instant laser ring is classifiable in three different headings. As such, we must turn to GRI 3(a), which provides as follows:

When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

Heading 8513, HTSUS, and heading 7117, HTSUS, are *eo nomine* provisions, which provide for portable electric lamps and imitation jewelry respectively. Heading 9503, HTSUS, is a principal use provision. In *The Pomeroy Collection, Ltd. v. United States*, 559 F.Supp. 2d 1374, note 22 (Ct. Int’l Trade 2008), the CIT explained the difference between use provisions and *eo nomine* provisions as follows:

A “use” provision is “a provision describing articles by the manner in which they are used as opposed to by name,” while an *eo nomine* provision is one ‘in which an item is identified by name.’ *Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1308 (Fed. Cir. 2003) (*Len-Ron Mfg. II*). And there are two types of “use” provisions - “actual use” and “principal (formerly known as ‘chief’) use.” An “actual use” provision is satisfied only if “such use is intended at the time of importation, the goods are so used and proof thereof is furnished within 3 years after the date the goods are entered.” See Additional U.S Rule of Interpretation (ARI) 1(b) (*quoted in Clarendon Mktg., Inc. v. United States*, 144 F.3d 1464, 1467 (Fed. Cir. 1998)). In

contrast, a “principal use” provision functions essentially “as a controlling legal label, in the sense, that even if a particular import is proven to be actually used inconsistently with its principal use, the import is nevertheless classified according to its principal use.” *Clarendon Mktg.*, 144 F.3d at 1467.

In *Len-Ron Mfg. II*, the CAFC reviewed the decision of the CIT in *Len-Ron Mfg. v. United States*, 118 F. Supp. 2d 1266 (Ct. Int’l Trade 2000) (*Len-Ron Mfg. I*), to classify a certain bag in an *eo nomine* provision, instead of classifying it in a principal use provision. 334 F.3d 1304,1313. While examining the CIT’s decision, the CAFC stated the following:

The courts have generally held that “where a product is equally described by both a “use” provision and an *eo nomine* provision, the “use” provision is typically held to be the more specific of the two. *Len-Ron Mfg. I*, 118 F. Supp. 2d at 1285. However, as the court also correctly pointed out, this is not a binding rule of law, but rather a “convenient rule of thumb for resolving issues where competing provisions are in balance.” *Id.* (quoting *Orlando Food*, 140 F.3d at 1441 (internal quotation marks omitted)). The court went on to explain that this rule of thumb was only applicable where the alternative competing provisions were “in balance” or “equally descriptive” of the article being classified. *Id.* Observing that subheading 4202.12 “specifies a single article for proper classification,” where subheading 4202.32 “is a broad provision encompassing a variety of articles with specific and independent uses,” the trial court found that subheading 4202.12, which expressly identifies “vanity cases,” was the more specific of the two.

Turning to the three relevant headings, we find that even though heading 9503, HTSUS, is a principal use provision, heading 7117, HTSUS, is the most specific of the three headings. Heading 7117, HTSUS, provides for imitation jewelry, which consists of a narrowly defined list of goods set forth in Note 9 to Chapter 71. Conversely, heading 9503, covers toys, which encompasses a broad range of products, as does heading 8513, HTSUS, which provides for portable lamps. Further, CBP has consistently classified rings that light up as imitation jewelry of heading 7117, HTSUS. *See, e.g.* NY H89185, dated April 2, 2002, NY I80756, dated April 18, 2002, NY I88948, dated December 3, 2002, and NY J81735, dated March 21, 2003. For all of these reasons, the laser light ring is properly classified as imitation jewelry of heading 7117, HTSUS.

HOLDING:

By application of GRI 3(a) and GRI 6, the laser light ring is classified under subheading 7117.90.60, HTSUS, which provides for “Imitation jewelry: Other: Valued over 20 cents per dozen pieces or parts: Toy jewelry (except parts) valued not over 8 cents per piece.” The 2015 column one, general rate of duty 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 World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N008876, dated April 6, 2007, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF FIVE RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF DOLL
PENS**

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

ACTION: Notice of proposed revocation of five ruling letters and revocation of treatment relating to the tariff classification of doll pens.

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

DATES: Comments must be received on or before July 24, 2015.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this Notice advises interested parties that CBP intends to revoke five ruling letters pertaining to the tariff classification of doll pens. Although in this Notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N134676, dated December 20, 2010 (Attachment A), NY H81777, dated June 19, 2001 (Attachment B), NY H82260, dated June 19, 2001 (Attachment C), NY I87007, dated October 11, 2002 (Attachment D), and NY J81101, dated February 12, 2003 (Attachment E), this Notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this Notice should advise CBP during this notice period.

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

In NY N134676, NY H81777, NY H82260, NY I87007, and NY J81101, CBP determined that the subject doll pens were classified in heading 9608, HTSUS, as pens. It is now CBP's position that the doll pens are properly classified in subheading 9503, as dolls.

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY N134676, NY H81777, NY H82260, NY I87007, and NY J81101, and to revoke or to modify any other ruling not specifically identified, in order to reflect the proper classification of doll pens, according to the analysis contained in proposed HQ H149977, set forth as Attachment F to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially similar transactions.

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

Dated: May 28, 2015

Sincerely,
MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division
JACINTO JUAREZ

Attachments

ATTACHMENT A

N134676

December 20, 2010

CLA-2-96:0T:RR:NC:N4:422

CATEGORY: Classification

TARIFF NO.: 9608.10.0000

MR. KENNETH W. LONG, JR.
SUNRISE WORLD ENTERPRISES, LLC
107 GLEN TRAIL
WOODSTOCK, GA 30188

RE: The tariff classification of a ball point pen in the form of a sports figure from China

DEAR MR. LONG:

In your letter dated November 23, 2010, on behalf of eCompanyStore, Inc., you requested a tariff classification ruling.

The submitted sample is identified as a BigShooz 2-Piece Desk Set. This item is a ball point pen in which the body of the pen is in the shape and form of a football player made of molded plastic. The top of the football player figure has a removable helmet. There is no face under the helmet but only a plastic extension over which the helmet is fitted. The figure has two articulated arms, one on each side of the figure, and has a painted red jersey with the number 13 printed on it. The bottom portion of the figure has painted white pants in which there is a vertical indented line that is designed to distinguish two legs. At the very bottom is a silver tip through which the writing end of the ball point pen cartridge extends.

The item includes a separate base for the pen, which is designed to appear like very large shoes for the football player. The base is one piece in which the shoes are attached in the middle to a section that has an aperture at the top. The aperture is designed to receive the writing end of the football player pen so that the pen and therefore the football player figure can stand upright on a desk. The entire item measures approximately 6 1/2" in height.

In your request, you suggest that the Big Shooz Desk Set is correctly classified as a toy in subheading 9603.00.0080, since the item depicts a human likeness and therefore should be considered a doll. You cite two New York Ruling Letters in which "doll pens" have been classified as toys (NY K82148 and NY L81741). However, the items in both rulings are distinguishable from the item in your ruling request. Based on the descriptions of the items, in each case, both dolls were full bodied representations of Barbie and Strawberry Shortcake and had rooted hair and textile garments. Each doll also had a hole drilled into the bottom in which a separate small ballpoint pen was inserted. Without the pen, the article was still a doll.

In the instant case, the form of the football player in the BigShooz Desk Set is constructed of two components that are not affixed to each other. The oversized "feet" of the item serves as a base to hold the remaining body of the football player, which contains the ball point pen cartridge. While the football player may appear to be a representation of a human, it is not marketed or sold as a doll, either for display or amusement purposes.

In addition, the ball point pen cartridge is a full 4" in length and is indistinguishable from a standard ball point pen cartridge. Consequently, the longevity of the writing function will not be any shorter than with a standard

ball point pen. The cartridge can be easily removed and replaced when the ink is depleted by twisting off the silver tip at the bottom. Therefore this office does not agree with the classification that you have suggested.

The applicable subheading for the BigShooz 2-Piece Desk Set will be 9608.10.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for ball point pens. The rate of duty will be 0.8 cents each plus 5.4 percent ad valorem.

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

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

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

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT B

NY H81777

June 19, 2001

CLA-2-96:RR:NC:N2:221 H81777

CATEGORY: Classification

TARIFF NO.: 9608.10.0000

MR. KEVIN MAHER
C AIR CUSTOMHOUSE BROKERS
181 SOUTH FRANKLIN AVENUE
VALLEY STREAM, NY 11581

RE: The tariff classification of doll pens from China.

DEAR MR. MAHER:

In your letter dated June 4, 2001, on behalf of Roseart Industries, you requested a tariff classification ruling.

The sample submitted with your letter is described as a Barbie fashion doll pen gift set. It consists of four ball point pens in the shape of Barbie dolls. The tip of the pen protrudes from the base of the doll's feet. The tip of the pen fits into a flower shaped base which functions as a pen/doll stand. The sample is being returned as you requested.

The Explanatory Notes to the Harmonized Tariff System provide guidance in the interpretation of the Harmonized Commodity Description and Coding System at the international level. Explanatory Note IX to GRI 3(b) describes composite goods as those in which the components are attached to each other to form a practically inseparable whole as well as those with separable components, provided these components are adapted one to the other and are mutually complementary and together form a whole which would not normally be offered for sale in separate parts. Goods classifiable under GRI 3(b) are classified as if they consisted of the material or component which gives them their essential character, which may be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the article. GRI 3(c) provides that when goods cannot be classified by reference to GRI 3(a) or 3(b), they are to be classified in the heading that occurs last in numerical order among those which equally merit consideration in determining their classification. In this case, no single component imparts the essential character, and the composite doll/pen will be classified in accordance with GRI 3(c).

The applicable subheading for the doll pens will be 9608.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for ball point pens. The general rate of duty will be 5.3 percent ad valorem plus 0.8 cents each.

Importations of these products might be subject to the provisions of Section 133 of the Customs Regulations if they copy or simulate a trademark, trade name or copyright registered with the United States Customs Service. If you are an authorized importer of this product we recommend notifying your local Customs office prior to importation.

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 Joan Mazzola at 212-637-7034.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT C

NY H82260

June 19, 2001

CLA-2-96:RR:NC:N2:221 H82260

CATEGORY: Classification

TARIFF NO.: 9608.10.0000

MS. LORIANNE ALDINGER
RITE AID CORPORATION
P.O. BOX 3165
HARRISBURG, PA 17105

RE: The tariff classification of doll pens from China.

DEAR MS. ALDINGER:

In your letter dated May 24, 2001, you requested a tariff classification ruling.

The sample submitted with your letter is described as a Barbie fashion doll pen gift set. It consists of four ball point pens in the shape of Barbie dolls. The tip of the pen protrudes from the base of the doll's feet. The tip of the pen fits into a flower shaped base which functions as a pen/doll stand.

The Explanatory Notes to the Harmonized Tariff System provide guidance in the interpretation of the Harmonized Commodity Description and Coding System at the international level. Explanatory Note IX to GRI 3(b) describes composite goods as those in which the components are attached to each other to form a practically inseparable whole as well as those with separable components, provided these components are adapted one to the other and are mutually complementary and together form a whole which would not normally be offered for sale in separate parts. Goods classifiable under GRI 3(b) are classified as if they consisted of the material or component which gives them their essential character, which may be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the article. GRI 3(c) provides that when goods cannot be classified by reference to GRI 3(a) or 3(b), they are to be classified in the heading that occurs last in numerical order among those which equally merit consideration in determining their classification. In this case, no single component imparts the essential character, and the composite doll/pen will be classified in accordance with GRI 3(c).

The applicable subheading for the doll pens will be 9608.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for ball point pens. The general rate of duty will be 5.3 percent ad valorem plus 0.8 cents each.

Importations of these products might be subject to the provisions of Section 133 of the Customs Regulations if they copy or simulate a trademark, trade-name or copyright registered with the United States Customs Service. If you are an authorized importer of this product we recommend notifying your local Customs office prior to importation.

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 Joan Mazzola at 212-637-7034.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT D

NY I87007

October 11, 2002

CLA-2-96:RR:NC:2:224 I87007

CATEGORY: Classification

TARIFF NO.: 9608.10.0000

MS. LEIGH WANG
THE DISNEY STORE, INC.
101 NORTH BRAND BLVD.
SUITE 1000
GLENDALE, CA 91203-2671

RE: The tariff classification of a Princess Pen Set from China.

DEAR MS. WANG:

In your letter dated October 1, 2002, you requested a tariff classification ruling.

You are requesting the tariff classification on an article that is identified as a Princess Pen Set, no style number is indicated. The set includes 3 Princess ballpoint pens and a sketching pad. The product will be sold and marketed as a set, and it will be considered a set for the purposes of the HTS. The pens certainly look exactly like toy dolls, except instead of legs, there is a ballpoint pen inserted. The pen is a functional ballpoint pen. Since it is not possible to determine whether the doll or the pen imparts the essential character, GRI3 (c) will be employed for classification purposes. Since the pen classification comes after the doll classification in the tariff, the set will be classified as ballpoint pens in chapter 96 of the HTSUSA. The sketching pad will be classified as part of the set. The sample will be returned, as requested.

The applicable subheading for the Princess Pen Set will be 9608.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for ball point pens. The rate of duty will be 0.8 cents each + 5.4 percent ad valorem.

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 Tom McKenna at 646-733-3025.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT E

NY J81101
February 12, 2003
CLA-2-96:RR:NC:2:224 J81101
CATEGORY: Classification
TARIFF NO.: 9608.10.0000

NARDAT PERSAUD
ADVANCE SHIPPING Co. INC.
30 VESEY STREET
SUITE 1005
NEW YORK, NY 10007

RE: The tariff classification of four ball-point novelty pens from Taiwan.

DEAR MR. PERSAUD:

In your letter dated January 31, 2003, you requested a tariff classification ruling, on behalf of Chulani International Inc., your client.

You are requesting the tariff classification on four novelty pens that are cased in the following: a clown with beads, a kangaroo with baby, astronaut and a silver alien/skeleton. You state in your ruling request that the articles will be sold commercially as toys, however the items are totally functional pens. The outside casings of these pens have doll and toy-like motifs but the casings do not detract or interfere with the functioning of the pen. Although the unique outside portions are marketing tools, the classification of the items will be as pens in Chapter 96 of the HTS. You have not requested the return of your samples.

The applicable subheading for the four novelty pens (clown, kangaroo, astronaut and alien/skeleton) will be 9608.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for ball point pens. The rate of duty will be 0.8 ¢each+ 5.4% ad valorem.

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 Tom McKenna at 646-733-3025.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT F

HQ H149977

CLA-2 OT:RR:CTF:TCM H149977 EGG

CATEGORY: Classification

TARIFF NO.: 9503.00.00

KENNETH W. LONG JR., ESQ.
SUNRISE WORLD ENTERPRISES, LLC
107 GLEN TRAIL
WOODSTOCK, GA 30188

RE: Revocation of NY N134676, NY H81777, NY H82260, NY I87007, and NY J81101; Tariff Classification of Doll Pens

DEAR MR. LONG:

This is in reference to your letter dated February 14, 2011, in which you requested reconsideration of New York Ruling Letter (NY) N134676, dated December 20, 2010, issued to you concerning the tariff classification of the Big Shooz Two Piece Desk Set (the doll pen). In NY N134676, U.S. Customs and Border Protection (CBP) classified the doll pen in subheading 9608.10.00, HTSUS, which provides for ball point pens. We have reviewed NY N134676 and find it to be in error. For the reasons set forth below, we hereby revoke NY N134676 and four other rulings with substantially similar merchandise: NY H81777, dated June 19, 2001; NY H82260, dated June 19, 2001; NY I87007, dated October 11, 2002, and NY J81101, dated February 12, 2003.

FACTS:

In NY N134676, the subject merchandise is described as follows:

The submitted sample is identified as a BigShooz 2-Piece Desk Set. This item is a ball point pen in which the body of the pen is in the shape and form of a football player made of molded plastic. The top of the football player figure has a removable helmet. There is no face under the helmet but only a plastic extension over which the helmet is fitted. The figure has two articulated arms, one on each side of the figure, and has a painted red jersey with the number 13 printed on it. The bottom portion of the figure has painted white pants in which there is a vertical indented line that is designed to distinguish two legs. At the very bottom is a silver tip through which the writing end of the ball point pen cartridge extends.

The item includes a separate base for the pen, which is designed to appear like very large shoes for the football player. The base is one piece in which the shoes are attached in the middle to a section that has an aperture at the top. The aperture is designed to receive the writing end of the football player pen so that the pen and therefore the football player figure can stand upright on a desk. The entire item measures approximately 6 1/2" in height.

In your reconsideration request, you provided additional information regarding the doll pen. The figure is made of plastic and it has an ink cartridge inserted into it. The ink cartridge is shorter than a standard cartridge in order to fit inside the figure, and no refills of the ink cartridge are sold.

The doll pen wears a college football uniform, which is licensed by the various institutions. The intended market is college alumni, current students and fans of the sports team. Given the quality of the product and the authen-

tic collegiate decoration, you expect that the consumer will consider this as an item of memorabilia and will not discard the item when the ink cartridge runs out. The doll pen general sells for a retail price of \$19.95. Pictures of the doll pen are provided below:



ISSUE:

What is the tariff classification of the doll pen?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. Under GRI 6, 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 GRIs 1 through 5.

GRI 3(b) provides as follows:

When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

...

- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable ...

* * *

The HTSUS headings and subheadings under consideration are the following:

9503.00.00 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:

* * *

9608 Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens, stylograph pens and other pens; duplicating styli; propelling or sliding pencils (for example, mechanical pencils); pen-holders, pencil-holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609:

9608.10.00 Ball point pens.

* * *

Note 1(I) to Chapter 96 provides that:

1. This chapter does not cover:

(I) Articles of Chapter 95 (toys, games, sports equipment).

* * *

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

The EN to GRI 3(b) states, in pertinent part:

RULE 3 (b)

(VI) This second method relates only to:

- (i) Mixtures.
- (ii) Composite goods consisting of different materials.
- (iii) Composite goods consisting of different components.
- (iv) Goods put up in sets for retail sales.

It applies only if Rule 3 (a) fails.

(VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.

(VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

(IX) For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole

but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

* * *

EN 95.03(C) provides, in pertinent part, as follows:

This heading covers:

(C) **Dolls.**

This group includes not only dolls designed for the amusement of children, but also dolls intended for decorative purposes (e.g., boudoir dolls, mascot dolls), or for use in Punch and Judy or marionette shows, or those of a caricature type.

Dolls are usually made of rubber, plastics, textile materials, wax, ceramics, wood, paperboard, papier mache or combinations of these materials. They may be jointed and contain mechanisms which permit limb, head or eye movements as well as reproductions of the human voice, etc. They may also be dressed.

* * *

Heading 9503, HTSUS, covers dolls and heading 9608, HTSUS, covers pens. The pen's exterior is a doll because it is a plastic figure of a college football player. According to EN 95.03(C), the heading includes dolls that are used for decoration, such as mascot dolls and caricature dolls. The instant doll pen is both a college mascot and a caricature doll, as its feet are oversized to act as a pen stand. However, the doll pen's interior ink cartridge and ball point tip form a complete pen inside of the doll. As such, neither heading 9503, HTSUS, nor heading 9608, HTSUS, describe the doll pen in its entirety. Each heading only refers to one component of the doll pen. As such, we must turn to GRI 3(b) to determine which component imparts the pen's essential character.

GRI 3(b) states that mixtures, composite goods and retail sets shall be classified as if they consisted of the component which gives them their essential character. In order to identify a composite good's essential character, the U.S. Court of International Trade (CIT) has applied the factors listed in the ENs to GRI 3(b), which are "the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods." *The Home Depot v. United States*, 427 F. Supp. 2d 1278, 1293 (Ct. Int'l Trade 2006). With regard to the role of the component which imparts the essential character, the court has stated it is "that which is indispensable to the structure, core or condition [of the retail set]." *Id. citing A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971).

Applying the aforementioned factors, the doll is bulkier and weighs more than the pen. We do not have any information relating to the separate values of the doll and pen components. However, you have provided us with information relating to the role of the each component. You stated that the ink cartridge is smaller than a standard ball point pen ink cartridge. You also stated that no replacement ink cartridges are available for the doll pen. You noted that the targeted consumers are fans of the college football team, who will treat the doll pen as memorabilia. You noted that college fans will not

throw away the pen once the ink runs out, but will keep the doll pen on display as a decorative item. As such, we find that the doll plays a much larger role than the pen.

Further, CBP has classified other pens encased inside of dolls as dolls. *See, e.g.* NY K82148, dated January 6, 2004 (Barbie™ Fashion Doll Pens were classified as dolls), and NY L81741, dated January 21, 2005 (Strawberry Shortcake™ Mini Doll Pen and Disney© Princess Doll Pens were classified as dolls). For all of these reasons, we find that the doll imparts the essential character to the doll pen. As such, the Big Shooz doll pen is properly classified as a doll of heading 9503, HTSUS.

HOLDING:

By operation of GRI 3(b), the Big Shooz Two Piece Desk Set is classified in subheading 9503.00.00, which provides, in pertinent part, for “[D]olls, other toys.” The 2015 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY N134676, dated December 20, 2010; NY H81777, dated June 19, 2001; NY H82260, dated June 19, 2001; NY I87007, dated October 11, 2002; and NY J81101, dated February 12, 2003, are hereby revoked.

Sincerely,

MYLES B. HARMON

Director,

Commercial and Trade Facilitation

**PROPOSED REVOCATION OF ONE RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE CLASSIFICATION OF COATED FABRIC**

AGENCY: Bureau of Customs and Border Protection (CBP); Department of Homeland Security.

ACTION: Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to the classification of coated fabric.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke one ruling concerning the classification of coated fabric under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 24, 2015.

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

FOR FURTHER INFORMATION CONTACT: Ann Segura, Tariff Classification and Marking Branch: (202) 325–0031.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke one ruling pertaining to the classification of coated fabric. Although in this notice: CBP is specifically referring to New York Ruling (NY) N216578, dated July 26, 2013 (Attachment "A"), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N216578, dated July 26, 2013, CBP classified plastic coated textile upholstery fabric from China in subheading 5903.20.2500, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Textile fabrics impregnated, coated, cov-

ered or laminated with plastics, other than those of heading 5902: With polyurethane: Of man-made fibers: Other: Other”. We now believe that the subject merchandise is classified in subheading 3921.13.1500, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polyurethanes: Combined with textile materials: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Other”.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N216578, and any other ruling not specifically identified, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H256889 (see Attachment “B” to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: May 28, 2015

Sincerely,
MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division
JACINTO JUAREZ

Attachments

ATTACHMENT A

N216578

July 26, 2013

CLA-2-59:0T:RR:NC:TA:350

CATEGORY: Classification

TARIFF NO.: 5903.20.2500

MR. AMEET SHAH
CULP, INC.
P.O. BOX 2686
1823 EASTCHESTER DRIVE
HIGH POINT, NC 27265

RE: The tariff classification of plastic coated textile upholstery fabric, from China

DEAR MR. SHAH:

In your letter dated May 1, 2012, you requested a tariff classification ruling.

The submitted sample is identified as Cantina RL. According to the information provided, the plastic coated upholstery material has a four layer construction. The top outer layer consists of compact polyurethane that has been printed and embossed to simulate leather. The second layer is cellular polyurethane. The third layer is a woven fabric of 70% polyester/30% cotton fibers. The backing layer is leather scrap that is flocked onto the textile fabric. You provided the following breakdown for this material:

Polyurethane plastic (2 layers)-260 g/m² Woven textile fabric-168 g/m²
Leather scrap -128 g/m² Based upon the weight breakdown that you submitted, this material is not over 70 percent by weight of the polyurethane plastics portion.

The applicable subheading for the Cantina RL will be 5903.20.2500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for textile fabrics impregnate, coated, covered or laminated, with plastics, with polyurethane, of man-made fibers, not over 70 percent by weight of rubber or plastics. The rate of duty will be 7.5 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 Deborah Walsh at (646) 733-3044.

Sincerely,

THOMAS J. RUSSO

Director,

National Commodity Specialist Division

ATTACHMENT B

HQ H256889
CLA-2 OT:RR:CTF:TCM H256889 AS
CATEGORY: Classification
TARIFF NO.: 3921.13.1500

MR. AMEET SHAH
CULP, INC.
P.O. BOX 2686
1823 EASTCHESTER DRIVE
HIGH POINT, NC 27265

RE: Revocation of NY N216578; Tariff Classification of Coated Fabric

DEAR MR. SHAH:

This is in response to your request for reconsideration, dated February 19, 2008, filed on your behalf by Alston & Bird LLP, requesting the reconsideration of New York Ruling Letter (NY) N216578, dated July 26, 2013, which classified coated fabric under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N216578, dated July 26, 2013, CBP classified plastic coated textile upholstery fabric from China in subheading 5903.20.2500, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: With polyurethane: Of man-made fibers: Other: Other". Samples have been submitted to this office for examination. You advise that the samples do not need to be returned.

We have reviewed NY N216578 and found it to be incorrect. For the reasons set forth below, we hereby revoke NY N216578.

FACTS:

The subject article, identified as fabric style "Cantina RL", is described as a plastic coated upholstery material with a four layer construction. The top outer layer consists of compact polyurethane that has been printed and embossed to simulate leather. The second layer is cellular polyurethane. The third layer is a woven fabric of 70 percent polyester/30 percent cotton fibers. The backing layer is leather scrap that is flocked onto the textile fabric. The article is composed of: Polyurethane plastic (2 layers -260 g/m²; Woven textile fabric -168 g/m²; Leather scrap -128 g/m². Based upon the weight breakdown, this material is not over 70 percent by weight of rubber or plastics.

The CBP Laboratory Report, dated 4/23/2014, which tested the sample identified as "Cantina RL", determined that this is a woven fabric that has been " ... coated, covered, impregnated, or laminated with two layers of polyurethane type plastic material on its outer surface and with composite leather on its inner surface. It weighs 505.4 grams per square meter. The two layers of polyurethane are composed of a top layer of compact application and a bottom layer of cellular application. The polyurethane layers weigh 241.0 grams per square meter. The woven fabric weighs 176.7 grams per square meter and the composite leather weighs 87.7 grams per square meter."

ISSUE:

What is the proper classification for the merchandise?

LAW AND ANALYSIS:

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

The HTSUSA provisions under consideration are as follows:

- 3921 Other plates, sheets, film, foil and strip, of plastics:
 - Cellular:
 - 3921.13 Of polyurethanes:
 - Combined with textile materials:
 - Products with textile components in which man-made fibers predominate by weight over any other single textile fiber:
 - 3921.13.1500 Other
 - 5903 Textile fabrics impregnated, coated, covered or laminated with plastics other than those of heading 5902:
 - 5903.20 With Polyurethane:
 - Of man-made fibers:
 - Other:
 - 5903.20.2500 Other

Note 2(p) to Chapter 39, HTSUS, states, in pertinent part, the following:

2. This chapter does not cover: ...

* * *

(p) Goods of section XI (textiles and textile articles)

Note 10 to Chapter 39, HTSUS, states the following:

In headings 3920 and 3921, the expression “plates, sheets, film, foil and strip” applies only to plates, sheets, film, foil and strip (other than those of chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

Note 1(h) to section XI, HTSUS provides:

1. This section does not cover

* * *

(h) Woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of chapter 39;

Note 2(a)(5) to Chapter 59, HTSUS, states in pertinent part, the following:

2. Heading 5903 applies to:

(a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than: ...

* * *

- (5) Plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (chapter 39); ...

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

The general EN to Chapter 39, under the heading, “Plastics and textile combinations”, in part provides:

Otherwise, the classification of plastics and textile combinations is essentially governed by Note 1 (h) to Section XI, Note 3 to Chapter 56 and Note 2 to Chapter 59.

The following products are also covered by this Chapter:

* * *

- (d) Plates sheets and strip of cellular plastics combined with textile fabrics (as defined in Note 1 to Chapter 59), felt or nonwovens, where the textile is present merely for reinforcing purposes.

You assert that the merchandise should be classified as a sheet of cellular polyurethane combined with a man-made fiber fabric, not over 70 percent by weight of plastics, under subheading 3921.13.1500, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polyurethanes: Combined with textile materials: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Other”. You also argue that the cellular polyurethane plastic imparts the essential character of Cantina RL, while the thin layer of compact polyurethane provides a slight coloring effect, i.e., it is the cellular polyurethane that provides the “leather-like” quality to the article. Therefore, you conclude that because the cellular polyurethane plastic imparts the essential character to the product, and the textile fabric is present merely for reinforcing purposes, this product is excluded from heading 5903, per note 2(a)(5) to Chapter 59 which excludes “Plates, sheets or strip of cellular plastics combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (chapter 39)”.

Although you raise an “essential character” analysis in your submission, we do not believe an “essential character” analysis is warranted in this instance. This article is classifiable pursuant to a GRI I analysis.

Note 2(p) to Chapter 39 states that Chapter 39 does not cover “goods of Section XI (textiles and textile articles)”. Therefore, our analysis begins with heading 5903, HTSUS.

Note 1 (h) to Section XI, HTSUS, which includes Chapter 59, provides that Section XI, covering textiles and textile articles, does not cover “Woven, knitted, or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of chapter 39.” In order for the subject merchandise to be classified as a textile in heading 5903, it must first meet the terms of Note 2 to Chapter 59, HTSUS. However, under the terms of Note 2(a)(5), merchandise is precluded from classification in heading 5903, HTSUS, when it is comprised of “Plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (chapter 39)”.

The General Notes to the EN for Chapter 39 define cellular plastics as: “... plastics having many cells (either open, closed or both), dispersed throughout their mass. They include foam plastics, expanded plastics and microporous or microcellular plastics. They may be either flexible or rigid.” In the CBP Laboratory Report it concluded, in pertinent part, that the merchandise consisted of two layers of polyurethane composed of a top layer of compact application and a bottom layer of cellular application. Since the merchandise is composed of cellular plastics, the issue that must be resolved is whether the woven textile fabric is present merely for reinforcing purposes.

We conclude that the textile fabric is present merely to reinforce the plastic. The subject article is comprised of four distinct layers, i.e., a top outer layer which consists of compact polyurethane (PU) that has been printed and embossed to simulate leather, a second layer of cellular PU, a third layer of woven fabric (70 percent polyester/30 percent cotton fibers), and a backing layer of leather scrap that is flocked onto the textile fabric. In fact, the woven fabric is “sandwiched” between two layers of polyurethane and having a backing layer of leather scrap that completely obscures the woven textile fabric. Clearly, the woven fabric is present merely for reinforcing purposes because it forms an interior layer and is completely obscured on both sides by the PU coatings and flocking. As such, the woven textile fabric serves to prevent the plastic from tearing or stretching. Therefore, we find that Note 2(a)(5) to Chapter 59, HTSUS, excludes the merchandise from heading 5903, HTSUS, and directs classification as an article of plastic of Chapter 39, HTSUS.

Merchandise of heading 3921, HTSUS, can be printed or otherwise surface-worked, uncut or cut into rectangles, but has not been further worked. As such, the subject merchandise meets the terms of heading 3921, HTSUS.

In view of the foregoing, CBP finds that NY 216578, dated July 26, 2013, incorrectly classified the subject merchandise as “Textile fabrics impregnated, coated, covered or laminated with plastics ...” in heading 5903, HTSUS.

HOLDING:

By application of GRI’s 1 and 6, the subject merchandise is properly classified in heading 3921, HTSUS, specifically, subheading 3921.13.1500, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polyurethanes: Combined with textile materials: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Other”. The column one, general rate of duty is 6.5 percent *ad valorem*.

Duty rates are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.us-itc.gov.

EFFECT ON OTHER RULINGS:

NY N216578, dated July 26, 2013, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF ONE RULING LETTER AND
PROPOSED MODIFICATION OF ONE RULING LETTER
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE CLASSIFICATION OF BAKED CRÈME
DESSERTS**

AGENCY: Bureau of Customs and Border Protection (CBP); Department of Homeland Security.

ACTION: Notice of proposed revocation of one ruling letter and proposed modification of one ruling letter and proposed revocation of treatment relating to the classification of baked creme desserts.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke one ruling and modify one ruling concerning the classification of baked creme desserts under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 24, 2015.

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

FOR FURTHER INFORMATION CONTACT: Ann Segura, Tariff Classification and Marking Branch: (202) 325–0031.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related Laws. Two new concepts which emerge from the law are

“informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke one ruling and modify one ruling pertaining to the classification of baked crème desserts. Although in this notice, CBP is specifically referring to New York Ruling (NY) N015908 (Attachment “A”), dated September 5, 2007, and NY N015868, dated September 7, 2007, (Attachment “8”), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N015908, dated September 5, 2007, CBP classified baked creme desserts, identified as “Crème Coffee” and “Crème Caramel” in

subheading 1901.90, Harmonized Tariff Schedule of the United States Annotated (HTSUS), which provides for “Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included: Other: Other: Dairy products described in additional U.S. note 1 to chapter 4”. Similarly, in NY N015868, dated September 7, 2007, one of two dessert products, “Crème au Chocolat”, a baked dessert, was also classified in subheading 1901.90, HTSUS. We now believe that the subject merchandise is properly classified in subheading 1905.90, HTSUS, which provides for “Bread, pastry, cakes, biscuits and other bakers’ wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products: Other”.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N015908, dated September 5, 2007, and modify NY N015868, dated September 7, 2007, and any other ruling not specifically identified, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) H233583 (see Attachment “C” to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: May 28, 2015

Sincerely,
MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division
JACINTO JUAREZ

Attachments

ATTACHMENT A

N015908

September 5, 2007

CLA-2-19:RR:NC:N2:228

CATEGORY: Classification

TARIFF NO.: 1901.90.4200; 1901.90.4300;

1901.90.4600; 1901.90.4700

MR. BRIAN KAVANAUGH
DERINGER CONSULTING GROUP
ONE LINCOLN BLVD.
ROUSES POINT, NY 12979

RE: The tariff classification of dessert products from Canada

DEAR MR. KAVANAUGH:

In your letter dated August 10, 2007, on behalf of Marie Morin Canada, Inc., Brossard, PQ, Canada, you requested a tariff classification ruling.

Descriptive literature, ingredients breakdowns, and a sample of the box in which the goods will be imported, accompanied your letter. The sample box was examined and disposed of. Marie Morin brand Crème Brulee, Crème Coffee, and Crème au Caramel are fully cooked custard desserts, imported in frozen condition, in single-serving glass ramekins containing 110-grams, six units in a retail package. A 3-gram sugar pouch is also placed inside the Crème Brulee retail package. The Crème Brulee dessert consists of approximately 47 percent cream, 23 percent milk, 14 percent egg yolks, 12 percent sugar, 5 percent egg whites, and less than one percent vanilla. The Crème Coffee dessert is said to be composed of approximately 46 percent cream, 23 percent milk, 14 percent egg yolks, 12 percent sugar, 4 percent egg whites, and one percent coffee flavor. Crème au Caramel is said to contain approximately 60 percent milk, 18 percent eggs, 12 percent sugar, 10 percent caramel, and one percent vanilla.

The applicable subheading for the Crème Brulee and Crème Coffee products, if imported in quantities that fall within the limits described in additional U.S. note 10 to chapter 4, will be 1901.90.4200, Harmonized Tariff Schedule of the United States (HTSUS), which provides for food preparations of goods of headings 0401 to 0404, not containing cocoa ... not elsewhere specified or included ... other ... other ... dairy products described in additional U.S. note 1 to chapter 4 ... dairy preparations containing over 10 percent by weight of milk solids ... described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions. The rate of duty will be 16 percent ad valorem. If the quantitative limits of additional U.S. note 10 to chapter 4 have been reached, these two products will be classified in subheading 1901.90.4300, HTS, and dutiable at the rate of \$1.035 per kilogram plus 13.6 percent ad valorem.

The applicable subheading for the Crème au Caramel, if imported in quantities that fall within the limits described in additional U.S. note 10 to chapter 4, will be 1901.90.4600, HTSUS, which provides for food preparations of goods of headings 0401 to 0404, not containing cocoa ... not elsewhere specified or included ... other ... other ... dairy products described in additional U.S. note 1 to chapter 4 ... other ... described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions. The rate of duty will be 16 percent ad valorem. If the quantitative limits of additional U.S. note 10 to

chapter 4 have been reached, this product will be classified in subheading 1901.90.4700, HTS, and dutiable at the rate of \$1.035 per kilogram plus 13.6 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 merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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 Stanley Hopard at 646-733-3029.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT B

September 7, 2007

CLA-2-18 :RR:NC:2:228

CATEGORY: Classification

TARIFF NO.: 1806.90.9090, 1901.90.4600,
1901.90.4700

MR. BRIAN KAVANAUGH
DERINGER LOGISTICS CONSULTING GROUP
1 LINCOLN BLVD. SUITE 225
ROUSES POINT, NY 12979

RE: The tariff classification of three dessert products from Canada.

DEAR MR. KAVANAUGH:

In your letter dated August 10, 2007, on behalf of Marie Morin Canada Inc., you requested a tariff classification ruling.

Ingredients breakdowns and descriptive literature for three products were forwarded with your request. A sample of the retail package for a similar product (Crème Brulee) was also submitted with your letter. Mousse au Chocolat is a chocolate mousse made from 42.5 percent chocolate, 12.7 percent egg yolks, 36.1 percent egg whites, and 8.5 percent butter. Crème au Chocolat is chocolate custard consisting of 64.1 percent milk, 19.2 percent whole eggs, 12.8 percent sugar, and 3.8 percent cocoa powder. The ready to eat desserts are imported in frozen condition, individually packed for retail sale in small glass ramekins containing 90 and 110 grams, respectively, 6 ramekins to a carton.

The applicable subheading for the Mousse au Chocolat will be 1806.90.9090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for chocolate and other food preparations containing cocoa... other ... other. .. other. The rate of duty will be 6 percent ad valorem.

The applicable subheading for the Crème au Chocolat if imported in quantities that fall within the limits described in additional U.S. note 10 to chapter 4, will be 1901.90.4600, HTSUS, which provides for food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa on a totally defatted basis, not elsewhere specified or included ... other ... other ... dairy products described in additional U.S. note 1 to chapter 4... other ... described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions. The rate of duty will be 16 percent ad valorem. If the quantitative limits of additional U.S. note 10 to chapter 4 have been reached, the product will be classified in subheading 1901.90.4700, HTSUS, and dutiable at the rate of \$1.035 per kilogram plus 13.6 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/>.

Your inquiry does not provide enough information for us to issue a classification ruling on the Tiramisu. Your request for a classification ruling should include a complete ingredients breakdown, by weight. Your literature states the Tiramisu is made with a soft sponge cake drenched in a light coffee flavor. The ingredients breakdown provided does not account for the cake component. This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which

is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at telephone number (301) 575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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 Stanley Hopard at 646-733-3029.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT C

HQ H233583
CLA-2 OT:RR:CTF:TCM H233583 AS
CATEGORY: Classification
TARIFF NO.: 1905.90.90

MR. BRIAN KAVANAUGH
DERINGER LOGISTICS CONSULTING GROUP
1 LINCOLN BLVD., SUITE 225
ROUSES POINT, NY 12979

RE: Revocation of NY N015908; Modification of NY N015868; Tariff Classification of Crème Desserts

DEAR MR. KAVANAUGH:

This is in response to your request for reconsideration dated September 12, 2012, filed on behalf of Marie Morin Canada, Inc., (“Marie”), requesting the reconsideration of New York Ruling Letter (NY) N015908, dated September 5, 2007.¹

In NY N015908, dated September 5, 2007, CBP classified creme desserts, identified as “Crème Coffee” and “Crème au Caramel”. The “Crème Coffee” product was classified in heading 1901, HTSUS, and subheading 1901.90.4200, Harmonized Tariff Schedule of the United States Annotated (HTSUSA)², which provides for “Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included: Other: Other: Dairy products described in additional U.S. note 1 to chapter 4: Dairy preparations containing over 10 percent by weight of milk solids: Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions”.

The “Crème au Caramel” product was classified in heading 1901, HTSUS, and subheading 1901.90.4600, HTSUSA³, which provides for “Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not

¹ In HQ H023498, dated March 9, 2009, CBP modified NY N015908, dated September 5, 2007, pursuant to Section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993). See “Customs Bulletin”, Vol. 43, No. 13, March 26, 2009. This was in response to a previous request for reconsideration of NY N015908 and further clarification at that time that you were only seeking the reconsideration of that ruling as it pertained to the classification of the “Crème Brulee” product. As such, NY N015908 was modified to reflect the correct classification of the “Crème Brulee” in subheading 1905.90.90, HTSUS.

² If the quantitative limits of additional U.S. note 10 to Chapter 4 have been reached, the product would be classified in subheading 1901.90.4300, HTSUSA.

³ If the quantitative limits of additional U.S. note 10 to Chapter 4 have been reached, the product would be classified in subheading 1901.90.4700, HTSUSA.

elsewhere specified or included: Other: Other: Dairy products described in additional U.S. note 1 to chapter 4: Other: Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions”.

In addition, in NY N015868, dated September 7, 2007, one of two dessert products, “Crème au Chocolat”, was also classified in heading 1901, HTSUS, and subheading 1901.90.4600, HTSUSA.⁴

We have reviewed NY N015908 and NY N015868 and found the classification of certain creme desserts to be incorrect. For the reasons set forth below, we hereby revoke NY N015908 and modify NY N015868.

FACTS:

In NY N015908, CBP described the Crème Coffee and Crème au Caramel as fully cooked custard desserts, imported in frozen condition, in single-serving glass ramekins containing 110-grams, six units in a retail package. The Crème Coffee dessert is said to be composed of approximately 46 percent cream, 23 percent milk, 14 percent egg yolks, 12 percent sugar, 4 percent egg whites, and one percent coffee flavor. The Crème au Caramel consists of approximately 60 percent milk, 18 percent eggs, 12 percent sugar, 10 percent caramel, and one percent vanilla.

In N015868, CBP described the Crème au Chocolat as a chocolate custard consisting of 64.1 percent milk, 19.2 percent whole eggs, 12.8 percent sugar, and 3.8 percent cocoa powder. It is a ready to eat dessert imported in a frozen condition, individually packed for retail sale in small glass ramekins containing 110 grams, 6 ramekins to a carton.

ISSUE:

Whether the creme dessert products are classified in heading 1901, HTSUS, as an “other” food preparation, or in heading 1905, HTSUS, as “bakers’ wares”?

LAW AND ANALYSIS:

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

The following HTSUS provisions are under consideration:

1901	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:
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* * *

⁴ If the quantitative limits of additional U.S. note 10 to Chapter 4 have been reached, the product would be classified in subheading 1901.90.4700, HTSUSA.

- 1905 Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to heading 1901, HTSUS, state, in relevant part:

Apart from the preparations excluded by the General Explanatory Note to this Chapter, this heading also **excludes**:

* * *

- (e) Fully or partially cooked bakers' wares, the latter requiring further cooking before consumption (**heading 19.05**).

The ENs to heading 1905, HTSUS, state, in relevant part:

(A) Bread, pastry, cakes biscuits and other bakers' wares, whether or not containing cocoa.

This heading covers all bakers' wares. The most common ingredients of such wares are cereal flours, leavens and salt but they may also contain other ingredients such as: gluten, starch, flour of leguminous vegetables, malt extract or milk, seeds such as poppy, caraway or anise, sugar, honey, eggs, fats, cheese, fruit, cocoa in any proportion, meat, fish, bakery "improvers", etc. Bakery "improvers" serve mainly to facilitate the working of the dough, hasten fermentation, improve the characteristics and appearance of the products and give them better keeping qualities. The products of this heading may also be obtained from dough based on flour, meal or powder of potatoes.

This heading includes the following products:

* * * *

- (11) Certain bakery products made without flour** (e.g., meringues made of white of egg and sugar).

You assert that the Crème Coffee and Crème au Caramel dessert products are classified as "bakers' wares" in heading 1905, HTSUS, because these are fully cooked desserts which are prepared by one who specializes in the making of baked goods. Furthermore, you note that EN 19.05(A)(11) suggests that these desserts, as baked flourless baker products, are classified in heading 1905, HTSUS, and are thus precluded from classification in heading 1901, HTSUS.

In accordance with the terms of heading 1901, HTSUS, we must first determine whether the HTSUS provides for the merchandise in any other heading.

CBP has previously construed the term "bakers' wares" to mean "manufactured articles offered for sale by one [who] specializes in the making of

bread, cakes, cookies, and pastries.”⁵ See HQ H015429, dated December 11, 2007. Most recently, in HQ W968393, dated July 16, 2008, we explained:

The text of heading 1905, HTSUS, provides for “other bakers’ wares” which, when read in the context of the entire clause of which this expression is a part, leads us to now find that **the term “other bakers’ wares” refers to baked goods (or wares) other than the “bread, pastry, cakes, [and] biscuits” specified in the heading.** In addition, based on the heading text and the examples provided by the ENs, it appears that **goods of heading 1905, HTSUS, are consumed “as is” and are not incorporated into other food items.** (Emphasis added).

In HQ H023498, dated March 9, 2009, CBP held that a Crème Brûlée dessert product was classified as “bakers’ wares” of heading 1905, HTSUS. In making this determination, CBP considered the fact that the product was a manufactured good offered for sale by one who specializes in the making of pastries. It was also noted that the Crème Brûlée product was akin to bakery products made without flour (e.g., meringues made of egg white and sugar) described in EN 19.05 (a)(11). Moreover, CBP noted that the product, as imported, was fully baked and ready for consumption “as is”, that is, they are not incorporated into other food items. See also HQ H015429, dated December 11, 2007, fully baked creme brulee classified in heading 1905, HTSUS; HQ H226175, dated October 10, 2012, pre-baked French creme brulee classified in heading 1905, HTSUS.

Like the Crème Brûlée of HQ H023498, the Crème Coffee, Crème au Caramel, and Crème au Chocolat dessert products at issue are bakery products made without flour. They are manufactured goods offered for sale by one who specializes in the making of pastries. They are akin to the bakery products made without flour (e.g., meringues made of white of egg and sugar) described in EN 19.05 (A)(11). Moreover, as imported, they are fully baked and ready for consumption “as is”; that is, they are not incorporated into other food items. Accordingly, we find that the Crème Coffee, Crème au Caramel, and Crème au Chocolat dessert products are “bakers’ wares” and are classified in heading 1905, HTSUS. This decision is consistent with CBP precedent. See HQ H023498; HQ H015429; and HQ H226175.

HOLDING:

By application of GRIs 1 and 6, the Crème Coffee, Crème Caramel, and Crème au Chocolat dessert products are classified in heading 1905, HTSUS, specifically, subheading 1905.90.90, HTSUS, which provides for “Bread, pastry, cakes, biscuits and other bakers’ wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products: Other: Other: Other”. The general column one duty rate is 4.5 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 the World Wide Web at www.usitc.gov/tata/hts/.

⁵ This definition was based on the dictionary definition of the word “baker” and the word “wares” since we were unable to find a dictionary that defined the compound term “bakers’ wares.”

EFFECT ON OTHER RULINGS:

NY N015908, dated September 5, 2007, is hereby REVOKED and NY N015868, dated September 7, 2007 is modified.

Sincerely,

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division

ACCREDITATION AND APPROVAL OF BENNETT TESTING SERVICE, INC., AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of Bennett Testing Service, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Bennett Testing Service, Inc., has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes for the next three years as of November 3, 2014.

DATES: *Effective Dates:* The accreditation and approval of Bennett Testing Service, Inc., as commercial gauger and laboratory became effective on November 3, 2014. The next triennial inspection date will be scheduled for November 2017.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Bennett Testing Service, Inc., 1045 E. Hazelwood Ave., Rahway, NJ 07065, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Bennett Testing Service, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API Chapters	Title
3	Tank gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Maritime Measurements.

Bennett Testing Service, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain

petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-48	ASTM D-4052	Standard test method for density and relative density of liquids by digital density meter.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>

Dated: June 1, 2015.

DONALD A. COUSINS,
*Director, Scientific Services,
Laboratories and Scientific Services
Directorate.*

[Published in the Federal Register, June 9, 2015 (80 FR 32579)]

**SUSPENSION OF ALTOL CHEMICAL AND
ENVIRONMENTAL LABORATORY AS A CUSTOMS-
ACCREDITED LABORATORY**

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

ACTION: General notice of suspension of Altol Chemical and Environmental Laboratory as a Customs-accredited laboratory.

SUMMARY: Altol Chemical and Environmental Laboratory has been suspended, pursuant to CBP regulations, from testing petroleum and petroleum products for customs purposes.

DATES: *Effective Dates:* Suspension effective June 5, 2015. Suspension will lift no earlier than September 3, 2015 and only after CBP auditors verify satisfactory compliance.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Pursuant to 19 CFR 151.12, Altol Chemical and Environmental Laboratory, Sabanetas Industrial Park Building M-1380, Ponce, PR 00715, has been suspended from testing petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12, specifically pursuant to 19 CFR 151.12(k)(1)(ii)(D) for violation of 19 CFR 151.12(c)(5), for failure to maintain the obligations as a CBP Accredited Laboratory. The laboratory must undergo another CBP audit at the end of the suspension to ensure that all corrective actions have been addressed to CBP's satisfaction. The facility is directed to cease performing any Customs-accredited functions during this time period. CBP reserves the right to inspect any aspect of Altol Chemical and Environmental Laboratory's regulatory obligations and operations during the suspension period.

Anyone wishing to employ this entity to conduct laboratory analyses for customs purposes after the 90 day suspension period should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the entity's CBP status or the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

<http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>

Dated: June 1, 2015.

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services
Directorate.

[Published in the Federal Register, June 5, 2015 (80 FR 32174)]

AGENCY INFORMATION COLLECTION ACTIVITIES:**Cargo Manifest/Declaration, Stow Plan, Container Status Messages and Importer Security Filing**

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

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

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Cargo Manifest/ Declaration, Stow Plan, Container Status Messages and Importer Security Filing. CBP is proposing to add burden hours for four new collections of information, including Electronic Ocean Export Manifest, Electronic Air Export Manifest, Electronic Rail Export Manifest, and Vessel Stow Plan (Export). There are no changes to the existing forms or collections within this OMB approval. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before July 10, 2015 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

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

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (80 FR 17059) on March 31, 2015, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections

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

Title: Cargo Manifest/Declaration, Stow Plan, Container Status Messages and Importer Security Filing.

OMB Number: 1651–0001.

Form Number: Forms 1302, 1302A, 7509, 7533.

Abstract: This OMB approval includes the following existing information collections: CBP Form 1302 (or electronic equivalent); CBP Form 1302A (or electronic equivalent); CBP Form 7509 (or electronic equivalent); CBP Form 7533 (or electronic equivalent); Manifest Confidentiality; Vessel Stow Plan (Import); Container Status Messages; and Importer Security Filing. CBP is proposing to add new information collections for Electronic Ocean Export Manifest; Electronic Air Export Manifest; Electronic Rail Export Manifest; and Vessel Stow Plan (Export). Specific information regarding these collections of information is as follows:

CBP Form 1302: The master or commander of a vessel arriving in the United States from abroad with cargo on board must file CBP Form 1302, *Inward Cargo Declaration*, or submit the information on this form using a CBP-approved electronic equivalent. CBP Form 1302 is part of the manifest requirements for vessels entering the United States and was agreed upon by treaty at the United Nations Inter-government Maritime Consultative Organization (IMCO). This form and/or electronic equivalent, is provided for by 19 CFR 4.5, 4.7, 4.7a, 4.8, 4.33, 4.34, 4.38, 4.84, 4.85, 4.86, 4.91, 4.93 and 4.99 and is accessible at: http://www.cbp.gov/sites/default/files/documents/CBP%20Form%201302_0.pdf.

CBP Form 1302A: The master or commander of a vessel departing from the United States must file CBP Form 1302A, *Cargo Declaration Outward With Commercial Forms*, or CBP-approved electronic

equivalent, with copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest. This form and/or electronic equivalent, is provided for by 19 CFR 4.62, 4.63, 4.75, 4.82, and 4.87–4.89 and is accessible at: http://www.cbp.gov/sites/default/files/documents/CBP%20Form%201302_0.pdf.

Electronic Ocean Export Manifest: CBP will begin a pilot in 2015 to electronically collect ocean export manifest information. This information will be transmitted to CBP in advance via the Automated Export System (AES) within the Automated Commercial Environment (ACE). The data elements to be transmitted may include the following:

- Mode of transportation (Vessel, containerized or Vessel, non-containerized)
- Name of ship or vessel
- Nationality of ship
- Name of master
- Port of loading
- Port of discharge
- Bill of Lading number (Master and House)
- Bill of Lading type (Master, House, Simple or Sub)
- Number of House Bills of Lading
- Marks and Numbers
- Container Numbers
- Seal Numbers
- Number and kind of packages
- Description of goods
- Gross Weight (lb. or kg.)
- Measurements (per HTSUS)
- Shipper name and address
- Consignee name and address
- Notify Party name and address
- Country of Ultimate Destination

- In-bond number
- Internal Transaction Number (ITN) or AES Exemption Statement
- Split Shipment Indicator
- Portion of split shipment
- Hazmat Indicator
- UN Number
- Chemical Abstract Service (CAS) Registry Number
- Vehicle Identification Number (VIN) or Product Identification Number

CBP Form 7509: The aircraft commander or agent must file Form 7509, *Air Cargo Manifest*, with CBP at the departure airport, or respondents may submit the information on this form using a CBP-approved electronic equivalent. CBP Form 7509 contains information about the cargo onboard the aircraft. This form, and/or electronic equivalent, is provided for by 19 CFR 122.35, 122.48, 122.48a, 122.52, 122.54, 122.73, 122.113, and 122.118, and is accessible at: http://www.cbp.gov/sites/default/files/documents/CBP%20Form%207509_0.pdf.

Electronic Air Export Manifest: CBP will begin a pilot in 2015 to electronically collect air export manifest information. This information will be transmitted to CBP in advance via ACE's AES. The data elements to be transmitted may include the following:

- Exporting Carrier
- Marks of nationality and registration
- Flight Number
- Port of Lading
- Port of Unlading
- Scheduled date of departure
- Consolidator
- De-Consolidator
- Air Waybill type (Master, House, Simple, or Sub)
- Air Waybill Number
- Number of pieces and unit of measure

- Weight (kg./lb.)
- Number of house air waybills
- Shipper name and address
- Consignee name and address
- Cargo description
- AES Internal Transaction Number (ITN) or AES Exemption Statement/Exception Classification
- Split air waybill indicator
- Hazmat indicator
- UN Number
- In-bond number
- Mode of transportation (Air, containerized or Air, non-containerized)

CBP Form 7533: The master or person in charge of a conveyance files CBP Form 7533, *INWARD CARGO MANIFEST FOR VESSEL UNDER FIVE TONS, FERRY, TRAIN, CAR, VEHICLE, ETC*, which is required for a vehicle or a vessel of less than 5 net tons arriving in the United States from Canada or Mexico, otherwise than by sea, with baggage or merchandise. Respondents may also submit the information on this form using a CBP-approved electronic equivalent. CBP Form 7533, and/or electronic equivalent, is provided for by 19 CFR 123.4, 123.7, 123.61, 123.91, and 123.92, and is accessible at: http://www.cbp.gov/sites/default/files/documents/CBP%20Form%207533_0.pdf.

Electronic Rail Export Manifest: CBP will begin a pilot in 2015 to electronically collect the rail export manifest information. This information will be transmitted to CBP in advance via ACE's AES. The data elements to be transmitted may include the following:

- Mode of Transportation (Rail, containerized or Rail, non-containerized)
- Port of Departure from the United States
- Date of Departure
- Manifest Number
- Train Number
- Rail Car Order

- Car Locator Message
- Hazmat Indicator
- 6-character Hazmat Code
- Marks and Numbers
- SCAC (Standard Carrier Alpha Code) for exporting carrier
- Shipper name and address
- Consignee name and address
- Place where the rail carrier takes possession of the cargo shipment or empty rail car
- Port of Unlading
- Country of Ultimate Destination
- Equipment Type Code
- Container Number(s) (for containerized shipments) or Rail Car Number(s) (for all other shipments)
- Empty Indicator
- Bill of Lading Numbers (Master and House)
- Bill of Lading type (Master, House, Simple or Sub)
- Number of house bills of lading
- Notify Party name and address
- AES Internal Transaction Number (ITN) or AES Exemption Statement
- Cargo Description
- Weight of Cargo (may be expressed in either pounds or kilograms)
- Quantity of Cargo and Unit of Measure
- Seal Number
- Split Shipment Indicator
- Portion of split shipment
- In-bond number
- Mexican Pedimento Number

Manifest Confidentiality: An importer or consignee (inward) or a shipper (outward) may request confidential treatment of its name and address contained in manifests by following the procedure set forth in 19 CFR 103.31.

Vessel Stow Plan (Import): For all vessels transporting goods to the United States, except for any vessel exclusively carrying bulk cargo, the incoming carrier is required to electronically submit a vessel stow plan no later than 48 hours after the vessel departs from the last foreign port that includes information about the vessel and cargo. For voyages less than 48 hours in duration, CBP must receive the vessel stow plan prior to arrival at the first port in the U.S. The vessel stow plan is provided for by 19 CFR 4.7c.

Vessel Stow Plan (Export): CBP will begin a pilot in 2015 to electronically collect a vessel stow plan for vessels transporting goods from the United States, except for any vessels exclusively carrying bulk cargo. The exporting carrier will electronically submit a vessel stow plan in advance.

Container Status Messages (CSMs): For all containers destined to arrive within the limits of a U.S. port from a foreign port by vessel, the incoming carrier must submit messages regarding the status of events if the carrier creates or collects a container status message (CSM) in its equipment tracking system reporting an event. CSMs must be transmitted to CBP via a CBP-approved electronic data interchange system. These messages transmit information regarding events such as the status of a container (full or empty); booking a container destined to arrive in the United States; loading or unloading a container from a vessel; and a container arriving or departing the United States. CSMs are provided for by 19 CFR 4.7d.

Importer Security Filing (ISF): For most cargo arriving in the United States by vessel, the importer, or its authorized agent, must submit the data elements listed in 19 CFR 149.3 via a CBP-approved electronic interchange system within prescribed time frames. Transmission of these data elements provide CBP with advance information about the shipment.

Current Actions: CBP is proposing that this information collection be extended with a change to the burden hours resulting from proposed new information collections associated with the Electronic Ocean Export Manifest, Electronic Air Export Manifest, Electronic Rail Export Manifest, and Vessel Stow Plan (Export). There are no changes to the existing information collections under this OMB approval. The burden hours are listed in the chart below.

Type of Review: Revision and Extension.

Affected Public: Businesses.

Collection	Total burden hours	Number of respondents	Number of responses per respondent	Total responses	Time per response
Air Cargo Manifest (CBP Form 7509).....	366,600	260	5,640	1,466,400	15 minutes.
Inward Cargo Manifest for Truck, Rail, Vehicles, Vessels, etc. (CBP Form 7533) ..	962,940	33,000	291.8	9,629,400	6 minutes.
Inward Cargo Declaration (CBP Form 1302).....	1,500,000	10,000	300	3,000,000	30 minutes.
Cargo Declaration Outward With Commercial Forms (CBP Form 1302A).....	10,000	500	400	200,000	3 minutes.
Importer Security Filing.....	17,739,000	240,000	33.75	8,100,000	2.19 hours.
Vessel Stow Plan (Import) ...	31,803	163	109	17,767	1.79 hours.
Vessel Stow Plan (Export) ...	31,803	163	109	17,767	1.79 hours.
Container Status Messages.	23,996	60	4,285,000	257,100,000	0.0056 minutes.
Request for Manifest Confidentiality.....	1,260	5,040	1	5,040	15 minutes.
Electronic Air Export Manifest.....	121,711	260	5,640	1,466,400	5 minutes.
Electronic Ocean Export Manifest.....	5,000	500	400	200,000	1.5 minutes.
Electronic Rail Export Manifest.....	2,490	50	300	15,000	10 minutes.
Total.....	20,796,603	289,996	281,217,774	

Dated: June 3, 2015.

SETH RENKEMA,
Acting Agency Clearance Officer,
U.S. Customs and Border Protection.

[Published in the Federal Register, June 10, 2015 (80 FR 32971)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Customs Declaration

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

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

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Customs Declaration (CBP Form 6059B). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be ex-

tended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before July 6, 2015 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to ira_submission@omb.eop.gov or faxed to (202) 395-5806.

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

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (80 FR 16416) on March 27, 2015, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/ or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Customs Declaration.

OMB Number: 1651-0009.

Form Number: CBP Form 6059B.

Abstract: CBP Form 6059B, Customs Declaration, is used as a standard report of the identity and residence of each person arriving in the United States. This form is also used to declare imported articles to U.S. Customs and Border Protection (CBP) in accordance with 19 CFR 122.27, 148.12, 148.13, 148.110, 148.111; 31 CFR 5316 and section 498 of the Tariff Act of 1930, as amended (19 U.S.C. 1498).

Section 148.13 of the CBP regulations prescribes the use of the CBP Form 6059B when a written declaration is required of a traveler entering the United States. Generally, written declarations are required from travelers arriving by air or sea. Section 148.12 requires verbal declarations from travelers entering the United States. Generally, verbal declarations are required from travelers arriving by land.

A sample of CBP Form 6059B can be found at: <http://www.cbp.gov/travel/us-citizens/sample-declaration-form>.

Current Actions: This submission is being made to extend the expiration date of this information collection with no change to the burden hours or to CBP Form 6059B.

Type of Review: Extension (without change).

Affected Public: Individuals.

CBP Form 6059B:

Estimated Number of Respondents: 104,506,000.

Estimated Number of Total Annual Responses: 104,506,000.

Estimated Time per Response: 4 minutes.

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

Verbal Declarations:

Estimated Number of Respondents: 233,000,000.

Estimated Number of Total Annual Responses: 233,000,000.

Estimated Time per Response: 10 seconds.

Estimated Total Annual Burden Hours: 669,000.

Dated: May 27, 2015.

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